

# **REQUEST FOR (DESIGN BUILD) BIDS**

## **Underground Storage Tanks**

### **Tri-City Healthcare District's Facilities**

#### **Department**

**Date of Issuance:** 6/5/2025

**Mandatory Job Walk:** 7/8/2025 at 10:00 AM

**RFI Due:** 7/16/2025 by 4:00 PM

**Bids Due:** 7/30/2025 at 3:00 PM

**AT**

**Tri-City Healthcare District  
Facilities Management  
Department 4002 Vista Way  
Oceanside, CA 92056**

**Attention: Benito Oporto-BOporto@TCMC.com**

## **NOTICE INVITING BIDS**

Tri-City Healthcare District ("TCHD", and "Owner"), is requesting design build bids for the TCHD's Underground Storage Tank, located at 4002 Vista Way, Oceanside, California 92056 (the "UST", and "Project"), all in accordance with the Contract Documents as more fully described and identified in the accompanying Bid Documents. TCHD is a California local healthcare district formed pursuant to Health and Safety Code section 3200 *et seq.* TCHD opened Tri-City Medical Center, a full-service acute-care hospital, in 1961 and has since grown to include outpatient services and clinics which serve San Diego County's coastal communities of Carlsbad, Oceanside and Vista, as well as the surrounding region. TCHD operates its hospital at 4002 Vista Way, Oceanside, CA 92056.

All Work under the Contract to be awarded must be completed within 200 business days of the issuance of the Notice to Proceed. To be eligible for award Bidders must possess a current and active California contractor's license for **Class B General Building Contractor, Class A General Engineering and a Class Haz, Hazardous Substance Removal Certification.**

**Bid packages are available starting 6/5/2025 at:**

<https://www.tricitymed.org/about-us/requests-for-proposals-rfps/>

Sealed Bids, inclusive of Bids, must be delivered to and received by the Owner at the offices of Tri-City Health Care District ("TCHD"), Facilities Management Department, 7/30/2025 3:00PM at which time they will be publicly opened and read. Any Bids received after this time will be returned unopened.

A mandatory pre-bid meeting and tour is scheduled for 10:00 A.M. on 7/8/2025 at 4002 Vista Way, Oceanside CA 92056 Facilities Management Office located on the East side of the Campus. All questions shall be submitted via email by end of day 7/16/2025 to Benito Oporto at BOporto@TCMC.com.

A bid security bond, in an amount not less than ten percent (10%) of the Total Bid Price, shall be submitted with each Bid. As a condition to Contract award the successful Bidder shall be required to furnish a payment bond and a faithful performance bond on the forms provided in the Instructions to Bidders.

Pursuant to section 1770 *et seq.* of the California Labor Code, the successful Bidder and its subcontractors of any tier shall pay all workers employed on the Project not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations ("DIR"). Copies of the prevailing rate of per diem wages can be located on the California Department of Industrial Relations website at [dir.ca.gov](http://dir.ca.gov).

Pursuant to provisions of Section 22300 of the California Public Contract Code, the successful Bidder may substitute securities for any monies withheld by the Owner to ensure performance under the Contract. The procedures for such substitution shall be as provided in said Section 22300.

The contractor and subcontractor shall be listed on a bid proposal as registered with the DIR pursuant to Labor Code section 1725.5 (with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)). However, pursuant to Section 1771.1, as long as Contractor or Subcontractor is registered to perform public work to Section 1725.5 at the time the contract is awarded, DIR registration is then acceptable within these parameters. This project is subject to compliance monitoring and enforcement by the DIR. The successful Bidder

shall be required to post all job site notices prescribed by law or regulation. The successful bidder and its subcontractors shall be required to furnish electronic certified payroll records directly to the Labor Commissioner (also known as the Division of Labor Standards Enforcement) (A) at least monthly or more frequently if specified in the contract with the awarding body and (B) in a format prescribed by the Labor Commissioner.

All questions relative to this Project prior to the opening of Bids shall be directed to the Owner's Project Manager. No interpretations of or changes to the Bid Instructions, Specifications or other Contract Documents will be made by telephone. Bidders shall not be entitled to rely upon any information provided by the Owner or the Owner's Project Manager unless such information is communicated in writing. The Owner will not consider any "or equal" products, materials or services for approval during the period preceding the opening of Bids. Bidders must submit their bid packages in compliance with these bid instructions and the Specifications. The Owner's Project Manager for the Project is:

**Benito Oporto, Director of  
Facilities  
Tri-City Healthcare District**  
Facilities Management Department  
4002 Vista Way  
Oceanside, CA 92056

The Owner, through its duly authorized body or agent, will award the Contract to the lowest responsive and responsible Bidder complying with these instructions, or will reject all Bids as soon as practicable after the date of opening of Bids. The lowest Bidder will be determined by reference to the Total Bid Price shown on the Bid Form.

The Owner reserves the right to reject any or all Bids, to waive any informality or irregularity in a Bid, and to make awards in the interest of the Owner.

Dated at Oceanside, California this 6/5/2025

By: Benito Oporto

## **SCOPE OF WORK**

The following is a summary of the work included in this designed build bid; all work will follow all local and state requirements, (following this summary is a detailed scope of work):

- Complete fuel system design and permitting (San Diego County and HCAI)
- Aboveground or below ground tank installation
- Provide alternate temporary fuel storage.
- Transition Boxes
- System electrical
- Above ground piping
- Underground piping
- Day tank upgrade
- Tank monitoring system installation (Veeder Root)
- Finish electrical
- System painting and decal installation
- System completion and testing
- UST removal
- Complete all asphalt work.
- Barrier and traffic control
- Identify and avoid existing utilities

## **INSTRUCTIONS FOR BIDDERS**

### **SECTION B: INSTRUCTIONS FOR BIDDERS**

#### **IFB-1.        Bids**

In order to receive consideration and be eligible for award, Bids must be made in accordance with the following instructions.

#### **IFB-2.        Examination of Documents, Site, and Conditions**

Before submitting a Bid, Bidders shall carefully examine all Contract Documents and visit the site of the Work in order to fully inform themselves as to all existing conditions and limitations. If, upon such examination, the Bidder believes that the plans or specifications are incomplete, the Bidder shall so notify the Owner and Project Manager in writing. Submission of a Bid shall be considered prima facie evidence that the Bidder has made such examination and is satisfied as to the conditions to be encountered in performing the Work and as to the requirements as set forth hereinafter.

#### **IFB-3.        Irregular Bids**

Bids may be considered irregular and may be rejected by the Owner if they show any alterations of form, unauthorized additions, unauthorized conditional or alternate bids, incomplete bids, recapitulations, experience lack qualifications, obviously unbalanced prices, erasures, or other irregularities of any kind. No Bid will be considered unless accompanied by the Bid Security in the type and amount specified. No oral, facsimile, telephonic, electronic (e.g. transmitted via e-mail) or modified Bids will be considered.

#### **IFB-4.        Signing the Bid Form**

The Bid shall include the legal name of the Bidder; identify the Bidder as a sole proprietor, a partnership, a corporation, or any other legal entity; include the Bidder's contractor's license number; be signed by the person or persons legally authorized to bind the Bidder to a contract for the execution of the Work (a Bid submitted by an agent shall have a current Power of Attorney attached certifying the agent's authority to bind the Bidder); and be signed in longhand.

#### **IFB-5.        Bid Security**

Each Bid shall be accompanied by a certified check, cashier's check, cash or bid bond, executed by an admitted surety approved to conduct business in the state of California pursuant to California Code of Civil Procedure Section 995.120, acceptable to the Owner in an amount equal to at least ten percent (10%) of the Bid, payable without condition to the Owner as a guarantee that the Bidder, if awarded the Contract, will promptly execute such Contract in accordance with the Bid and in manner and form required by these Contract Documents and will furnish the specified bonds. The bid security of the Bidder awarded the Contract will be retained until the Contract is signed and satisfactory payment and performance bonds are furnished, or other disposition made thereof.

**IFB-6.            Experience and Business Standing**

Each Bidder shall submit with the Bid a statement setting forth his/her experience and qualifications. Along with this statement each Bidder shall include a list of projects most similar to this one that the Bidder has currently completed and the following information for each such similar project: the name, telephone number and address of the owner; the contract price before change orders, the contract price as modified by change orders, and the date the project was completed. Each Bidder shall also provide a summary of the qualifications of the Bidder's proposed Project Manager for this Project that highlights this individual's experience and skills relevant to the needs of this Project. The successful Bidder shall not assign to the Project an individual to whom the Owner expresses a reasonable objection and shall remove from the Project any individual the Owner rejects with or without specific cause.

**IFB-7.            Withdrawal of Bid Prior to Bid Opening**

Any Bidder may withdraw his Bid, either personally or by facsimile or written request, at any time prior to the scheduled closing time for receipt of Bids.

**IFB-8.            Withdrawal of Bid after Bid Opening**

A Bidder may request to withdraw his/her Bid after the opening of Bids if a mistake was made in preparing the Bid. A Bidder desiring to withdraw shall give written notice to the Owner within five (5) days after the opening of Bids, specifying in detail how the mistake occurred and how the mistake made the Bid materially different than it was intended to be. Withdrawal will be permitted for mistakes made in filling out the Bid provided the Bidder establishes, to the Owner's satisfaction, that such a mistake was made and determined as reasonable. Withdrawal will not be permitted for mistakes resulting from errors in judgment or carelessness in inspecting the site of the Work or in reading the Plans and Specifications. The decision to accept or reject a request for withdrawal shall be solely the Owner's.

**IFB-9.            Required Bonds**

The successful Bidder, simultaneously with the execution of the Contract, will be required to furnish a payment bond in an amount equal to one hundred percent (100%) of the Contract Price and a faithful performance bond in an amount equal to one hundred percent (100%) of the Contract Price. Such bonds shall be executed by an admitted surety approved to conduct business in the state of California, pursuant to California Code of Civil Procedure Section 995.120. All Bidders are notified that all bonds required to be submitted relating to this Project must comply with California Code of Civil Procedure Section 995.630 and must be executed by a person authorized by virtue of a valid Power of Attorney which is in effect and on file with the County Clerk of the County of San Diego.

**IFB-10.          Warranty Period and Performance Bond**

The performance bond shall extend through the warranty period as specified in the General Conditions.

**IFB-11.**        Surety Company

All required bonds shall be secured from a California admitted surety company satisfactory to the Owner. Owner shall be supplied either with: (1) proof of a minimum rating of "A" according to the current edition of Best's Key Rating Guide for the coverage being offered and evidence that the surety is a California admitted surety; or (2) the documents described in § 995.660 (a)(1) through (4) of the California Code of Civil Procedure.

**IFB-12.**        Examination of Forms

The Bidder shall carefully examine any form contracts or bonds presented herein.

**IFB-13.**        Number of Copies

The Contract and the bonds will be executed in three original counterparts.

**IFB-14.**        Questions About Documents

If any person contemplating submitting a Bid in response to this Request for Bids ("RFB") is in doubt as to the true meaning of any part of this RFB, or finds discrepancies or omissions in any element thereof, s/he shall submit to the Owner a written request via e-mail no later than July 19, 2022\_ for an interpretation or correction thereof. The person submitting the request will be responsible for its prompt delivery.

**IFB-15.**        Interpretations or Corrections

Interpretation or correction of this RFB will be made only by Addendum duly issued and a copy of such Addendum will be mailed or delivered to each person or firm receiving a copy of this RFB. The Owner will not be responsible for any other explanations or interpretations of the proposed Contract Documents.

**IFB-16.**        Documents to Rely Upon

Only this RFB, including the Notice Inviting Bids, the Instructions to Bidders and the Owner-issued Addenda, shall be relied upon for preparation of Bids, and unless specifically corroborated by the RFB, any and all statements or representations made by the Design Engineer, the Owner, the Owner's Representative, or other third parties regarding the Project prior, during, or after submission of Bids will not be binding.

**IFB-17.**        Addenda

Addenda shall become a part of this RFB. Any Addenda issued shall be covered and acknowledged in the Bid.

**IFB-18.**        Award of Contract

The Owner, through its duly authorized body or agent, will award the Contract to the lowest responsive and responsible and qualified Bidder complying with these instructions, or will reject all Bids as soon as practicable after the date of opening of Bids. The Award, if made, will be made within sixty (60) calendar days after the opening of Bids, and a Notice of Award will be sent to the

successful Bidder by certified mail. The low Bid will be determined by the Total Bid Price identified on the Bids.

**IFB-19.**        Rejection of Bid

The Owner reserves the right to accept or reject any or all Bids and to waive any informality, irregularity, and nonconformity in the Bids received when deemed advisable in its sole discretion for the public good or the Owner's best interests.

**IFB-20.**        Bidders Interest in More Than One Bid Prohibited

No person, firm, or corporation, under the same or different name, shall make, file, or be interested in more than one Bid for the same Work unless alternate Bids are called for. A person, firm, or corporation who has submitted a sub-bid to a Bidder, or who has quoted prices on materials to a Bidder, is not thereby disqualified from submitting a sub-bid or quoting prices to other Bidders.

**IFB-21.**        Bid Rejection in Case of Collusion or Prohibited Gratuities

Reasonable grounds for believing that any Bidder is interested in more than one Bid will cause the rejection of all Bids in which such a Bidder is interested. Any or all Bids can be rejected by the Owner if the Owner has reason for believing that collusion exists among any of the Bidders.

No gratuities of any kind will be accepted from any Bidders, including meals, gifts or trips, and violation of this condition may result in immediate disqualification and rejection of all Bids in which such a Bidder is interested.

**IFB-22.**        Bid Protest

If any Bidder wishes to challenge a potential bid award, he shall file a written objection within five (5) calendar days following the bid opening. The written objection shall include specific reasons why the Owner should reject the bid questioned by the Bidder. The Owner may, in its discretion, consider the protest during the public meeting at which the contract award is to be considered, or it may consider it at a prior meeting. The Owner shall give the challenging Bidder and the challenged apparent low Bidder at least five (5) working days' notice of the board meeting at which the challenge shall be considered by the Board. No other notice, other than that required for agenda descriptions by the Ralph M. Brown Act, shall be required. The Board may, in its discretion, continue its consideration and determination of the issue to future meetings of the Board within the time authorized for award of the Contract. The Board's decision shall be final.

**IFB-23.**        Site Conditions

Bidders are required to inform themselves fully of the conditions relating to construction and labor under which the Work for the Project will be or is now being performed, and the Contractor shall employ, as far as possible, such methods and means in carrying out his Work as will not cause any interruption or interference to others working at the site.



**IFB-24.**        Materials and Equipment Identified by Brand or Trade Names

Some materials and equipment specified in the Contract Documents may be identified by brand or trade names. Except where specified otherwise, it is the intent of the Contract Documents to allow Bidders to select such materials and equipment from two or more brands or trade names listed in the Specifications and in the Plans or from other brands or trade names of materials and equipment of equal quality and utility to those specified and in accordance with provisions contained in the Specifications. Where only one brand or trade name is listed followed by the words "or equal," only one brand or trade name was known to the Owner's Design Engineer when preparing the Contract Documents or the product involves a unique or novel application required to be used in the public interest or for other reasons specified in Public Contract Code section 3400. Upon request of the Owner or the Owner's Design Engineer, the successful Bidder shall have thirty-five (35) calendar days after signing a Contract for this Work to submit data substantiating any request for substitution of "or equal" items.

**IFB-25.**        Sets of Plans and Specification Free to Successful Bidder

The Bidder to whom award is made may obtain five (5) sets of Plans and Specifications for the Work at no extra cost from the Owner or the Owner's Agent.

**IFB-26.**        Additional Sets of Plans

Additional sets may be purchased at the Design Engineer's cost of reproduction.

**IFB-27.**        Liquidated Damages

Pursuant to Section GC3-6 of the General Conditions, the liquidated damages applicable to this Contract is the sum of Five Hundred Dollars (\$500) per day.

**IFB-28.**        Procurement of Permits and Licenses

Unless otherwise stated, the Contractor shall procure all permits and licenses, pay all charges, fees, and taxes and give all notices necessary that are due and lawful to the prosecution of the Work.

**IFB-29.**        California Contractor's License

Bidders shall have a valid California contractor's license issued by the Contractors State License Board under license classification "B" – General Building Contractor. The license shall be active and in good standing as of the date of submittal of the Bid and shall remain active and in good standing continuously until final acceptance of the Work and shall be provided at time of bid.

**IFB-30.**        Wage Rates

Pursuant to Sections 1770 et seq. of the California Labor Code, the successful Bidder and its subcontractors of any tier shall pay all workers employed on the Project not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. Copies may be obtained from State of California, Division of Labor Statistics and Research, (415) 557- 0561. The successful Bidder shall post a copy of such determination at the job site. The successful Bidder may be subject to penalties if workers are

paid less than the required prevailing wages,

as provided by Labor Code Section 1775. The successful Bidder shall, as a penalty to the Owner, forfeit two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the specified prevailing rates for such work or craft in which such worker is employed, whether paid by the successful Bidder or by any subcontractors under him unless the requirements of Labor Code Section 1775(b) are met. TCHD does not monitor payments, it is the obligation of the Contractor.

**IFB-31.        Apprentices on Public Works**

The Contractor shall comply with all applicable provisions of Section 1777.5 and 1777.6 of the California Labor Code relating to employment of apprentices on public works. Additional information is provided in the General Conditions

**IFB-32.        Working Hours**

The Contractor shall comply with all applicable provisions of Sections 1810 to 1815, inclusive, of the California Labor Code relating to working hours. The Contractor shall, as a penalty to the Owner, forfeit twenty-five dollars (\$25.00) for each worker employed in the execution of the Contract by the Contractor or by any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, unless such worker receives compensation for all hours worked in excess of eight (8) hours at not less than one and a half (1 1/2) times the basic rate of pay.

**IFB-33.        Insurance**

The Contractor shall provide insurance for this Project in accordance with the provisions stated in Part 2 of General Conditions. Nothing contained in the insurance requirements is to be construed as limiting the liability of the Contractor or the Contractor's sureties. TCHD shall be listed as an additional insured.

**IFB-34.        Registration with DIR and Compliance Monitoring**

No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5 (with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)). No contractor or subcontractor may be awarded a contract for public works on a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, and in accordance with statement above.

This project is subject to compliance monitoring and enforcement by the DIR. The Contractor is required to post all job site notices prescribed by law or regulation. The Contractor and all of its subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (also known as the Division of Labor Standards Enforcement) (A) at least monthly or more frequently if specified in the contract with the awarding body and (B) in a format prescribed by the Labor Commissioner.

**IFB -35.        Execution of Bids and Bid Forms**

Bids shall be properly executed upon the Bid Forms attached to and made part of these Contract Documents. No Bid will be considered unless it is made upon such Bid Forms and is submitted with the book of Contract Documents also provided herewith. All Bids shall be

prepared in accordance with these instructions and shall comply with applicable California statutes, with applicable ordinances, codes and regulations (including, without limitation, building codes), and with the Contract Documents. Numbers shall be stated both in writing and in figures where so required. In case of a difference between written words and figures, the amount stated in written words shall govern. The completed forms shall be without interlineations, alterations, or erasures and no forms, Specifications or Contract Documents shall be disassembled.

**IFB-36.**        Listing of Subcontractors

As provided by Public Contract Code section 4104, the Bidder shall provide on the form included in this Request for Bids the name, California Contractor's license number, and location of place of business of each subcontractor who will perform work or labor or render service to the Bidder in or about the construction of the work or improvements in an amount in excess of one-half of one percent (0.5%) of the Bidder's Total Bid Price, together with the dollar value and portion of the Work which will be done by each subcontractor. Only one subcontractor shall be listed for each portion of the Work. Circumvention by the Bidder of the requirement to list subcontractors by the device of listing one subcontractor who will in turn sublet portions constituting the majority of the Work covered by this Contract shall be considered a violation of Chapter 4 of the California Public Contract Code and shall subject the Bidder to the penalties set forth in Sections 4110 and 4111 of said Code. The Contractor shall conduct substitutions of subcontractors only in compliance with Public Contract Code Sections 4107 and 4107.5, which detail the process and conditions under which a public agency may consent to a subcontractor substitution. Attach additional sheets to this subcontractor listing form if necessary.

**IFB-37.**        Wrap-Up Insurance

Owner may elect after award to procure an Owner-controlled insurance program ("OCIP" or "Wrap-Up insurance") to cover the Bidder's firm and all of its subcontractors on the Project to meet the insurance requirements of the Contract for comprehensive general liability, property damage and workers compensation insurance. If Owner makes such election, the successful Bidder will cooperate with the Owner as required to calculate the credit due to the Owner against the Contract Price to reflect the cost of the insurance that the successful Bidder no longer needs to provide due to the Wrap-Up insurance. Contractor will provide proof of workers' compensation insurance, General liability insurance, Auto liability insurance, property damage insurance, prior to acceptance of bid.

**IFB-38.**        Submission of Bids

A.        Sealed bids shall be delivered as instructed herein and, in the Notice, Inviting Bids, on or before the day and hour set for the opening of Bids in the Notice Inviting Bids. It is the sole responsibility of the Bidder to see that his, her or its Bid is received in proper time. Bids received after the scheduled closing time for receipt of Bids will be returned to the Bidder unopened. Bids shall be submitted in a sealed envelope. The outside, upper left-hand corner of the envelope shall be marked as follows:

**OFFICIAL BID - DO NOT OPEN**  
Tri-City Healthcare District  
Facilities Management Department  
4002 Vista Way  
Oceanside, CA 92056

Bid Open Date: 7/15/2025

B. No Bid will be considered unless it is made upon the Bid Proposal forms (Bidding Documents) contained in and submitted with the book of Contract Documents. No book of Contract Documents shall be disassembled. Bid Proposals may be considered irregular and may be rejected by the Owner if they show any alterations of form, unauthorized additions, unauthorized conditional or alternate Bids, incomplete Bids, obviously unbalanced prices, erasures, or other irregularities of any kind. No Bid will be considered unless accompanied by the Bid Security in the type and amount set forth in Instructions for Bidders.

C. The Bids will be publicly opened and read at the time and place designated in the Notice Inviting Bids. The Owner reserves the right to reject any or all Bids and to waive any informality, irregularity, and nonconformity when deemed advisable in the Owner's sole discretion for the public good or the Owner's best interests.

## REQUIRED FORMS

This form is required.

Failure to submit a Bid upon this form shall constitute grounds for rejection of the Bid.

### ~~~ BEGIN COST BID FORM ~~~ BID FORM

TO: Tri-City Healthcare District

FOR: General Contracting Services – TCHD Emergency Department Renovation  
UNDERSIGNED, AS BIDDER, HEREBY AGREES AND DECLARES THAT:

A. BID IRREVOCABLE FOR SIXTY DAYS

This Bid, as presented herein, is irrevocable, and may not be withdrawn for a period of sixty (60) calendar days after the date set for the opening of Bids, except in accordance with the withdrawal of Bid provisions of the Instructions for Bidders.

This information shall be submitted in accordance with all provisions of the Instructions for Bidders.

B. SCHEDULE OF PRICES

All prices quoted are F.O.B. JOB SITE installed, tested and operational with all applicable state and/or federal sales taxes and any other special taxes, patent rights or royalties. FREIGHT AND FULL INSURANCE SHALL BE PAID BY THE BIDDER to the job site. Award will be based on the Total Bid Price listed in the "Bid Schedule."

## **BID SCHEDULE**

**for**

### **Underground Storage Tank Replacement**

*Bid Schedule must be completed in its entirety.*

<b>Item</b>	<b>Description</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Extended Amount</b>
1.	Furnish contract bonds, project insurance, and project permits (not to exceed two percent (2%) of the Total Bid Price) and Mobilization/Demobilization including project closeout (not to exceed 3% of the Total Bid Price.)	Lump Sum	\$	\$
2.	State required line item for Labor Code Sections 6705 and 6707, excavation safety measures.	Lump Sum	\$	\$
3.	All Work, labor, materials, equipment, taxes and incidentals to provide a complete Project in accordance with Contract Documents which are not already included in Items 1 and 2	Lump Sum	\$	\$

Bidder shall total the extended amounts provided in the above Bid Schedule to determine Total Bid Price, and shall enter the Total Bid Price on the following two lines:

Total Bid Price in Numerals: \$ \_\_\_\_\_

Total Bid Price in Words: \_\_\_\_\_ Dollars

The Contract Award will be based on the Total Bid Price listed above.

#### **C. COSTS INCLUDED IN TOTAL BID PRICE**

The undersigned declares that the Total Bid Price includes the cost for all labor, materials, equipment, taxes, insurance, bonds and incidentals necessary for the completion of the Work of the Contract Documents, including, without limitation, the cost of providing and implementing a detailed plan showing the design of sheeting, shoring, and bracing, or the equivalent method for the protection of life and limb in trenches and open excavation in conformance with applicable safety orders and Labor Code section 6705.

#### **D. LIST OF SUBCONTRACTORS**

As provided by Public Contract Code section 4104, the Bidder shall provide on the form below the name, California Contractor's license number, and location of place of business of each subcontractor who will perform work or labor or render service to the Bidder in or about the

construction of the work or improvements in an amount in excess of one-half of 1 percent of the Bidder's Total Bid Price, together with the dollar value and portion of the Work which will be done by each subcontractor. Only one subcontractor shall be listed for each portion of the Work. Circumvention by the Bidder of the requirement to list subcontractors by the device of listing one subcontractor who will in turn sublet portions constituting the majority of the Work covered by this Contract shall be considered a violation of Chapter 4 of the California Public Contract Code and shall subject the Bidder to the penalties set forth in Sections 4110 and 4111 of said Code. The Contractor shall conduct substitutions of subcontractors only in compliance with Public Contract Code Sections 4107 and 4107.5, which detail the process and conditions under which a public agency may consent to a subcontractor substitution. Attach additional sheets to this subcontractor listing form if necessary.

<u>Subcontractor's Name, Location of Business and Contractor's License Number</u>	<u>Value of Work (\$)</u>	<u>Portion (Type of Work)</u>
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E. APPROACH TO WORK

Submit a brief description on how the Bidder intends to approach the Work with respect to staging, fabrication (on or off-site), safety measures for accident prevention, handling of hazardous material or wastes, procurement of materials in coordination of scheduling subcontractors (i.e.; delays with materials, etc., for the job) or any other item that is important to the Work. Bidder shall submit all detailed safety and accident prevention plans and associated safety policies and practices required by law along with the Bid. Bidder's Bid will be rejected as incomplete and non-responsive if not accompanied by this safety documentation. Owner may reject Bidder's Bid if Owner is not satisfied with Bidder's safety documentation. Attach additional sheets if necessary.

F. COMPANY DATA

Legal name of Bidder: \_\_\_\_\_

The full names and residences of all persons and parties interested in the foregoing Bid Proposal as principals are as follows:

(NOTICE: Give first and last names in full; in case of corporation, give names of President, Secretary, Treasurer, and Manager, and in case of partnerships and joint ventures, give names and Post Office addresses of all the individual partners and joint venture members.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Business address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone \_\_\_\_\_

Facsimile \_\_\_\_\_

Contact \_\_\_\_\_

Email \_\_\_\_\_

California Contractor's License:

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Bidder shall submit proof of all contractor and subcontractor registrations with the DIR with the Bid.

G. CLOSING STATEMENT

In signing below, Bidder certifies that its Total Bid Price requests sufficient funds to allow Contractor to comply with all applicable laws or regulations governing the labor or services to be provided under the Contract. Furthermore, Bidder hereby agrees to defend and indemnify Owner and its directors, officers, employees and agents for liabilities and penalties for violations of Labor Code Section 2810.

In conformance with current requirements of Section 1861 of the Labor Code of the State of California, the undersigned confirms the following as his certification:

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

The undersigned has the legal authority to bind the Bidder to a contract for the execution of the Work that is the subject of this Bid Proposal.

Addenda:           The undersigned acknowledges receipt of the following Addenda numbers:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Respectfully  
submitted by:

\_\_\_\_\_  
(signature)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this statement was executed on\_\_\_\_\_,20\_\_ at\_\_\_\_\_, California.

Clearly    printed  
name:       \_\_\_\_\_

Position:       \_\_\_\_\_

Seal:

Co-signed       or  
attested:       \_\_\_\_\_

\_\_\_\_\_  
(signature)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this statement was executed on\_\_\_\_\_, 20\_\_at\_\_\_\_\_, California.

Clearly

printed

name

---

**\*\*\*END OF BID FORM\*\*\***

This form is required.

Failure to submit a Bidder's Bond in this form  
shall constitute grounds for rejection of the Bid.

**BIDDER'S BOND**

(10 Percent of the Total Bid Price)

KNOW ALL MEN BY THESE PRESENTS,

That we \_\_\_\_\_,  
(Full legal name of Bidder)

as Principal, and \_\_\_\_\_,  
(Full legal name of Surety)

as Surety, are held and firmly bound unto the Tri-City Healthcare District, Oceanside, California  
(the "Owner") in the sum of

\_\_\_\_\_  
Dollars (\$\_\_\_\_\_)

such amount representing ten percent (10%) of the amount of the Total Bid Price to obtain the  
award of a contract for the General Contracting Services for construction of the Underground  
Storage Tank Replacement as specified and directed for a complete and operating installation  
(the "Contract") and to be paid to the Owner, its successors and assigns, for which payment,  
well and truly to be made, we bind ourselves, our heirs, executors and administrators,  
successors or assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That if the certain proposal of the above bound Principal is accepted by the said Owner and if  
the above bound Principal shall duly enter into and execute a Contract for such construction,  
and shall execute and deliver the Payment Bond, Performance Bond, and other Contract  
Documents described, within ten (10) calendar days from the date of the award and notice to  
the above bound Principal by and from the said Owner that said contract is ready for execution,  
then this obligation shall become null and void; otherwise it shall be and remain in full force and  
virtue.

Name of Surety

Signature of Representative

Name of Bidder/Principal

Signature of Representative

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

STATE OF CALIFORNIA )  
 )  
 ) ss:  
COUNTY OF [COUNTY] )

On \_\_\_\_\_, before me, [Notary Name] , Notary Public, personally appeared [Name of person] , who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public



This form is required.

Failure to submit a Noncollusion Declaration in this form shall constitute grounds for rejection of the Bid.

This Declaration to be fully executed.

**NONCOLLUSION DECLARATION**

**TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID**

The undersigned declares:

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

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

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

---

Signature of: President, Secretary, Manager,  
Owner, or Representative





## CONTRACT DOCUMENTS

This document is Tri-City Healthcare District's "Formal Contract" or "Agreement" and is a non-negotiable form. Tri-City Healthcare District is not bound to proceed with this Project until (i) the successful Bidder executes this form and all other required forms, (ii) Tri-City Healthcare District's Board of Directors approves the executed form, and (iii) Tri-City Healthcare District issues a Notice to Proceed.

### AGREEMENT

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between \_\_\_\_\_ hereinafter referred to as "Contractor," and Tri-City Healthcare District, hereinafter referred to as "Owner" or "TCHD."

WITNESSETH:

That for and in consideration of the promises and agreements hereinafter made and exchanged, the Owner and the Contractor agree as follows:

A. Contractor will furnish all labor, materials, equipment, tools, transportation, services, supervision, appliances, bonds, taxes, insurance and appurtenances for the construction of the Design Build of the Underground Storage Tank Replacement Project as specified and directed for a complete and operating installation all in strict accordance with this Agreement and the following Contract Documents, all of which together comprise the entire agreement (the "Contract") between Owner and Contractor:

1. Notice Inviting Bids
2. Instructions to Bidders
3. Formal Contract
4. Payment Bond
5. Faithful Performance Bond
6. General Conditions
7. Special Conditions
8. Plans prepared by Sfeir Architects Inc.
9. Technical Specifications
10. Any certificates, addenda, change orders or change directives issued after the execution of this Agreement

B. In consideration for Contractor's full and timely performance of the Contract to the Owner's satisfaction, the Owner will pay the Contractor the following Contract Price in the time and manner described in the General Conditions:

Contract Price = \_\_\_\_\_ dollars (\$ \_\_\_\_\_)

C. The Contractor agrees to complete all Work under the Contract within one hundred forty (140) business days from the day following the issuance of the Notice to Proceed, and to the entire satisfaction of the Owner before final payment is made.

D. Time is of the essence in the performance of this Contract.

E. Pursuant to Section GC3-6 of the General Conditions, the liquidated damages applicable to this Contract is the sum of Five Hundred Dollars (\$500) per day.

F. In the event any action or proceeding is commenced to enforce or interpret the provisions of this Contract, the venue for any such action or proceeding shall be in the County of San Diego, State of California.

G. Owner will timely notify Contractor in the event that a claim is filed by a third party which relates to the Contract. Owner will notify Contractor of such claim within ten (10) business days from the date on which Owner is made aware of the claim. Owner may recover its reasonable costs incurred in providing such notification.

H. Contractor has read and understands Tri-City Healthcare District's Corporate Compliance Responsibility Program ("Program") materials and its Code of Conduct which can be found at <http://www.tricitymed.org/about-us/code-of-conduct/> and will comply with all provisions thereof in connection with performance of this Contract. The Program requires that Contractor promptly report any noncompliance to an appropriate TCHD Hospital manager or to the TCHD Hospital through the Hospital hotline (**1-844-521-7862 or Legal Department 1-760-940-5979**) or directly to Hospital's Chief Compliance and Privacy Officer.

I. Any notice required or permitted under this Contract may be given by ordinary mail at the address set forth below. Any party whose address changes shall notify the other party in writing. Any notices shall be deemed delivered, given and received three (3) business days after the date of posting by the United States Postal Service.

To Owner:

To Contractor:

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\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed the day and year first above written.

\_\_\_\_\_  
(Contractor)

Tri-City Healthcare  
District (Owner)

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Dr. Gene Ma

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

CEO  
(Title)

Contractor's License No. \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Legal Counsel

This form is required.

### **PAYMENT BOND**

KNOW ALL BY THESE PRESENTS, THAT, WHEREAS, Tri-City Healthcare District (hereinafter the "Owner"), has, on \_\_\_\_\_, 20\_\_\_\_, awarded to \_\_\_\_\_ (hereinafter the "Principal"), a contract for General Contracting Services for construction of the Underground Storage Tank Replacement, as specified in the Contract Documents, and all miscellaneous work as specified and directed for a complete and operating installation (the "Contract").

WHEREAS, the Principal is required to furnish a bond in connection and with the Contract, providing that if the Principal, or any of his or its subcontractors, shall fail to pay for any materials, provisions, or other supplies used in, upon, for, or about the performance of the Work contracted to be done, or for any work or labor done thereon of any kind, the Surety of this bond will pay the same to the extent hereinafter set forth:

NOW, THEREFORE, WE, the Principal, and, \_\_\_\_\_, as Surety, are held and firmly bound unto the Owner, its successors and assigns for the penal sum of One Hundred Percent of the Contract Price for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal, his or its heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies used in, upon, for, or about the performance of the Work contracted to be done, or for any work or labor thereon of any kind or for amount due under the Unemployment Insurance Code of the State of California with respect to such work or labor, or for any amounts due or to be withheld pursuant to Sections 18668 of the Revenue and Taxation Code of the State of California, or with respect to any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of the contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code of the State of California, or with respect to any work or labor for which a bond is required by the provisions of Section 9500 through 9566 of the Civil Code of the State of California, and provided that the persons, companies, or corporations so furnishing said materials, provisions, or other supplies, appliances, owned or used, in, upon, for, or about the performance of the Work contracted to be executed or performed, or any person who performs work or labor upon same, or any person who supplies both work and materials, thereto, shall have complied with the provisions of the Civil Code of the State of California, then the Surety will pay the same in or to an amount not exceeding the amount hereinabove set forth, and in case suit is brought upon this bond, also will pay such reasonable attorneys' fees and costs to the Owner as shall be fixed by the court.

This bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under the Civil Code of the State of California, so as to give a right of action to them or their assigns in any suit brought upon this bond.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition of the terms of the contract or to the Work to be performed thereunder or the specifications accompanying the same shall, in any way, affect its obligations under this bond, and it does hereby waive notice of any change, extension of time, alteration, or addition to the terms of the Contract, specifications thereto, or to the Work thereunder. The Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly executed by its undersigned representative, pursuant to authority of its governing body.

(Seal)

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Signature for Principal

\_\_\_\_\_  
Title

(Seal)

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Signature for Surety

\_\_\_\_\_  
Title







This form is required.

### **FAITHFUL PERFORMANCE BOND**

KNOW ALL BY THESE PRESENTS, THAT, WHEREAS, Tri-City Healthcare District (the "Owner"), has, on \_\_\_\_\_, 20\_\_\_\_, awarded to \_\_\_\_\_, (the "Principal"), a contract for the furnishing all labor, materials, equipment and services for the General Contracting Services for construction of the Underground Storage Tank Replacement, as specified in the Contract Documents, and all miscellaneous work as specified and directed for a complete and operating installation (the "Contract").

WHEREAS, the Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract:

NOW, THEREFORE, WE, the Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto the Owner, its successors and assigns for the penal sum of One Hundred Percent of the Contract Price, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and faithfully perform the covenants, conditions, and agreements in the Contract and any alterations made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and hold harmless, the Owner, its officers, employees and agents as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and virtue and Principal and Surety, in the event suit is brought on this bond, will pay to the Owner such reasonable attorneys' fees and costs as shall be fixed by the court.

As a condition precedent to the satisfactory completion of the Contract, the above obligation in the said amount shall remain in effect for a period of one (1) year after the completion and acceptance by the Owner of the work, undertaken pursuant to the Contract during which time if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns shall fail to make full, complete, and satisfactory repair and replacements or totally protect the Owner from loss of damage made evident during said period of one year from the date of acceptance of the work, and resulting from or caused by defective materials and/or faulty workmanship in the prosecution of the work done, the above obligation in the said amount shall remain in full force and effect. However, notwithstanding anything in this paragraph to the contrary, the obligation of the Surety hereunder shall continue in effect so long as any obligation of the Principal remains.

And the 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 specifications accompanying the same shall, in any way, affect its obligations under this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract, specifications thereto, or to the Work. The Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

As a part of the obligation secured hereby and in addition to the amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees

and court costs, incurred by the Owner in successfully enforcing any and all obligations, hereunder all to be taxed as costs and included in any judgment rendered.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their seals this\_\_\_\_ day of\_\_\_\_\_, 20\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly executed by its undersigned representative, pursuant to authority of its governing body.

(Seal)

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Signature for Principal

\_\_\_\_\_  
Title

(Seal)

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Signature for Surety

\_\_\_\_\_  
Title





## **GENERAL CONDITIONS**

## **GENERAL CONDITIONS – PART 1**

### **DEFINITIONS**

#### **GC1-1 DEFINITIONS**

Wherever in the Notice Inviting Bids, Instructions for Bidders, Bidding Documents, Contract Documents, General Conditions and Specifications the following terms are used, the intent and meaning shall be interpreted as specified herein. Additional definitions and abbreviations are specified in the Special Conditions.

OWNER: Tri-City Healthcare District

ADDENDUM: A supplement to any of the Contract Documents issued by the Owner or the Owner's Representatives in writing prior to the opening of Bids.

AWARD: The formal acceptance of the Bid Proposal by the Owner. BID: (See PROPOSAL.)

BIDDER: Any individual, firm, partnership or corporation submitting a Bid Proposal for the Work, acting directly or through a duly authorized agent.

CONSTRUCTION ADMINISTRATOR: The term "Construction Administrator" when used in these Documents and Specifications refers to the District or its designee, the firm providing construction administration services to the Owner, or their assistants assigned to the Work, the Project, or any part thereof during the performance of the Work by the Contractor and until final acceptance.

CONTRACT: The written instrument executed by the Contractor and the Owner by which the Contractor is bound to furnish all labor, equipment, and materials and to perform the Work, and by which the Owner is obligated to compensate the Contractor for such performance at the prices set forth therein.

CONTRACT DOCUMENTS: The Notice Inviting Bids, Instructions for Bidders, Bid Proposal, Addenda (if any), Agreement, General Conditions, Special Conditions, Plans, Specifications, Certificates and Affidavits, Payment Bond, Performance Bond, Change Orders, Change Directives, and any other documents incorporated by reference in any of the foregoing.

CONTRACT PRICE: The Contract Price set forth in Section B. of the Formal Contract, as may be revised pursuant to the procedures set forth in the Contract Documents.

CONTRACT TIME: The number of calendar days in which the Work shall be completed by the Contractor, as set forth in Section C. of the Formal Contract.

CONTRACTOR: The person or persons, partnership or corporation who has or have entered into a contract with the Owner for the performance of the Work.

DAYS: Unless otherwise designated, days will be understood to mean calendar days.

DESIGN ENGINEER: The term Design Engineer, when used in the Contract Documents refers to the firm providing engineering design services to the Owner or their assistants assigned to the Work, the Project, or any part thereof during the performance of the Work by the Contractor and until final acceptance. The Design Engineer shall assist the Owner in answering questions during the Bid phase. During the construction phase, the Design Engineer shall provide services

such as submittal review, interpretation of documents regarding design intent, consultation with the Owner, and site visits.

**DRAWINGS:** Plans.

**MATERIALS:** Material incorporated in the Project, and equipment and other material consumed in the performance of the Work.

**NOTICE INVITING BIDS:** The public announcement inviting bids for the performance of the Work.

**NOTICE TO PROCEED:** A written directive issued by the Owner, authorizing the Contractor to start performance of the Work.

**OWNER:** The individual, company, municipality or other legal entity that has contracted for the performance of the Work or for whom the Work is being performed.

**OWNER'S REPRESENTATIVE OR OWNER'S AGENT ("OWNER'S REPRESENTATIVE"):**  
The authorized representative of the Owner which may be an individual or a firm, Construction Administrator, Construction Manager, the Design Engineer, or their assistants assigned to the Work, the Project, or any part thereof during the performance of the Work by the Contractor and until final acceptance.

**PLANS:** All drawings or reproductions thereof pertaining to details of the Work and which are made a part of the Contract Documents.

**PROJECT:** The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

**PROPOSAL:** The offer of Bidder, completed upon the Bidding Documents, to perform the Work. It may also be referred to as the "Bid."

**SPECIAL CONDITIONS:** The term "Special Conditions" refers to Division 1 - General Requirements of the Technical Specifications.

**SPECIFICATIONS:** The written directions, provisions, and requirements for performing the Work.

**SUBCONTRACTOR:** The person or persons, partnership, or corporation having a direct contract with the Contractor for furnishing labor, materials, services and/or equipment required for any portion of the Work.

**SUPPLEMENTAL AGREEMENT:** Written amendment to the Contract Documents executed by the Owner and the Contractor.

**WORK:** The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.



## **GENERAL CONDITIONS – PART 2**

### **EXECUTION OF CONTRACT AND INSURANCE**

#### **GC2-1 EXECUTION OF CONTRACT**

A. The successful Bidder shall, within ten (10) days of Notice of Award, execute the Contract and simultaneously therewith furnish the required Payment Bond and Performance Bond, in the amounts indicated in the Instructions for Bidders, and shall file insurance policies and/or certificates of insurance as required herein.

B. No Proposal shall be considered as being binding upon the Owner until the execution of the Contract by the Owner. Failure of the successful Bidder to properly execute the awarded Contract and file acceptable bonds as provided in the Contract Documents shall be just and sufficient cause for the annulment of the Award and the forfeiture of the Bidder's Bond.

C. No contractor or subcontractor may be awarded a contract for public works on a public works project unless registered with the DIR pursuant to Labor Code section 1725.5.

#### **GC2-2 CONTRACTOR'S INSURANCE REQUIREMENTS**

##### **A. GENERAL.**

On all projects, the Contractor shall carry all insurance required by Federal, State, County, and local laws and shall procure and maintain, during the life of the Contract, adequate fire, worker's compensation, public liability, and property damage insurance. The specific requirements for insurance as set forth in these General Conditions shall be considered as minimum requirements.

The Contractor shall furnish satisfactory proof of carriage of insurance, or satisfactory proof of an approved self-insured program, and shall submit to the Owner, before the issuance of the Notice to Proceed and Work on the Contract starts, original insurance certificates or proof of self-insured programs and amendatory endorsements as per Part G, Verification of Coverage of this Section regarding Contractor's Insurance. Neither the Contractor, nor any subcontractor, shall commence Work under this Contract until the Owner has approved all required insurance policies. The certificates of insurance will be attached to the Contract by the Owner and filed in the Owner's office. Insurance certificates shall set forth the following information and shall be signed by an authorized representative of the insurance company.

1. Name and address of the insured.
2. The location of the operations to which the insurance applies.
3. The number of the policy and the type or types of insurance in force thereunder on the date borne by the certificate.
4. The expiration date of the policy and the limit or limits of liability thereunder on the date borne by the certificate.
5. A statement that the insurance covered by the certificate applies to all of the operations on and at the site of the Project, which are undertaken by the insured during the life of the Contract.

6. Public liability and Comprehensive General Liability, completed operations broad form property damage insurance shall include elevator liability, water damage liability, and automobile liability including non-owned and rented cars.
7. A statement that all coverage is on an occurrence basis rather than claims-made basis.
8. A statement that "explosion, collapse, and underground" coverage is included.
9. A provision that the policy or policies may not be canceled or reduced in coverage until at least thirty (30) days after written notice has been sent to the Owner (ten (10) days for cancellation due to non-payment of premiums).
10. A statement that a cross-liability or severability of interests' clause is included (unless a separate policy covering the Owner is provided).
11. In lieu of an insurance certificate setting forth all the required information concerning the coverages, a copy of the complete policy or policies may be furnished to the Owner.

All insurance shall be secured from carriers qualified to do business in California, maintain an agent for process within the state, and are satisfactory to the Owner. All such insurance carriers shall have not less than an "A" policyholder's rating and a financial rating of not less than "Class VII" according to the latest Best Key Rating Guide.

#### B. WORKERS COMPENSATION INSURANCE.

The Contractor shall take out and maintain Worker's Compensation Insurance as required by the Labor Code of the State of California for all his employees employed at the site of the Project during the life of this Contract. In case any Work is sublet, the Contractor shall require each subcontractor to provide Workers' Compensation Insurance for his employees unless such employees are covered by the Contractor which shall be stated.

In the event any class of employees engaged in hazardous work under this Contract is not protected by the Workers' Compensation Statute, the Contractor shall provide, and shall cause the subcontractor to provide special insurance for the protection of such employees not otherwise protected.

The minimum scope and limits of Worker's Compensation insurance shall be as follows:

1. Minimum Scope of Insurance

Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

2. Minimum Limits of Insurance

Employer's Liability: \$1,000,000 per accident for bodily injury or disease, and \$3,000,000 aggregate.

#### C. COMPREHENSIVE GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE.

The Contractor shall procure, and maintain for the duration of the Contract, such comprehensive general liability and property damage insurance necessary to protect him, the Owner, Design

Engineer, Construction Administrator and Owner's Representative, from all claims for bodily injury, including accidental death and property damage claims arising from or in connection with the performance of Work under this Contract, whether such operations are those of the Contractor, its subcontractors, or the agents, representatives, employees or subcontractors of any of them. The Owner and its directors, officers, officials, employees, agents and volunteers, Design Engineer, Construction Administrator and Owner's Representative shall be named as additional primary insureds without offset against their existing insurance, with respect to the Work or operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such Work. Such insurance coverage shall be primary insurance, and any insurance or self-insurance maintained by the Owner and its directors, officers, officials, employees, agents and volunteers, Design Engineer, Construction Administrator and Owner's Representative shall be excess of the Contractor's insurance and shall not be called upon to contribute to it in any way. The certificate(s) of insurance shall include reference to such provisions.

1. Unless otherwise specifically required by the Special Conditions, the minimum scope and limits of insurance shall be as follows:

#### Minimum Scope of Insurance

Coverage shall be at least as broad

as:

- a. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- b. Insurance Services Office form number CA 0001 (ed. 1/87) covering Automobile Liability, code 1 (any auto).
- c. Installation Floater and Transportation Floater covering materials and equipment for all risks of loss.

#### Minimum Limits of Insurance

Contractor shall maintain limits no less than:

- a. General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- c. Installation Floater and Transportation Floater: Replacement value of equipment and material being installed.
- d. Contractor shall carry Contractor's Pollution Liability coverage of not less than \$1,000,000 Each Occurrence / \$2,000,000 General Aggregate. Policy should also include Additional insured and a Waiver of Subrogation in favor of TCMC.

2. Such policy shall not exclude coverage for the following:
  - a. Injury to or destruction of any property arising out of the collapse of/or structural injury to any building or structure due:
    - (1) To grading of land excavation, borrowing, filling, backfilling, tunneling, pile driving, cofferdam work, or caisson work; or

- (2) To moving, shoring, underpinning, raising, or demolition of any building or structure, or removal or rebuilding of any structural support thereof.
    - b. Injury to or destruction of wires, conduits, pipes, mains, sewers, or other similar property or any apparatus in connection therewith, below the surface of the ground, if such injury or destruction is caused by and occurs during the use of mechanical equipment for the purpose of grading of land, paving, excavating, drilling, or injury to or destruction of any property at any time resulting therefrom.
    - c. Injury to or destruction of any property arising out of blasting or explosion.
  3. The Contractor shall carry and maintain fire and extended coverage with an endorsement for vandalism and malicious mischief in his name and also in the name of the Owner in an amount of at least fifty percent (50%) of the value of the Contract.

#### D. BUILDER'S RISK "ALL RISK" INSURANCE

1. At all times during the performance of the Work, Contractor shall maintain builder's risk insurance on an "all risk" completed value basis (excluding earthquake and flood) upon the entire Project which is the subject of the Contract. Coverage shall include completed work as well as work in progress. Such insurance shall include the Owner as Loss Payee. Contractor shall carry an allowance in the Contract Price to cover the cost of Builder's Risk. Contractor shall present Owner with actual premium invoice and allowance shall be adjusted up or down according to the premium cost.
2. Such insurance may have a deductible clause but not to exceed the lesser of five percent (5%) of the total amount of the Contract or \$10,000.00 for all risks.
3. Such policies shall name the Owner as Additional Insured.
4. The making of Partial or Final Payments to the Contractor shall not be construed as creating an insurable risk interest by or for the Owner or be construed as relieving the Contractor or his subcontractors of responsibility for loss from any direct physical loss, damage, or destruction occurring prior to final acceptance of the Work by the Owner.
5. The insurer shall waive all rights of subrogation against the Owner and shall provide the Owner with a Certificate of Insurance for Builder's Risk insurance coverage and evidence of waiver of rights of subrogation against Owner.
6. The minimum policy limit of the "All Risk" insurance policy shall be completed value or replacement cost of the Work.

#### E. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the Owner. At the option of the Owner, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Owner, its officers, official, employees and volunteers; or (ii) the Contractor shall provide a financial guarantee satisfactory to the Owner guaranteeing payment of losses and related investigations, claim administration and defense expenses.

## F. OTHER INSURANCE PROVISIONS

The general liability and automotive liability policies are to contain, or be endorsed to contain, the following provisions:

1. The Owner and its directors, officers, officials, employees, agents and volunteers, Design Engineer, Construction Administrator and Owner's Representative are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance, or as a separate Owner's policy.
2. For any claims related to this Project, the Contractor's insurance coverage shall be primary insurance as respects the Owner and its directors, officers, officials, employees, agents and volunteers, Design Engineer, Construction Administrator and Owner's Representative. Any insurance or self-insurance maintained by the Owner and its directors, officers, officials, employees, agents or volunteers, Design Engineer, Construction Administrator and Owner's Representative shall be excess of the Contractor's insurance and shall not contribute with it in any way.
3. Course of construction policies shall contain the following provisions:
  - a. The Owner shall be named as loss payee as interest may appear.
  - b. The insurer shall waive all rights to subrogation against the Owner.
4. At a minimum, all workers' compensation and employers' liability policies shall contain the following provision, or Contractor shall provide endorsements on forms supplied or approved by the Owner to add the following provision to the insurance policies: the insurer shall agree to waive all rights of subrogation against the Owner, its directors, officers, officials, employees, volunteers and agents for losses paid under the terms of the insurance policy which arise from work performed by the Contractor.
5. At a minimum, all policies shall contain the following provisions, or Contractor shall provide endorsements on forms supplied or approved by the Owner to add the following provisions to the insurance policies: (a) coverage shall not be canceled except after thirty (30) days prior written notice by mail has been given to the Owner; and (b) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Owner, its directors, officials, officers, employees, volunteers and agents.
6. All insurance required by the Contract shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the Owner, its directors, officers, officials, employees, agents or volunteers.
7. The Owner shall not be liable for loss or damage to any tools, machinery, equipment, materials or supplies of the Contractor. The Contractor shall supply to

the Owner an endorsement waiving the insurance carrier's right of subrogation against the Owner for all policies insuring such tools, machinery, equipment, materials or supplies.

G. VERIFICATION OF COVERAGE

Contractor shall furnish the Owner with original certificate and amendatory endorsements effecting coverage required by this clause which shall be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements should be on forms provided by the Owner or on other than the Owner's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the Owner prior to the issuance of the Notice to Proceed and before work commences. The Owner reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

H. SUBCONTRACTORS

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages and limits for subcontractors shall be subject to all of the requirements stated herein, with the exception that the limits of subcontractors' general liability insurance policies shall not be less than \$2,000,000 per occurrence/\$2,000,000 aggregate.

## **GENERAL CONDITIONS – PART 3**

### **COMMENCEMENT, PROSECUTION AND PROGRESS**

#### **GC3-1 COMMENCEMENT**

The Contractor or subcontractor shall commence Work on or before the tenth (10th) day after receiving the Notice to Proceed, and shall complete all Work under the Contract within the period of time specified in the Formal Contract. Notice to Proceed will be issued not later than sixty (60) days after the date of the Formal Contract unless otherwise agreed upon in writing, or as may be specified in the Special Conditions, provided that the Contractor has satisfied all conditions precedent to such issuance.

#### **GC3-2 CONTRACTOR'S REPRESENTATIVE**

The Contractor shall, at all times during working hours, be represented in all matters pertaining to this Project by one, and only one, fully competent and experienced general superintendent. Instructions and information given by the Owner's Representative to the Contractor's superintendent on the Work shall be considered as having been given to the Contractor. Before any work is done at the jobsite, the Contractor shall give written notice to the Owner's Representative stating who the Contractor's superintendent will be and providing his home address and telephone number. The Owner's Representative shall be informed in writing prior to any change of general superintendent. A statement naming more than one representative at a time to be in charge or that depends upon who is present at the time will not be acceptable.

#### **GC3-3 ERRORS AND OMISSIONS / SUBCONTRACTING**

A. The written dimensions on the Plans are presumed to be correct, but the Contractor should check carefully all dimensions before beginning the Work. If any errors or omissions are discovered in the Plans or any of the other Contract Documents, the Contractor shall advise the Design Engineer in writing, and the Design Engineer will make the corrections if appropriate. Any such adjustments made by the Contractor without prior review and acceptance shall be at his own risk, and the settlement of any complications or disputed expenses arising from such adjustment shall be made by the Contractor, at his own expense.

B. If the Contractor subcontracts any part of the Contract, the Contractor shall be as fully responsible to the Owner for the acts, errors and omissions of the subcontractors and of the person(s) either directly or indirectly employed by the subcontractor(s) as the Contractor is for the acts, errors and omissions of persons directly employed by the Contractor. Nothing contained in the Contract Documents shall create any contractual relationship between any subcontractor and the Owner. The Contractor shall require every subcontractor to be bound by the terms of the Contract Documents as applicable.

#### **GC3-4 CHARACTER OF WORKERS AND SUBSTITUTION OF SUBCONTRACTORS**

When, in the opinion of the Owner's Representative, any superintendent, foreman, or workman employed by the Contractor or his subcontractors is disrespectful, intemperate, disorderly, or otherwise objectionable, that individual, at the written request of the Owner's Representative, shall be removed and not again employed on the Work without the written consent of the Owner's Representative.



A Contractor whose Bid is accepted may not substitute a person as subcontractor in place of the subcontractor listed in the original Bid, except as provided in Public Contract Code Sections 4107 and 4107.5.

#### GC3-5 SUSPENSION OF WORK

In case of suspension of Work from any cause whatever, the Contractor shall be responsible for all materials and shall store them properly if necessary and shall provide suitable drainage and erect temporary structures where necessary. Temporary storage shall be as specified in the Specifications.

#### GC3-6 TIME FOR COMPLETION AND LIQUIDATED DAMAGES

A. The Contractor shall complete all or any designated portion of the Work called for under the Contract within the time set forth in the Contract Documents. Time is of the essence in this Contract. Failure of the Contractor to perform any covenant or condition contained in the Contract Documents within the time period specified shall constitute a material breach of this Contract. The Owner will be entitled to terminate the Contract unless the Contractor applies for, and receives, an extension of time in accordance with the procedures set forth in this section and the following section, EXTENSION OF TIME.

B. Failure of the Owner to insist upon the performance of any covenant or condition within the time period specified in the Contract Documents shall not constitute a waiver of the Contractor's duty to complete performance within the designated periods unless the waiver is in writing.

C. The Owner's agreement to waive a specific time provision or to extend the time for performance shall not constitute a waiver of any other time provisions contained in the Contract Documents.

D. Failure of the Contractor to complete performance promptly within the additional time authorized in the waiver or extension of time agreement shall constitute a material breach of this Contract entitling the Owner to terminate.

E. It is agreed by the parties to the Contract that in case the Work is not completed in accordance with the foregoing, damage will be sustained by the Owner, and that it is and will be impracticable to determine the actual damage which the Owner will sustain in the event of and by reason of such delay, and it is therefore agreed that the Contractor will pay to the Owner the amount per day set forth in the Formal Contract for each and every calendar day of delay beyond the time prescribed to complete the Work, as liquidated damages and not as a penalty, and the Contractor and his surety shall be liable for the total amount thereof. It is further agreed that said amount per day is a reasonable estimate of such damages, that said amount does in fact bear a reasonable relationship to the damage that would be sustained by the Owner, and that Contractor agrees to pay such liquidated damages as herein provided. Contractor agrees that the Owner may deduct the amount thereof from any money due or that may become due the Contractor under the Contract, or if said amount is not sufficient, recover the total amount. The Contractor shall not be deemed in breach of this Contract nor shall liquidated damages be collected because of any delays in the completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor provided the Contractor requests an extension of time in accordance with the procedures set forth in this article and the article on EXTENSION OF TIME. Unforeseeable causes of delay beyond the control of the Contractor shall include Acts of God, acts of a public enemy, acts of the government, acts of the Owner, acts of another contractor in the performance of a contract with the Owner, fires, floods,

epidemics, quarantine restrictions, strikes, freight embargoes, and weather, or delays of subcontractors due to such causes, or delays caused by failure of the Owner or the owner of a utility to provide for removal or relocation of existing utility facilities. Delays caused by actions or neglect of Contractor or his agents, servants, employees, officers, subcontractors, directors, or of any party contracting to perform part or all of the Work or to supply any equipment or materials shall not be excusable delays.

F. Excusable delays (those beyond Contractor's control) shall not entitle the Contractor to any additional compensation. The sole remedy of the Contractor shall be to seek an extension of time.

#### GC3-7 EXTENSION OF TIME

A. The time specified for completion of all of the Work or any part of the Work may be extended only by a written change order executed by the Owner or other written form executed by the Owner.

B. Requests for an extension of time must be delivered to the Owner's Representative no later than ten consecutive calendar days following the date of the occurrence, which caused the delay. The request must be submitted in writing and must state the cause of the delay, the date of the occurrence causing the delay, and the amount of additional time requested. Requests for extensions of time shall be supported by all evidence reasonably available or known to the Contractor, which would support the extension of time requested. Requests for extension of time failing to include the information specified in this article and requests for extensions of time which are not received within the time specified above shall result in the forfeiture of the Contractor's right to receive any extension of time requested.

C. If the Contractor is requesting an extension of time because of weather, he shall supply daily written reports to the Construction Administrator describing such weather and the work which could not be performed that day because of such weather or conditions resulting therefrom affecting activities on the critical path. In setting the Contract time, it has been determined that up to ten (10) working days will be lost as a result of weather conditions. Therefore, no extension of the Contract time will be allowed for the first ten (10) working days of abnormal rain, wind, high water or other natural phenomena. A rain day shall be one when the daily rainfall exceeds 0.25 inches as measured at the nearest weather station. The Work affected by the weather does not have to be on the critical path. The Contractor must document each weather delay within ten (10) days of the event. The Construction Administrator's acceptance of the daily reports shall not be deemed an admission of the Contractor's right to receive an extension of time or a waiver of the Owner's right to strictly enforce the time provisions contained in the Contract Documents.

D. When the Contractor has submitted a request for an extension of time in accordance with the procedures of this article, the Owner will ascertain the facts and extent of the delay and extend the time for completing the Work if, in its judgment, the findings of fact justify such an extension, and its findings of facts thereon shall be final and conclusive.

E. An extension of time may be granted by the Owner after the expiration of the time originally fixed in the Contract or as previously extended, and the extension so granted shall be deemed to commence and be effective from the date of such expiration.

F. Any extension of time shall not release the sureties upon any bond required under the Contract.

### GC3-8 TERMINATION FOR BREACH OF CONTRACT

A. If the Contractor refuses or fails to prosecute the Work or any separable part thereof with such diligence as will ensure its completion within the time specified herein, or any extension thereof, or fails to complete such Work within time, or if he or any of his subcontractors should violate any of the provisions of the Contract, or if the Contractor should be adjudged as bankrupt, or if the Contractor should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency, or if the Contractor files a petition to take advantage of any debtor's Act, or if the Contractor should persistently or repeatedly refuse or fail, except in cases for which an authorized extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified, or if the Contractor should fail to make prompt payment to the subcontractors or for material or labor, or if the Contractor should persistently disregard laws or instructions given by the Owner, the Owner may serve written notice upon the Contractor and his surety of their intention to terminate the Contract, said notice to contain the reasons for such intention to terminate the Contract, and unless within ten (10) days after the service of such notice such violations shall cease and satisfactory arrangements for the corrections thereof be made, the Contract shall, upon the expiration of said ten (10) days cease and terminate.

B. In the event of any such termination, the Owner will immediately serve written notice thereof upon the Surety and the Contractor and the Owner and Surety shall within ten (10) days of the date of such notice jointly select a Contractor to take over and perform the Contract and in the event the Owner and Surety cannot agree on the substitute Contractor, the Owner may take over the Work and prosecute the same to completion by contract or by any other method the Owner may deem advisable for the account and at the expense of the Contractor, and his surety shall be liable to the Owner for any excess cost or other damage occasioned the Owner thereby, and in such event the Owner may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plants and other property belonging to the Contractor that may be on the site of the Work and be necessary therefor. For any portion of such Work that the Owner elects to complete by furnishing employees, materials, tools and equipment, the Owner shall be compensated for such in accordance with the schedule of compensation for force account work in the section on payment for changes in the Work. Upon termination of the Contract pursuant to Paragraph A. above, the Contractor shall (1) promptly discontinue all affected Work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the Owner all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Contractor in performing this Contract whether completed or in process.

C. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the Owner.

### GC3-9 METHODS AND APPLIANCES

The methods and equipment adopted by the Contractor shall be such as will secure a satisfactory quality of work and will enable the Contractor to complete the Work in the time agreed upon. The selection and use of these methods and appliances are the responsibility of the Contractor.

### GC3-10 DATE OF ACTUAL COMPLETION

The date upon which the Project will be considered complete shall be the date of final acceptance of the Work by the Owner. The Contractor acknowledges that final acceptance requires affirmative action by the Tri-City Healthcare District Board of Directors.

### GC3-11 PARTIAL ACCEPTANCE OF WORK

After completion of certain portions of the Work, including all testing and other preparation necessary for operation of such portions by the Owner as herein specified, but prior to final completion of the Work, provisions may be made for partial acceptance in writing by the Owner for such portions only. Acceptance of any portion of the Work prior to acceptance of the whole shall not be construed as absolving the Contractor of responsibility for any item of construction or incidental work included in the Contract. Partial payments on the Contract Price shall not be considered as an acceptance of any part of Work. Beneficial occupancy or use of a portion or all of the Work will not constitute final acceptance.

### GC3-12 FINAL ACCEPTANCE

A. Within ten (10) days after the Contractor has completed to the best of his knowledge all the Work under this Contract, including all of the Contractor's testing and cleanup, the Contractor shall then inform the Owner's Representative by written memorandum that the Work has been completed. The Contractor shall then request a final inspection by the Owner's Representative and Design Engineer. The Owner's Representative and the Design Engineer will then inspect. If items are found by the Owner's Representative or the Design Engineer to be incomplete or not in compliance with the Contract requirements, the Owner's Representative will inform the Contractor of such items. After the Contractor has completed these items, the procedure shall then be the same as specified above for the Contractor's statement of completion and request for final inspection.

B. After all Work under the Contract has been completed, as determined by the Owner's Representative and the Design Engineer, and after the Owner's final seven (7) day test operation, if such is required, the Owner's Representative and the Design Engineer will recommend in writing to the Owner that final acceptance of the entire Work under this Contract be made as of the date of the Owner's Representative's and the Design Engineer's final inspection. If the Owner agrees with the Owner's Representative's and the Design Engineer's recommendation, the Owner will make final acceptance promptly after receiving the recommendations. The Contractor shall understand that final acceptance requires Tri-City Healthcare District Board action.

C. Unless otherwise specified, no partial acceptance of any portion of the Work will be made and no acceptance other than the final acceptance of the overall completed Project will be made. No inspection or acceptance pertaining to specific parts of the Project shall be construed as final acceptance of any part until the overall final acceptance by the Owner is made.

### GC3-13 PROTECTION OF WORK

The Contractor shall be responsible for the protection of the Work until its completion and final acceptance, and shall at its own expense, replace damaged or lost material, or repair damaged parts of the Work, and the Contractor and his Sureties shall be liable therefor.

### GC3-14 WARRANTY OF WORK

A. The Contractor guarantees the Work against defective materials or workmanship for a period of one (1) year from the date of its final acceptance under this Contract except where longer warranty periods are specifically stated. Pursuant to the provisions herein specified, the Contractor shall execute and deliver to the Owner's Representative and the Design Engineer prior to final acceptance of the Work by the Owner a warranty in the form included.

B. All Work which has been rejected shall be remedied, or removed and replaced, by the Contractor at its own expense with Work conforming to the Plans and Specifications. Any defective material or workmanship, which may be discovered before final acceptance or within one (1) year thereafter, shall be corrected immediately by the Contractor at its own expense notwithstanding that it may have been overlooked in previous inspections and estimates. Failure to inspect work at any stage shall not relieve the Contractor from any obligation to perform sound and reliable work as herein described. It is the Contractor's ultimate responsibility to deliver at the time of final acceptance a complete Project that complies in all details with these Contract Documents. All items shall be ready to operate.

C. Any omission or failure on the part of the Owner's Representative or the Design Engineer to discover or notify the Contractor of or to condemn defective work or material at the time of construction shall not be deemed an acceptance, and the Contractor will be required to correct defective work or material prior to final acceptance.

D. The Owner's Representative and the Design Engineer will endeavor to locate any errors or defective materials or workmanship and call them to the attention of the Contractor prior to subsequent work being performed. However, the Owner's Representative and the Design Engineer are under no obligation to do so and neither the Owner, the Owner's Representative nor the Design Engineer shall be held liable because errors or defective material or workmanship by the Contractor are not discovered by the Owner's Representative or the Design Engineer prior to subsequent work.

E. During the one (1) year warranty period, should the Contractor fail to remedy defective material and/or workmanship, or to make replacements within five (5) days after written notice by the Owner, it is agreed that the Owner may make such repairs and replacements and the actual cost of the required labor and materials shall be chargeable to and payable by the Contractor.

F. In the event it is necessary for the Owner to file suit to enforce any liability of the Contractor pursuant to this section WARRANTY OF WORK, the Owner shall be entitled to recover from the Contractor, in addition to all other amounts found due and owing, costs of suit and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the Owner in successfully enforcing the Contractor's obligations, all to be taxed as costs and included in any judgment rendered.

G. The warranty provided herein shall not be in lieu of, but shall be in addition to any warranties or other obligations otherwise imposed by the Contract Document or by law. The remedies provided herein shall not be exclusive and the Owner shall be entitled to any and all remedies provided by law.

#### GC3-15 CONTINGENCIES

A. All loss or damage arising from obstruction or difficulties which may be encountered in the prosecution of the Work, from the action of the elements, or from any act or omission on the part of the Contractor or any person or agent employed by him shall be borne by the Contractor.

B. The Contractor shall rebuild, repair, restore and make good all injuries, losses or damages to any portion of the Work or the materials occasioned by any cause before the Work's completion and Final Acceptance, and Contractor shall bear the expense thereof.

## **GENERAL CONDITIONS – PART 4**

### **GENERAL SCOPE**

#### **GC4-1 INTENT OF PLANS AND SPECIFICATIONS**

The intent of the Plans and Specifications is to prescribe a complete Work or improvement, which the Contractor shall perform in a manner acceptable to the Owner's Representative and the Design Engineer and in full compliance with the terms of the Contract. The Contractor shall provide the Owner with a complete and operable Work or improvement in accordance with the Plans, Specifications and other Contract Documents. The Notice Inviting Bids, Instructions for Bidders, General Conditions, Special Conditions, Specifications, Plans and all supplementary documents are intended to be complete and complementary and to prescribe a complete Work. If any omissions are made of information necessary to carry out the full intent and meaning of the Contract Documents, the Contractor shall immediately call the matter to the attention of the Design Engineer for furnishing of detailed instructions. Any drawings or plans listed anywhere in the Specifications or Addenda thereto shall be regarded as a part thereof and of the Contract. Anything mentioned in these Specifications and not indicated on the Plans, or anything indicated on the Plans and not mentioned in these Specifications, shall have the same force and effect and be deemed included in the Contract as if indicated or mentioned in both.

#### **GC4-2 PERFORMANCE OF WORK**

A. Unless otherwise specified in the Special Conditions, the Contractor shall furnish at its own expense all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of every nature, and incidentals, including, but not limited to, dust and traffic control measures, and shall perform all Work involved in executing the Contract in a satisfactory and workmanlike manner within the time specified.

B. Contractor shall coordinate the Work covered by this Contract with that of other contractors, subcontractors, and of the Owner in a manner that will facilitate the efficient completion of the Work. Owner shall have the right to assert complete control of the premises on which the Work is to be performed and shall have the right to decide the time or order in which the various portions of the Work shall be installed or the priority of the work of other subcontractors, and, in general, all matters representing the timely and orderly conduct of the Work of the Contractor on the premises.

C. Work shall be performed in accordance with the Health and Safety Code Sections 25914 through 25914.3, and in accordance with the Public Contract Code with respect to unforeseen underground conditions.

D. Contracts involving Digging Trenches or other Excavations. In accordance with Public Contract Code Section 7104, the following is added to this Contract if the Work involves the digging of trenches that extend deeper than four (4) feet below the surface:

1. The Contractor shall promptly, and before the following conditions are disturbed, notify the Owner, in writing, of any:
  - a. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law.

- b. Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to Bidders prior to the deadline for submitting Bids.
  - c. 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.
- 2. The Owner 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.
- 3. In the event that a dispute arises between the Owner 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. The Contractor shall retain any and all rights provided either by Contract or law which pertain to the resolution of disputes and protests between the contracting parties.
- 4. The Contract Documents show subsurface conditions or otherwise hidden conditions as they are supposed or believed by the Design Engineer to exist; but it is not intended or to be inferred that the conditions as shown thereon constitute a representation that such conditions actually exist. Except as otherwise specifically provided in the Contract Documents, the Owner, the Owner's Representative, the Design Engineer and their consultants shall not be liable for any loss sustained by the Contractor as a result of any variance to such conditions as shown on the Contract Documents or the actual conditions revealed or otherwise discovered during the progress of the Work.

E. Contracts involving Digging Trenches or other Excavations. In accordance with Labor Code Section 6705, the following is added to this Contract if the Contract is over \$25,000 and the Work involves the digging of trenches that extend five (5) feet or more in depth below the surface:

- 1. Contractor shall submit 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 or such trench or trenches. The plan shall be for acceptance by Owner or by a registered Civil or Structural Engineer, employed by the Owner, to whom the authority to accept has been delegated, in advance of excavation. Additional requirements are stated in General Conditions Section GC7-10.
- 2. If such plan varies from the shoring system standards, the plan shall be prepared by a Civil or Structural Engineer registered in the State of California.
- 3. Nothing in this section shall be deemed to allow the use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders.

4. Nothing in this section shall be construed to impose tort liability on the Owner or any of its employees.

#### GC4-3 ADDENDA, REVISIONS AND SUPPLEMENTARY DRAWINGS

The Work shall conform to such other provisions and drawings relating thereto as may be furnished by the Owner prior to the opening of Bids as part of the Addenda and to such drawings, explanation of details, or minor modifications as may be furnished from time to time during construction including such minor modifications as the Owner may consider necessary during the prosecution of the Work.

#### GC4-4 CHANGES IN THE WORK

A. The Owner, without invalidating the Contract and without notification of Sureties, may order extra work or may make changes by altering or deleting any portion of the Work as specified herein or as deemed necessary or desirable by the Owner. All such work shall be executed under the conditions of the original Contract except that any claim for extension of time and additional costs caused thereby shall be adjusted at the time of ordering such extra work or change. In giving instructions, the Owner's Representative shall have authority to make minor changes in the Work, not involving extra cost, and not inconsistent with the purposes of the Work.

B. No extra work or change, except minor changes authorized by the Owner's Representative, shall be made unless in pursuance of a written order by the Owner, and no claim for an addition to the total amount of the Contract shall be valid unless so ordered, except in an emergency endangering life or property.

C. It is mutually understood that it is inherent in the nature of municipal construction that some changes in the Plans and Specifications may be necessary during the course of construction to adjust them to field conditions, and that it is of the essence of the Contract to recognize a normal and expected margin of change. The Owner shall have the right to make such changes, from time to time, in the Plans, in the character of the Work, and in the schedule of the Work as may be necessary or desirable to insure the completion of the Work in the most satisfactory manner without invalidating the Contract.

D. Upon demand of either the Contractor or the Owner an equitable adjustment satisfactory to both parties shall be made in the basis of payment for extra work. The prices agreed upon and any agreed upon adjustment in Contract time shall be incorporated in the written order issued by the Owner, which will be written so as to indicate acceptance on the part of the Contractor as evidenced by his signature. In the event prices cannot be agreed upon, the Owner reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as it may deem necessary to complete the Work, or it may direct the Contractor to proceed with the items in question on a force account basis as provided hereinafter.

E. The Contractor shall be allowed fifteen (15) percent of direct costs for overhead and profit on his own Work and one percent of such direct costs for bond. When the extra Work involves subcontractors and material suppliers, compensation for such Work shall be based on direct costs as listed by the subcontractor or material supplier plus fifteen (15) percent of such direct costs for the subcontractor's or supplier's overhead and profit. The Contractor may add five (5) percent to the subcontractor or material supplier's proposal for overhead and profit, and one (1) percent for bond. The final negotiated cost of each change order shall include all



compensation and adjustments for changes in sequence of Work, equipment delivery, rescheduling, acceleration, impact and costs for extended overhead.

F. Consistent with applicable law, bids need not be secured for change orders that do not materially change the scope of the Work as set forth in this Contract if each individual change order does not total more than five percent (5%) of the Contract.

#### GC4-5 FORCE ACCOUNT

If so directed by the Owner, the Contractor shall perform extra work and changes in the Work under force account procedures. Contractor shall proceed promptly with the performance of the extra work and changes as so directed by Owner in writing. Under such procedures the Contractor will be compensated as follows:

##### A. LABOR.

1. For all labor and for foremen in direct charge of the specific operations the Contractor will be paid:
  - a. The actual cost of wages paid by Contractor, but at rates not to exceed those for comparable labor currently employed on the Project.
  - b. The actual cost of industrial accident or Workmen's Compensation Insurance.
  - c. The actual cost of social security taxes and unemployment compensation insurance.
  - d. The actual amounts paid by the Contractor by reason of an employment Contract generally applicable to his employees.

##### B. TOOLS AND EQUIPMENT.

1. For any machine power tools and special or heavy equipment used, the Contractor shall be paid in accordance with the current edition of "Labor Surcharge and Equipment Rental Rates" published by the State of California, Department of Transportation ("Caltrans"). In the event that any of the equipment to be used is not shown in said schedule, the rental rate for such equipment shall be as agreed upon in writing before the work is started. No allowance shall be made for the use of small tools and minor items of equipment, which shall be considered as part of the overhead.
2. As used herein, such tools and equipment are defined as individual tools or pieces of equipment having a replacement value of One Hundred Fifty (150) Dollars each or less. When equipment is used on the extra work for less than five days, hourly rates shall be used. Less than thirty (30) minutes of operation shall be considered one-half hour of operations. When equipment is used on the extra work for more than five (5) days, daily rates shall apply. In this case, less than four (4) hours of operation shall be considered to be one-half (1/2) day of operation.

C. MATERIALS.

For all materials accepted by the Owner's Representative and the Design Engineer and used in the Work, the Contractor shall be paid the actual cost of such material, including transportation charges.

D. SUPERVISION AND OVERHEAD.

No allowance shall be made for supervision of the extra work by the Contractor's representative or superintendent. Such costs shall be regarded as overhead and fully compensated by the mark ups provided in GC4-4. E.

E. DEFECTIVE WORK.

The Contractor shall repair, reconstruct, replace, or otherwise make acceptable the work found by the Owner's Representative or the Design Engineer to be defective, and the cost therefor shall be considered as included in the fifteen (15) percent profit and overhead.

F. RECORDS.

1. The Contractor's representative and the Owner's Representative shall compare the records of the work performed as ordered on a force account basis at the end of each day on which such work is performed.
2. Copies of these records shall be made on suitable forms provided for this purpose and signed by both the Owner's Representative and the Contractor's representative.
3. All claims for work done on a force account basis shall be certified and submitted to the Owner's Representative by the Contractor, and such statements shall be filed with the Owner's Representative not later than the fifth (5th) day of the month following that in which the work was actually performed.

GC4-6 EXTRA WORK

The Contract Price includes compensation for all Work covered by the Contract Documents, unless a change order is obtained in the manner set forth below. Work will be classed as extra work when determined by the Owner's Representative that such work is not covered by the Contract Documents.

GC4-7 CHANGE ORDERS

A. Unless ordered by force account, extra work and changes in the Work, except minor changes authorized by the Owner's Representative, will be ordered in writing by the Owner, with or without notice to any surety, by means of a Change Order in which the adjustments of Contract Price and Contract Time will be set forth.

B. Change Orders shall be executed by the Owner, the Design Engineer, and the Contractor utilizing the Change Order form included in the Contract Documents.

C. The value of extra work and changes shall be determined and paid for in one of the following ways:

1. By unit prices mutually agreed upon by the Owner and Contractor.

2. By a lump sum based upon the Contractor's estimate and the Owner's Representative's review and acceptance of the estimate.
3. Payment for extra work and changes in the Work required to be performed pursuant to the provisions of this section, in the absence of an executed Change Order, will be made by Force Account as provided herein, or as may be made as otherwise agreed by the Contractor and the Owner.
4. Payment for overhead and profit shall be as stated in GC4-4. E.

D. The Contractor shall do such extra work and changes in the Work, except minor changes authorized by the Owner's Representative, and furnish material and equipment therefore upon receipt of an approved Change Order or other written order of the Owner, and in the absence of such Change Order or other written order of the Owner, the Contractor shall not be entitled to payment for such extra work and changes in the Work.

1. In no case shall extra work or changes in the Work be undertaken without written notice from the Owner to proceed with such extra work or changes.

E. Contractor shall submit to the Owner's Representative an itemized cost breakdown of quantities, hours, material and equipment, satisfactory to the Owner's Representative together with other supporting data to substantiate Contractor's lump sum or unit prices.

F. Extensions to the Contract Time will be made only if and to the extent that the acceptable causes of delay affect the prosecution of Work having a direct effect on the critical sequence of performance (critical path) required to complete the Contract within the Contract Time.

G. Change orders shall be executed in triplicate (3). GC4-8 CLAIMS FOR EXTRA WORK If the Contractor claims that any instructions involve extra cost or additional time under this Contract, he shall give the Owner's Representative written notice thereof within forty-eight (48) hours after the receipt of such instructions, and in any event before proceeding to execute the work, except in emergency endangering life or property, and the procedure shall then be as provided for under CHANGES IN THE WORK. No such claim shall be valid unless so made. If the Contractor claims that defective Plans and Specification involve extra work under this Contract, he shall give the Owner's Representative written notice thereof within forty-eight (48) hours after the occurrence of the cost and time associated with such extra work, and the procedures shall be as specified before under Changes in the Work. No such claim shall be valid unless so made. Pending final resolution of a claim, Contractor shall diligently proceed with the performance of the Work as directed by Owner so as to not delay the completion of the Project.

## **GENERAL CONDITIONS – PART 5**

### **CONTROL OF WORK**

#### **GC5-1 WORK SCHEDULE**

The Contractor shall submit work schedules as specified in the SPECIAL CONDITIONS. The Contractor shall assume the full responsibility for performing the Work in an orderly procedure under the Contract.

#### **GC5-2 AUTHORITY OF THE CONSTRUCTION ADMINISTRATOR AND THE DESIGN ENGINEER**

The Owner's Representative and the Design Engineer will decide all questions which may arise as to the quality and acceptability of materials furnished and work performed, and all questions as to the satisfactory and acceptable fulfillment of the Contract on the part of the Contractor. The Design Engineer will decide all questions which may arise as to the interpretation of the Plans and Specifications.

#### **GC5-3 FORMAL PROTEST**

If the Contractor considers any work demanded of him to be outside the requirements of the Contract, or if he considers any instructions, ruling, or decision of the Design Engineer to be unfair, he shall, within ten (10) days after any such demand is made, or instruction, ruling or decision is given, file a written protest with the Design Engineer, stating clearly and in detail his objections and the reasons for them. Except for such protests as are made of record in the manner and within the time above stated, the Contractor shall be deemed to have waived and does hereby waive all claims for Extra Work, damages and extensions of time resulting from demands, instructions, rulings and decisions of the Design Engineer. Upon receipt of any such protest from the Contractor, the Design Engineer shall review the demand, instructions, rulings, or decisions objected to and shall promptly advise the Contractor in writing of his final decision, which shall be binding, unless within ten (10) days thereafter the Contractor shall file with the Owner a formal protest against said final decision of the Design Engineer. The Owner shall consider and render a final decision of any such protest within thirty (30) days of receipt of it. Pending a final decision on the protest, the Contractor shall diligently proceed with the performance of the Work as directed by Owner so as to not delay the completion of the Project.

#### **GC5-4 PLANS**

The Contract Plans consist of general drawings. These indicate such details as are necessary to give a comprehensive idea of the work necessary to fulfill the Contract. All authorized alterations affecting the requirements and information given on the Contract Plans shall be in writing. The Contract Plans shall be supplemented by such working or shop drawings prepared by the Contractor as are necessary to adequately control the work. No change shall be made by the Contractor in any working or shop drawing after it has been stamped by the Design Engineer: "Resubmittal not Required." Any drawings or plans listed in the specifications shall be regarded as a part thereof and the Design Engineer will furnish from time to time such additional drawings, Plans, profiles, and information as he may consider necessary for the Contractor's guidance. All authorized alterations affecting the requirements and information given on the Plans shall be in writing. No changes shall be made of any Plan or drawing after the same has been stamped by the Design Engineer: "Resubmittal not Required."

#### GC5-5 DOCUMENTS AVAILABLE AT THE SITE

The Contractor shall keep a copy of the Contract Documents at the site of the Work and shall give access thereto to the Owner's Representative at all times.

#### GC5-6 CONFORMITY WITH PLANS AND ALLOWABLE DEVIATIONS

Finished surfaces in all cases shall conform with lines, grades, cross sections, and dimensions indicated on the Plans. Allowable deviations, other than specified tolerances, from the Plans and working drawings will, in all cases, be determined by the Design Engineer.

#### GC5-7 COORDINATION AND INTERPRETATION OF PLANS AND SPECIFICATIONS

A. The Plans, including schematic drawings, Specifications, General Conditions, Special Conditions, Contract Change Orders, force account directives, and all supplementary documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be coordinated and to describe and provide for a complete Work. Should it appear that the Work or any of the matters relative thereto are not sufficiently detailed or explained in the Contract Documents, the Contractor shall apply to the Design Engineer for such further explanations as may be necessary and shall conform to them as part of the Contract. In the event of any doubt or question arising regarding the true meaning of the Contract Documents, reference shall be made to the Design Engineer, whose decision thereon shall be final. In the event of any discrepancy between any drawing and the figures written thereon, the figures shall be taken as correct. Figured dimensions shall govern over scaled dimensions. Scaled dimensions shall not be used in the performance of the Work. Large scaled plans shall govern over smaller scaled plans.

B. In the event of there being a conflict between one Contract Document and any of the other Contract Documents, the Contract Document highest in precedence shall control and supersede the Contract Document that is contrary to it. The order of precedence of the Contract Documents from the highest to the lowest in precedence shall be as follows:

FIRST: Supplemental Agreements/Change Orders, the last in time being the first in precedence

SECOND: The Formal Contract

THIRD: Notice Inviting Bids

FOURTH: Instructions for Bidders

FIFTH: Plans and

Specifications SIXTH: General

Conditions SEVENTH: Standard

Specifications EIGHTH:

Contractor's Bid

#### GC5-8 ORDER OF WORK

When required by the Contract Documents, the Contractor shall follow the sequence of

operations as set forth therein. Full compensation for conforming to such requirements will be

considered as included in the prices paid for Contract items of work and no additional compensation will be allowed therefor.

#### GC5-9 INSPECTION

A. The Contractor shall furnish the Owner's Representative and the Design Engineer with every reasonable facility for ascertaining whether or not the Work as performed is in accordance with the requirements and intent of the Specifications and Contract. If the Owner's Representative or the Design Engineer requests it, the Contractor at any time before acceptance of the Work shall remove or uncover such portions of the finished Work as may be directed. After examination, the Contractor shall restore said portions of the Work to the standards required by the Specifications. Should the Work thus exposed or examined prove acceptable, the uncovering or removing and the replacing of the covering or making good of the parts removed, will be paid for as provided under CHANGES IN THE WORK, but should the Work so exposed or examined prove unacceptable the uncovering or removing and the replacing of the covering or making good of the parts removed shall be at the Contractor's expense. Inspection or supervision by the Owner's Representative or the Design Engineer shall not be considered as direct control of the individual workman and his work. The direct control shall be solely the responsibility of the Contractor's foremen and superintendent.

B. The inspection of the Work shall not relieve the Contractor of any of his obligations to fulfill his Contract as herein provided and unsuitable materials may be rejected notwithstanding that such work and materials may have been previously overlooked and accepted or estimated for payment.

C. Should any Work be covered up before acceptance or consent of the Owner's Representative or the Design Engineer, it must, if required by the Owner's Representative or the Design Engineer, be uncovered for examination at the Contractor's expense.

#### GC5-10 LINES AND GRADES

Profiles and elevations are shown on the Plans. Elevations are referred to a datum as shown on the Plans. All Work under this Contract shall be built in accordance with the lines and grades shown on the Plans. These lines and grades may be modified as provided in the Contract.

## **GENERAL CONDITIONS – PART 6**

### **MATERIALS AND WORKMANSHIP**

#### **GC6-1 GENERAL**

A. All equipment, materials, and articles incorporated in the Work covered by this Contract shall be new and subject to review and acceptance by the Owner's Representative and the Design Engineer unless otherwise specifically provided for in the Contract Documents.

B. Where equipment, materials, or articles are referred to in the Request for Bids, Instructions for Bidders or other Contract Documents as "or equal," or "equal to" any particular standard, the Design Engineer shall decide the question of equality.

C. Wherever any standard published specification is referred to, the latest edition or revision, including all amendments, shall be used unless otherwise specified. Materials of a general description shall be the best of their several kinds, free from defects, and adapted to the use for which provided. The physical characteristics of all materials not particularly specified shall conform to the latest standards published by the American Society for Testing and Materials, where applicable. All material shall be new and of the specified quality and equal to the accepted samples, if samples have been submitted.

D. All Work shall be done and completed in a thorough, workmanlike manner and it shall be the duty of the Contractor to call the Owner's Representative's and the Design Engineer's attention to apparent errors or omissions and request instructions before proceeding with the Work. The Design Engineer may, by appropriate instructions, correct errors and supply omissions, which instructions shall be as binding upon the Contractor as though contained in the original Specifications or Plans.

#### **GC6-2 SUBSTITUTION OF OR EQUAL MATERIAL OR EQUIPMENT**

A. Where material or equipment is designated in the Plans or in the Specifications by a trade or manufacturer's name, it is so designated primarily to establish standards of quality, finish, appearance, and performance. It is not the intent to limit the choice of equipment to the specific product designated. However, requests relative to substitutions for materials or equipment specifically designated on the Plans and in the Specifications will not be considered until after award of the Contract. Requests relative to substitutions for materials or equipment specifically designated on the Plans or in the Specifications shall be made in writing, and such requests shall be accompanied by complete data on which the Design Engineer can make a determination on the merits of the proposed substitution. The written request shall state how the product proposed for a substitution compares with or differs from the designated product in composition, size, arrangement, performance, corrosion resistance, longevity, etc., and in addition, the request shall be accompanied by documentary evidence of equality in price and delivery or evidence of difference in price and delivery. Data on price shall be in the form of certified quotations from suppliers of both the designated and proposed items.

B. All items accepted for substitution shall be subject to all applicable provisions of the Specifications. All specific requirements of the Specifications must be adhered to, and all necessary modifications shall be made in the articles specified by trade name, type, or model of manufacturer's equipment to make it conform to the specific requirements of the Specifications and the actual conditions under which the product is required to be used. Should a substitution be allowed under the foregoing provisions, and should the item subsequently prove to be



defective or otherwise unsatisfactory for the service for which it was intended, the Contractor should, without cost to the Owner, and without obligation on the part of the Design Engineer, replace the item with the material originally specified.

#### GC6-3 SAMPLE AND TESTING

A. All materials to be incorporated in the Work shall be subject to sampling, testing, and acceptance. Samples furnished by the Contractor shall be representative of the materials to be used.

B. All sampling and testing of materials shall be done in accordance with the latest designated standard methods of AASHTO or ASTM, or in accordance with special methods designated in the Specifications.

#### GC6-4 FABRICATED MATERIALS AND SHOP DRAWINGS

Fabricated materials and shop drawings shall be handled as set forth in the Special Conditions.  
GC6-5 MATERIALS FURNISHED BY THE OWNER

All materials and/or services furnished by the Owner shall be obtained by the Contractor as indicated in the Special Conditions. The cost of handling and placing Owner furnished materials shall be included in the price paid for the Contract item involving such material.

#### GC6-6 STORAGE OF MATERIALS

The Contractor shall provide proper storage facilities and exercise such measures as will insure the preservation of the specified quality and fitness of all materials and equipment to be used in the Work. Stored materials shall be located so as to provide reasonable access for inspection. Protection of materials and equipment stored on the site shall be the responsibility of the Contractor. The Owner reserves the right to direct the Contractor to provide proper means of protection for materials if such is deemed advisable by the Construction Administrator or the Design Engineer; however, the exercise of or failure to exercise this right shall not be deemed to relieve the Contractor of his primary responsibility for protecting the material and equipment. The Contractor shall provide suitable warehouses or other adequate means of protection for such of the materials and equipment as require storage or protection. The Contractor shall store and care for the materials and equipment in the most suitable manner to protect them from distortion, rain, dust, or other damage. The cost of replacing any material or equipment damaged in storage shall be borne by the Contractor, and the fact that material or equipment has been damaged after partial payment has been made shall not relieve the Contractor of his primary responsibility. No motor shall be left uncovered or unprotected.

#### GC6-7 REJECTED MATERIALS

Materials not conforming to the requirements of the Specifications, whether in place or not, may be rejected. Rejected materials shall be removed immediately from the site of the Work unless otherwise permitted by the Owner's Representative or the Design Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used unless accepted by the Design Engineer. If the Contractor fails to remove and replace rejected material, the Owner has authority to do so and to deduct the cost thereof from any monies due or to become due the Contractor.

## **GENERAL CONDITIONS – PART 7**

### **LEGAL RELATIONS AND RESPONSIBILITY**

#### **GC7-1 LAWS TO BE OBSERVED**

The Contractor is presumed to know, and at all times shall observe and comply with, all Federal and State laws and local ordinances, worker's compensation, occupational disease, and unemployment compensation laws together with the payment of all premiums and taxes therefor; also all laws, ordinances, and regulations in any manner affecting the conduct of the Work, and shall defend, indemnify, and save harmless the Owner, the Owner's Representative, the Design Engineer, and their officers, agents, and employees against claims arising from the violation of laws, bylaws, ordinances, or regulations, whether by Contractor or by Contractor's subcontractors or suppliers. The Contractor is required to post all job site notices prescribed by law or regulation. This Project is subject to compliance monitoring and enforcement by the DIR.

#### **GC7-2 EMPLOYMENT OF APPRENTICES**

A. Attention is directed to the provisions in Section 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.

B. Section 1777.5, as amended, requires that every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

C. Only apprentices, as defined in section 3077 of the Labor Code, who are in training under the apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

1. The apprenticeship standards and apprentice agreements under which he or she is training.
2. The rules and regulations of the California Apprenticeship Council.

D. When the Contractor and/or any subcontractor under him, in performing any of the Work, employs workers in any apprentice able craft or trade, the Contractor and/or subcontractor shall employ apprentices in at least the ratio set forth in Labor Code section 1777.5 and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the Contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected.

E. Prior to commencing Work on the Contract, the Contractor and/or subcontractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the Work. The information submitted shall include an estimate of the journeyman hours to be performed under the Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the Owner.

F. Within 60 days after concluding Work on the Contract, the Contractor and any subcontractors shall submit to the Owner, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Contract. The information submitted pursuant to this section GC 7-2 shall be public.

G. If the Contractor, in performing any of the Work under the Contract, employs journeymen or apprentices in any impracticable craft or trade, then the Contractor shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the site of the Work. The Contractor may take as a credit for payments to the council any amounts paid by Contractor to an approved apprenticeship program that can supply apprentices to the site of the Work. The Contractor may add the amount of the contributions in computing his or her Bid for the Contract.

H. Contractor and any subcontractor under him shall comply with the requirements of Sections 1777.5 and 1777.6 in the employment of apprentices. The Contractor has the responsibility of compliance with these requirements for all impracticable occupations.

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

#### GC7-3 WAGE RATES

Pursuant to Pursuant to Sections 1770 et seq. of the California Labor Code, Contractor and its subcontractors of any tier shall pay all workers employed on the Project not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. Copies of the prevailing rate of per diem wages are on file at the Owner's Facilities Management Department, 4002 Vista Way, Oceanside, California 92056, and shall be made available to any interested party upon request. Copies may also be obtained from State of California, Division of Labor Statistics and Research, (415) 557- 0561. Contractor shall post a copy of such determination at the job site. Contractor may be subject to penalties if workers are paid less than the required prevailing wages, as provided by Labor Code Section 1775. Contractor shall, as a penalty to the Owner, forfeit two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the specified prevailing rates for such work or craft in which such worker is employed, whether paid by the successful Bidder or by any subcontractors under him unless the requirements of Labor Code Section 1775(b) are met.

#### GC7-4 PAYROLL RECORDS

The Contractor and each subcontractor shall keep an accurate payroll record showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed on the forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records shall be certified, available for inspection, and copies thereof furnished as prescribed in Section 1776 of the Labor Code. The Contractor shall keep the Owner informed as to the location of the records and shall be responsible for the compliance with these requirements by all subcontractors. The Contractor shall inform the Owner of the location of the payroll records, including the street address, city, and county, and shall, within five (5) working days, provide a notice of a change of location and address. Penalties for

noncompliance includes a forfeiture of \$100 per day per worker, which may be deducted from any moneys due the Contractor.

The Contractor and each subcontractor must furnish electronic certified payroll records directly to the Labor Commissioner (also known as the Division of Labor Standards Enforcement) (A) at least monthly and (B) in a format prescribed by the Labor Commissioner.

#### GC7-5 CONTRACTOR LICENSES

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

#### GC7-6 PATENTED DEVICES, MATERIALS, AND PROCESSES

The Contractor shall indemnify and save harmless the Owner and its duly authorized representatives from all liabilities, judgments, costs, damages, and expenses which may result from the infringement of any patents, trademarks, and copyrights by reason of the use of any proprietary materials, devices, equipment, or processes incorporated in or used in the performance of the Work under this Contract.

#### GC7-7 SURVEY LAND MONUMENTS

Survey land monuments and property marks shall not be moved or otherwise disturbed by the Contractor until an authorized agent of the agency having jurisdiction over the land monuments or property marks setting has witnessed or otherwise referenced their location, and only then in accordance with the requirements of the agency having jurisdiction.

#### GC7-8 PROTECTION OF PERSONS AND PROPERTY

A. Contractor shall adopt every practical means and comply with all laws, ordinances, and regulations in order to minimize interferences to traffic and inconveniences, discomfort and damage to the public, including the provision of adequate dust control measures. All obstructions to traffic shall be guarded.

B. The Contractor shall not trespass upon private property and shall be responsible for all injury or damage to persons or property, directly or indirectly, resulting from his operations in completing this Work. He shall comply with the laws and regulations of the Owner, County, and State relating to the safety of persons and property, and will be held responsible and required to make good any injury or damage to persons or property caused by carelessness or neglect on the part of the Contractor, its subcontractor(s) of any tier, or the agents or employees of any of them during the progress of the Work and until its final acceptance.

C. The Contractor shall protect against injury any pipes, sewer conduits, electrical conduits, lawns, gardens, shrubbery, trees, fences, or other structures or property, public and/or private, encountered in this Work except as stipulated elsewhere herein.

D. The Contractor shall be responsible and liable for any injury to such pipe, structures, and property. The fact that such pipe or other underground facility is not shown on the Contract

Documents or is shown in a different location shall not relieve the Contractor of responsibility under this Section.

#### GC7-9 UTILITIES

A. The Design Engineer has endeavored to determine the existence of utilities at the site of the work from the records of the owners of known utilities in the vicinity of the Work.

B. The Contractor shall make his own investigations, including exploratory excavations, to determine the locations and type of existing service laterals or appurtenances when their presence can be inferred from the presence of other visible facilities, such as buildings, meters, and junction boxes on or adjacent to the site of the Work. The Contractor shall expose all shown or inferred utilities, service laterals, appurtenances, and the like which might interfere with construction of the Project, in order to permit survey location prior to construction. If the Contractor discovers utility facilities not identified in the Plans or Specifications or in a position different from that shown on the Plans and Specifications, he shall immediately notify in writing the Owner's Representative, the Design Engineer and the owner of the utility facility.

C. The Owner shall have the responsibility for the timely removal, relocation, protection, and temporary maintenance of existing main or trunk line utility facilities, which are not indicated in the Plans and Specifications with reasonable accuracy.

D. In case it should be necessary to remove, relocate, protect, or temporarily maintain a utility because of interference with the Work, the work on such utility shall be performed and paid for as follows:

1. When it is necessary to remove, relocate, protect, or temporarily maintain an existing main or trunk line utility facility not indicated on the Plans and Specifications with reasonable accuracy, the Owner will compensate the Contractor for the costs of locating; for the costs of repairing damage not due to the failure of the Contractor to exercise reasonable care; for the costs of removing, relocating, protecting, or temporarily maintaining such utility facilities; and for the costs for equipment on the site necessarily idled during such work. These costs and the work to be done by the Contractor in locating, removing, relocating, protecting, or temporarily maintaining such utility facilities shall be covered by a written change order conforming to the provision of "Changes in The Work" and "Change Orders" in these General Conditions. The Owner may make changes in the alignment and grade of the work to obviate the necessity to remove, relocate, protect, or temporarily maintain such utility facilities or to reduce the costs of the work involved in removing, relocating, protecting, or temporarily maintaining such utility facilities. Changes in alignment and grade will be ordered in accordance with the provisions for "Changes in the Work."
2. When it is necessary to remove, relocate, protect, or temporarily maintain the utility (other than [1] existing main or trunk line utility facilities not indicated in the Plans and Specifications with reasonable accuracy, or [2] existing service laterals or appurtenances when their presence cannot be inferred from the presence of other visible facilities, such as buildings, meters, and junction boxes on or adjacent to the site of the work) the cost of which is not required to be borne by the owner thereof, the Contractor shall bear all expenses incidental to the work on the utility or damage thereto. The work on the utility shall be done in a manner satisfactory to the owner thereof; it being understood that the owner of the utility has the option of doing such work with his own forces, or permitting the work to

be done by the Contractor. No representations are made that the obligation to remove, relocate, protect, or temporarily maintain any utility and to pay the cost thereof is or is not required to be borne by the owner of such utility and it shall be the responsibility of the Contractor to investigate to find out whether or not said cost is required to be borne by the owner of the utility.

E. The right is reserved to governmental agencies and to owners of utilities to enter at any time upon any street, alley, right of way, or easement for the purpose of making changes in their property made necessary by the work and for the purposes of maintaining and making repairs to their property. The public utility, where they are the owner, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price.

F. The Contractor shall notify all owners of utilities when his work is in progress and shall make such arrangements as are necessary to make any emergency repair.

G. The Contractor shall not be assessed liquidated damages for delay in completion of the project when such delay was caused by the failure of the Owner or the owner of the utility to provide for removal or relocation of such utility facilities.

H. Nothing herein shall be deemed to require the Owner to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the Work can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the Work; provided, however, nothing herein shall relieve the Owner from identifying main or trunklines in the Plans and Specifications.

I. Nothing herein shall preclude the Owner from pursuing any appropriate remedy against the utility for delays which are the responsibility of the utility.

J. Nothing herein shall be construed to relieve the utility from any obligation as required either by law or by contract to pay the cost of removal or relocation of existing utility facilities.

#### GC7-10 SAFETY

A. In accordance with generally accepted construction practices, the Contractor shall be solely and completely responsible for conditions of the jobsite, including safety of all persons and property during performance of the Work, and the Contractor shall fully comply with all state, federal and other laws, rules, regulations and orders relating to safety of the public and workers. The Contractor will be required to comply with all applicable Owner's Safety Practices during performance of Work under this Contract.

B. The right of the Owner's Representative, the Design Engineer or the Owner to conduct construction review or observation of the Contractor's performance will not include review or observation of the adequacy of the Contractor's safety measures in, on, or near the construction site.

C. Owner shall have the authority to enter the worksite at any time for the purpose of identifying the existence of conditions, either actual or threatened that may present a danger or hazard to any and all employees. Owner, in its sole authority and discretion, may order the immediate abatement of any and all conditions that may present an actual or threatened danger or hazard to any and all employees at the worksite. Owner may also, in its sole authority and discretion, issue an immediate stop work order to Contractor to ensure that no employee working at the worksite is exposed to a dangerous or hazardous condition. Any stop work order

issued by the Owner to Contractor in accordance with this paragraph shall not give rise to any claim or cause of action for delay damages by Contractor or Contractor's agents or subcontractors against Owner.

D. The Specifications require that all excavations be performed, protected, and supported as required for safety and in a manner set forth in the operation rules, orders, and regulations prescribed by the CAL/OSHA Construction Safety Orders.

E. If the total amount of the excavation contract is in excess of \$25,000, the Contractor shall submit to the Owner for acceptance, in advance of excavation, 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 any trench or trenches five (5) feet or more in depth. The plan shall be prepared and signed by a registered civil or structural engineer. As a part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with the CAL OSHA Construction Safety Orders, or that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders.

F. Owner's Eye Safety Program Information

1. General

Eye and face protection are required for workers under Cal/OSHA Construction Safety Order Section 1516. Further, Section 1516 states that eye protection equipment meet requirements specified in ANSI (American National Standard Institute) Z87.1-1989. Eye and face protection are required for persons who are potentially exposed to such hazards as punctures, abrasions, contusions or burns as a result of contact with flying particles, hazardous substances, projections or injurious light rays on the job.

2. Eye-Protection Areas

Personnel performing work in the following areas or performing the following operations will always be required to use appropriate eye protection equipment.

- a. All areas where operations produce flying particles capable of causing eye injuries including grinding, machining, sanding, welding, casting, molding, fabrication, soldering, sheet metal work, and similar operations.
- b. All areas where wastewater or chemical splashes, sprays or mists could cause eye injuries or exposures including all wash down operations, working in areas where misting occurs, dip cleaning, spray coating, etching, any laboratory operations involving chemical handling, and similar operations.
- c. All areas where hazardous chemicals are handled or transported.
- d. All operations where flying parts or substances pose a threat to eye safety including wiring, soldering, wire clipping and similar operations.
- e. All facilities maintenance operations where eye injuries could result from particles, dust, chemicals, pressurized gases, pressurized liquids or similar hazards.

### 3. Responsibility

Contractors and their employees performing services for the Owner are required to provide any and all necessary eye protection equipment as required by applicable regulations.

### 4. Designated Areas

- a. Generally, the Owner's eye safety program and procedures are oriented towards the operations being performed. In most cases the nature of the operation will dictate the necessary level of eye protection warranted. However, some areas are designated as always requiring at least the use of safety glasses. These areas are to be identified by the contractor to comply with Cal OSHA requirements.

**NOTE:** Areas not listed as requiring mandatory eye protection equipment are to be considered on a case-by-case basis. That is, a specific area, while normally safe from eye hazards, may be subject to sudden and unexpected changes or conditions necessitating the use of at least safety glasses.

### GC7-11 PERSONAL LIABILITY

No director, officer, employee, or agent of the Owner, the Owner's Representative, the Design Engineer, or the consultants of any of them shall be personally responsible for any liability arising under or by virtue of the Contract.

### GC7-12 INDEMNITY

A. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, the Design Engineer, any Owner's Representative, their respective consultants, and their respective directors, officers, agents, and employees (collectively, "Indemnitees") from and against all claims, damages, losses, liabilities, expenses and other costs, including costs of defense and attorneys' fees (collectively, "Claims"), arising out of or resulting from or in connection with the performance of the Work, both on and off the jobsite, provided that any of the foregoing (1) is attributable to personal injury, bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) is caused in whole or in part by any act or omission of the Contractor, any subcontractor, any supplier, anyone directly or indirectly employed by any of them or anyone for whose acts or omissions any of them may be liable, regardless of whether or not the Claim is caused in part by any act or omission (active, passive, or comparative negligence included) of an Indemnatee. Nothing in this Section GC7-12 shall be deemed to impose on the Contractor, or relieve the Owner from, liability for the active negligence of the Owner.

B. In any and all Claims against the indemnified parties by any employee of the Contractor, any subcontractor, any supplier, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under the first paragraph in this section on INDEMNITY 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, or any supplier or other persons under workers compensation acts, disability benefit acts, or other employee acts.



C. The Contractor shall also indemnify and hold harmless the Indemnitees from and against all Claims (including damages to the Work itself) that any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the Work and all of the Contractor's obligations under the Contract. Such Claims shall include all costs, including attorney's fees, incurred by the Indemnitees in any lawsuit to which they are a party.

#### GC7-13 MUTUAL RESPONSIBILITY OF CONTRACTORS

A. Nothing in the Contract shall be interpreted as granting to the Contractor exclusive occupancy of the site of the Project. The Contractor must ascertain to his own satisfaction the scope of the Project and the nature of any other contracts that have been or may be awarded by the Owner in the construction of the Project, to the end that the Contractor may perform this Contract in the light of such other contracts, if any.

B. The Contractor shall not cause any unnecessary hindrance or delay to any others working on the site of the Project. If the performance of any contract for the Project is likely to be interfered with by the simultaneous performance of some other contract or contracts, the Owner's Representative will decide which contractor shall cease work temporarily and which contractor shall continue or whether the work under the contracts can be coordinated so that the contractors may proceed simultaneously. On all questions concerning conflicting interest of contractors performing related work, the decision of the Owner's Representative shall be binding upon all contractors concerned and the Owner, the Owner's Representative, the Design Engineer, and their consultants shall not be responsible for any damages suffered or extra costs incurred by the Contractor resulting directly or indirectly from the award or performance or attempted performance of any other contract or contracts on the Project or caused by a decision or omission of the Owner's Representative respecting the order of precedence in the performance of the contracts.

C. If through acts of neglect on the part of the Contractor, any others suffer loss or damage, the Contractor agrees to settle with such others by agreement or arbitration, if such others will so settle. If such others shall assert any claim against the Owner, the Owner's Representative, the Design Engineer, or their consultants on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor who shall hold harmless, indemnify, and defend the Owner, the Owner's Representative, the Design Engineer, their consultants, and each of their directors, officers, employees and agents against any such claim, including all attorneys' fees and any other costs incurred by the indemnified parties relative to any such claim.

#### GC7-14 NONRESPONSIBILITY OF THE OWNER

Indebtedness incurred for any cause in connection with this Work must be paid by the Contractor, and the Owner is hereby relieved at all times from any indebtedness or claim other than payments under terms of the Contract.

#### GC7-15 PROPERTY RIGHTS IN MATERIAL

A. Nothing in the Contract shall be construed as vesting in the Contractor any right of property in the material used after they have been attached or affixed to the Work or the soil and accepted. All such materials shall become the property of the Owner upon being so attached or affixed and accepted.

B. All Plans, Specifications, shop drawings, other drawings, permits, reports, licenses, etc., used for this Project are the property of the Owner and shall not be used for any other work. Nothing in this Contract shall be construed to vest in Contractor any property right in any Plans,

Specifications, shop drawings, other drawings, permits, reports, or licenses prepared in connection with the Work covered by the Contract.

C. No materials, supplies or equipment for the Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest therein or any part thereof is retained by the seller or supplier. The Contractor warrants clear and good title to all materials, supplies, and equipment installed and incorporated in the Work and agrees, upon completion of all Work, to deliver the Work together with all improvements and appurtenances constructed or placed thereon to the Owner free from any claims, liens, encumbrances, or charges, and further agrees that neither the Contractor, nor any person, firm, or corporation furnishing any material or labor for any Work covered by the Contract shall have any right to a lien upon the premises or any improvement or appurtenance thereon, provided that this shall not preclude the Contractor from installing metering devices or other equipment of utility companies or of municipalities, the title to which is commonly retained by the utility company or the municipality.

D. Nothing contained in this section shall defeat or impair the right of such persons furnishing materials or labor, under any bond given by the Contractor for their protection, or any right under any law permitting such persons to look to unpaid funds due the Contractor in possession of the Owner. The provisions of this section shall be inserted in all subcontracts and material contracts, and notices of its provisions shall be given to all persons furnishing materials for the Work when no formal contract is entered into for such materials.

E. Contractor shall assume all responsibility for and shall be obligated to pay all stop notice claimants who have asserted and proven an obligation owing to them by Contractor.

#### GC7-16 ASSIGNMENT OF PAYMENTS

No assignment by the Contractor of the Contract, or of any part of it, or of funds to be received thereunder by the Contractor will be recognized by the Owner unless such assignment has had prior written consent of the Owner and the Surety has been given due notice of such assignment in writing and has consented thereto in writing.

#### GC7-17 PAYMENT FOR LABOR AND MATERIAL

Contractor shall pay when due, all valid charges for labor and material incurred by Contractor and used in the construction of the Work and shall also be responsible for keeping the job free of mechanics' liens recorded by or under Contractor or his subcontractors. Nothing contained herein shall be deemed to waive any immunities or other provisions of law preventing imposition of mechanics' liens on public property. If Contractor fails to make any payments required under this paragraph, or if Contractor fails to keep the Project free of Stop Notices resulting from Work performed or materials furnished by Contractor or his subcontractors, Owner may settle such claims and Contractor shall, on demand, reimburse Owner for amounts so paid. If Contractor fails to pay for labor and materials when due, Owner may settle such claims by making demand upon the surety to this Contract. In the event of the failure or refusal of the surety to satisfy such claims, Owner may settle them directly and deduct the amount of payments from the Contract Price and any amounts due to Contractor.

#### GC7-18 WORK DURING DISPUTES AND LITIGATION

In the event of a dispute between the parties as to performance of the Work, the interpretation of this Contract, or payment or nonpayment of Work performed, the parties shall attempt to resolve the dispute through direct negotiations. If the dispute is not resolved, Contractor agrees

to continue the Work diligently to completion and will neither rescind this Contract nor stop the progress of the Work, but will submit such controversy to determination in accordance with the terms of the Contract Documents. In the event any litigation is commenced with respect to this Contract, such litigation shall not serve to suspend Contractor's obligation to continue performance of the Work hereunder.

#### GC7-19 ATTORNEYS' FEES

In case any litigation is commenced with respect to this Contract, the prevailing party shall be entitled to recover from the other party, in addition to amounts found due and owing, costs of suit and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the prevailing party in such litigation, all to be taxed as costs and included in any judgment rendered.

#### GC7-20 NOTICE AND SERVICE THEREOF

Any Notice to the Contractor from the Owner relative to any part of this Contract shall be in writing and considered delivered and the service thereof completed when said Notice is posted, by registered mail, to the said Contractor at his last given address, or delivered in person to said Contractor or his authorized representative on the Work.

#### GC7-21 ASSIGNMENT TO AWARDING BODY

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

#### GC7-22 PROVISIONS REQUIRED BY LAW

Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though they were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contractor shall forthwith be physically amended to make such insertion.

#### GC7-23 PATENTS AND ROYALTIES

A. All costs involved in fees, royalties or claims for any patented invention, article, process or method that may be used upon or in a manner connected with the Work under this Contract or with the use of completed Work by the Owner, shall be paid by the Contractor. The Contractor and his sureties shall protect and hold Owner together with all of his officers, agents, servants and employees, harmless against any and all demands made for such fees or claims brought or made by the holder of any invention or patent. Before final payment is made on the account of this Contract, the Contractor shall, if requested by the Owner, furnish acceptable proof of a proper release from all such fees or claims.

B. Should the Contractor, his agent, servant or employee or any of them be enjoined from furnishing or using any invention, article, material or plans supplied or required to be supplied or

used under this Contract, the Contractor shall promptly pay such royalties and secure the requisite licenses; or subject to acceptance by the Owner, substitute other articles, materials or appliances in lieu thereof which are of equal efficiency, quality, finish, suitability and market value to those planned or required under the Contract. Descriptive information of these substitutions shall be submitted to the Design Engineer for determination of general conformance to the design concept and the construction Contract. Should the Owner elect to refuse the substitution, the Contractor agrees to pay such royalties and secure such valid licenses as may be requisite for the Owner, his officers, agents' servants and employees or any of them, to use such invention, article, material or appliance without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof.

#### GC7-24 WORK HOURS

The Contractor shall comply with all applicable provisions of Section 1810 to 1815, inclusive, of the California Labor Code relating to working hours. The Contractor shall, as a penalty to the Owner, forfeit \$25.00 for each worker employed in the execution of the Contract by the Contractor or by any subcontractor, for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week, unless such worker receives compensation for all hours worked in excess of 8 hours at not less than 1 1/2 times the basic rate of pay.

Except as otherwise agreed to in advance, all Work shall be accomplished between the hours of 7:00 AM and 5:00 PM, Monday through Friday. For any work done at other times, on Owner adopted holidays or beyond eight (8) hours workday, the Contractor shall pay for all inspection payroll costs. The Contractor will provide minimum of 48 hours written advance notice to the Engineer to schedule work beyond eight (8) hours workday, Saturday, Sunday and Owner adopted holidays.

#### GC7-25 PROHIBITION AGAINST USE OF INELIGIBLE SUBCONTRACTORS

Under Public Contract Code Section 6109, Contractor shall not perform work on a public works project with a subcontractor who is ineligible to perform work on the public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code (regarding violations of prevailing wage, working hours and apprentice requirements).

## **GENERAL CONDITIONS – PART 8**

### **PAYMENT TO CONTRACTORS**

#### **GC8-1 GENERAL**

The basis of payment for construction of the Project shall be in full for all Work actually performed in accordance with the Plans and Specifications, and shall include all labor and materials incorporated in the completed Work. Upon final inspection and acceptance of the Work, the Owner will pay the Contractor the amount earned under the Contract, as stipulated herein.

#### **GC8-2 FINAL PAYMENT**

A. For and in consideration of the faithful performance of the Work, the Owner will pay to the Contractor the amount earned as computed from the actual quantities of Work performed under the Contract and to make such payment in the manner and at the time(s) specified, as follows:

1. Within thirty (30) days after Final Acceptance, as described herein, of the Work completed under the Contract, the Design Engineer shall render to the Owner and to the Contractor, a final estimate which shall show the amount of Work performed according to the Contract.
2. Within sixty (60) days after the final completion and final acceptance of the Work under the Contract, the Owner will pay to the Contractor all amounts due him under the provisions of the Contract on the condition that no stop notices, claims or suits have been filed, except that before the final payment will be made, the Contractor shall satisfy the Owner by affidavit that all bills for labor and materials incorporated in the Work have been paid, and shall complete and submit to the Design Engineer a Certification relinquishing any and all claims or right of lien under, in connection with, or as a result of the Work under the Contract.

B. The sixty (60) day period is necessary to allow for the filing and recording of the Notice of Completion with the County Recorder.

C. The basis of payment shall be in full for all Work actually performed in accordance with these Specifications, and shall include all labor and materials incorporated in the completed Work.

#### **GC8-3 PARTIAL PAYMENT**

A. Once each month the Owner will process the Contractor's request for partial payment on the basis of the estimate prepared by the Contractor and accepted by the Owner's Representative for the value of work completed during the preceding month. The Contractor's request shall be submitted on or before the fifth day of each calendar month and shall be in a form acceptable to the Owner's Representative. The estimate will cover the value of Work performed by the Contractor during the preceding month plus 80% of the paid invoice cost of material suitably stored at the site of the Project if the Contractor desires payment for material stored. The remaining 20% of the material cost will be paid when the materials are installed and become an integral part of the final completed Work.

B. In addition to the request for partial payment, the Contractor shall provide a monthly invoice summary using the Monthly Invoice Summary form. This form must be correct and complete or partial payment will be denied. The Contractor shall also provide a CPM schedule with a "banana curve" matching expenses and percent completion of the Work.

C. In the event the Owner's Representative does not accept the estimate, the Contractor shall make such changes and resubmit to the Owner's Representative.

D. The Owner will retain a portion of the amount otherwise due the Contractor. The amount retained by the Owner will be as follows:

1. The Owner shall retain five (5) percent of such estimated value of the Work as part security for the fulfillment of the Contract by the Contractor.
2. When the Work is substantially complete and placed into service by the Owner, the amount retained may be reduced to that amount as determined by the Owner to be necessary to assure completion of the Work. However, in no case shall the total amount retained be less than five (5) percent of the total Contract Price. Said amount shall be withheld until final completion and acceptance of the Work, per Public Contract Code 9203 and the provisions of this Contract regarding Final Payment.

E. Cost of material stored will be based on vendors' invoices, which shall be listed by the Contractor. A copy of each such invoice shall accompany the first estimate in which payment is requested for material covered by the invoice. This list shall be revised and brought up-to-date by the Contractor for each estimate. The revised list shall show the total amount of each invoice, the invoice amount that has been incorporated in the Work, and the remaining invoice amount that is stored for which payment is requested that month. Only those materials that have become an integral part of the final completed Project may be included for partial payment as material stored.

F. The Contractor shall furnish a detailed breakdown of the Contract Price, showing unit prices and quantities for use in preparing the monthly estimate. No partial payment will be made until this breakdown is presented by the Contractor and accepted by the Owner's Representative and the Design Engineer. The breakdown shall list, as separate items, the labor and materials for each item for which payment is requested.

G. Partial payments for jobsite delivered material or equipment will in no way reduce the Contractor's responsibility for such material or equipment until it has been installed.

#### GC8-4 OWNER'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATIONS

A. In addition to the amount which the Owner may retain under the above article on PARTIAL PAYMENT, the Owner may withhold a sufficient amount or amounts from any payment otherwise due to the Contractor as in the Owner's sole judgment may be necessary to cover:

1. Payment which may be past due and payable for properly filed claims against the Contractor or any subcontractors for labor or materials furnished in or about the performance of the Work on the Project under this Contract.
2. Estimated or actual costs for correcting defective or damaged work not remedied.
3. Amounts claimed by the Owner as liquidated damages or other offsets.

4. Fines levied against the Owner caused by the negligence of the Contractor.

B. The Owner may apply such withheld amount or amounts to the payment of such claims in its discretion. In so doing, the Owner shall be deemed the agent of the Contractor and any payments so made by the Owner shall be considered as a payment made under the Contract by the Owner or the Contractor, and the Owner shall not be liable to the Contractor for such payment made in good faith. Such payments may be made without prior judicial determination of the claim or claims. The Owner will render to the Contractor a proper account of such funds disbursed on behalf of the Contractor.

#### GC8-5 PAYMENT OF ITEMS IN PROPOSAL

Only those items listed in the Proposal are Pay Items. Compensation for all Work necessary for the completion of the Project or improvement shall be included by the Bidder in the prices bid for the items shown in the Proposal.

#### GC8-6 PAYMENT FOR "EXTRA WORK" AND FOR "CHANGES IN THE WORK"

Payment for "Changes in the Work" and for "Claims for Extra Work" will be made as stated in the General Conditions.

#### GC8-7 TIME OF PARTIAL PAYMENTS

Pursuant to California Public Contract Code Section 20104.50, upon receipt of a payment request, the Owner shall review such request as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request. Any payment request determined not to be a proper payment request suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) days after receipt. The returned request shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper. If the Owner fails to make any progress payment within sixty (60) days after receipt of an undisputed and properly submitted payment request, the Owner shall pay interest to the Contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure. A "progress payment" includes all payments due to the Contractor, except that portion of the final payment designated by this Agreement as retention earnings. A payment request shall be considered properly executed if funds are available for payment of the payment request, and payment is not delayed due to an audit inquiry by a financial officer of the Owner.

#### GC8-8 SUBSTITUTION OF SECURITIES FOR AMOUNTS WITHHELD

A. Pursuant to Section 22300 of the California Public Contract Code, the Contractor may substitute securities for any money withheld by the Owner to ensure performance of the Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the Owner or with a State or Federally chartered bank as the escrow agent, who shall release such securities to Contractor following the expiration of thirty-five (35) days from the date of filing of a Notice of Completion of the Work by the Owner, to the extent such securities have not previously been utilized by Owner for purposes as provided hereinafter or are not then subject to withholding by Owner to satisfy stop notices, claims, and costs associated therewith.

B. Alternatively, the Contractor may request and the Owner shall make payment of retentions earned directly to the escrow agent at the expense of the Contractor. At the expense of the Contractor, the Contractor may direct the investment of the payments into securities and

the Contractor shall receive the interest earned on the investments upon the same terms provided for in Section 22300 of the Public Contract Code for securities deposited by the Contractor. Upon satisfactory completion of the Contract, the Contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agency from the Owner, pursuant to the terms of Section 22300 of the Public Contract Code.

C. If the Contractor elects to receive interest on moneys withheld as retention by the Owner, he or she shall, at the request of any subcontractor, make that option available to the subcontractor regarding any moneys withheld as retention by the Contractor from the subcontractor. If the Contractor elects to receive interest on any moneys withheld as retention by the Owner, then the subcontractor shall receive the identical rate of interest received by the Contractor on any retention moneys withheld from the subcontractor by the Contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the Contractor elects to substitute securities in lieu of retention, then, by mutual consent of the Contractor and subcontractor, the subcontractor may substitute securities in exchange for the release of moneys held in retention by the Contractor.

1. This subdivision (C) shall apply only to those subcontractors performing more than five (5) percent of the Contractor's total Bid.
2. No Contractor shall require any subcontractor to waive any provision of this subdivision (C).

D. The request for substitution of securities to be deposited with the Owner, or with a State or Federally chartered bank as escrow agent, shall be submitted on the escrow form contained and with procedures as set forth in Section 22300, which form when executed by the Contractor and the Owner shall constitute a Supplemental Agreement forming a part of the Contract Documents. The Owner shall have thirty (30) days from receipt of any such written request, properly completed and signed by the Contractor and, if applicable, accompanied by an escrow agreement in a form acceptable to Owner, to approve said request and effect the substitution. Owner will not unreasonably withhold approval of said request. Owner will determine the value of any security so deposited. Such Supplemental Agreement and any escrow agreement shall provide for the release of the securities to Contractor as set forth herein and shall also set forth the manner in which Owner may convert the securities or portions thereof to cash and apply the proceeds to the accomplishment of any purposes for which moneys may be withheld and utilized as described in the Contract Documents, including but not limited to the completion of the Work, correction of defective work, and the answering of any stop notice, claims, and costs associated therewith.

E. Securities eligible for investment under this section shall be those listed in Section 22300 of the California Public Contract Code or bank or savings and loan certificates of deposit.

F. The Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

#### GC8-9 CLAIMS

Notwithstanding any other law, including Public Contract Code sections 10240 and 20104, the parties to this Contract are subject to the provisions of Section 9204 of the Public Contract Code, which requires compliance with the following procedures to resolve any claim by



Contractor arising under the Contract including an extension of time, a change order, extra work, or any other disputed amount.

A. For purposes of this section only:

1. "Claim" means a separate demand by Contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
  - a. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by Owner under the Contract.
  - b. Payment by Owner of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
  - c. Payment of an amount that is disputed by Owner.
2. "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract Contractor or is a lower tier subcontractor.

- B. Upon receipt of a Claim pursuant to this section, Owner shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, Owner and Contractor may, by mutual agreement, extend the time period provided in this subdivision.
- C. Contractor shall furnish reasonable documentation to support the Claim.
- D. If Owner needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the Claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, Owner shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.
- E. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after Owner issues its written statement. If Owner fails to issue a written statement, paragraph (J) shall apply.
- F. If the claimant disputes Owner's written response, or if Owner fails to respond to a Claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, Owner shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- G. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, Owner shall provide the

claimant a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after Owner issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with Owner and the claimant sharing the associated costs equally. Owner and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to applicable procedures outside this section including, but not limited to, the requirement that Contractor file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to commencing any litigation.

- H. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.
- I. Unless otherwise agreed to by Owner and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.
- J. Failure by Owner to respond to a Claim from Contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by reason of Owner's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the claimant.
- K. Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.
- L. If a subcontractor or a lower tier subcontractor lacks legal standing to assert a Claim against Owner because privity of contract does not exist, Contractor may present to Owner a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that Contractor present a Claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the Owner. The subcontractor requesting that the Claim be presented to Owner shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, Contractor shall notify the subcontractor in writing as to whether Contractor presented the Claim to Owner and, if Contractor did not present the Claim, provide the subcontractor with a statement of the reasons for not having done so.

#### GC8-10 PARTIAL INVALIDITY

If any provisions of these Contract Documents are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

#### GC8-11 WAIVER OF RIGHTS

Except as otherwise specifically provided in the Contract Documents, no action or failure to act by the Owner, Owner's Representative or Design Engineer shall constitute a waiver of any right or duty afforded any of them under the Contract Documents, nor shall any such actions or failure to act constitute an approval of or acquiescence in any breach thereunder.

#### GC8-12 AUDIT DISCLOSURE

Pursuant to Government Code Section 8546.7, if the Contract is over ten thousand dollars (\$10,000), it is subject to examination and audit of the State Auditor, at the request of the public entity or as part of any audit of the public entity, for a period of three (3) years after final payment under the Contract.

#### GC8-13 CERTIFICATION AGAINST FALSE CLAIMS

In submitting the bid, signing the Contract, performing the Work, and requesting and receiving payment, Contractor certifies it has not and will not submit false claims, pursuant to Government Code Section 12650 et seq.

#### GC8-14 NON-DISCRIMINATION CLAUSE

In the performance of this Contract, Contractor agrees that it will comply with the requirements of California Labor Code section 1735 and not engage in nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of California Labor Code section 1720 et seq.

#### GC8-15 GOVERNING LAW

This Contract shall be governed by and interpreted in accordance with the laws of the State of California.

#### GC8-16 ENTIRE AGREEMENT

This Contract, including all Contract Documents, constitutes the entire contract and agreement between the parties with respect to the subject matter covered by this Contract. This Contract supersedes all previous representations, arrangements, agreements and understandings (whether written or oral) by and among the parties with respect to the subject matter covered by this Contract.

#### GC8-17 COUNTERPARTS

This Contract may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same Contract, and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

## **CONTRACT FORMS**

This document is Tri-City Healthcare District's warranty form and is non-negotiable. Upon completion of the Project, the Contractor will sign and deliver this form to Owner as a condition of final payment and in compliance with all terms and conditions of this form and the General Conditions.

**WARRANTY FORM**

**WARRANTY FOR the Underground Storage Tank Replacement**

**We hereby make this guarantee and warranty in favor of the Tri-City Healthcare District ("Owner") for a period of one (1) year after the date of acceptance of the Work by the Owner:**

We agree that if any of the equipment provided under this Contract should fail due to any reason other than improper maintenance, improper operation or any defect in equipment supplied by Owner; or if any equipment, pipe or appurtenances should develop leakage due to improper assembly or installation; or if any settlement of fill or backfill occurs; or should any portion of the Work fail to fulfill any of the requirements of the Contract Documents, we will, within five (5) days after written notice of such defects, commence to repair or replace the same together with any other work which may be damaged or displaced in so doing and diligently continue the repair and/or replacement until completed.

In the event of our failure to comply with the above-mentioned conditions within a reasonable time after being notified, or should the exigencies of the case require repairs or replacements to be made before we can be notified or respond to notification, we do hereby authorize Tri-City Healthcare District to proceed to have the defect repaired and made good at our expense, and we will pay all associated costs to the Owner upon demand.

The warranty provided herein shall not be in lieu of, but shall be in addition to any warranties or other obligations otherwise imposed by the Contract Documents and by law.

Contractor: \_\_\_\_\_

Signed: \_\_\_\_\_  
(Authorized Representative)

Title: \_\_\_\_\_ Date: \_\_\_\_\_  
(Authorized Representative)

All change orders shall be proposed using this form and shall be supplemented with other supporting documentation determined to be necessary and appropriate by the Owner.

CHANGE ORDER NUMBER \_\_\_\_\_

DATE \_\_\_\_\_

DATE OF CONTRACT: \_\_\_\_\_

PROJECT TITLE: Underground Storage Tank Replacement

---

TO CONTRACTOR: (Name and Address)

WHEN THIS CHANGE ORDER HAS BEEN APPROVED BY TRI-CITY HEALTHCARE DISTRICT YOU ARE DIRECTED TO MAKE THE FOLLOWING CHANGES IN THIS CONTRACT, SUBJECT TO ALL REQUIREMENTS OF THE CONTRACT DOCUMENTS:

ITEM 1      DESCRIPTION:

ITEM 1 IS AN ADD/DEDUCT/NO CHANGE IN THE SUM OF \$ \_\_\_\_\_ AND REQUIRED  
\_\_\_\_\_ WORKING/CALENDAR \_\_\_\_\_ DAYS ADDED/DEDUCTED  
\_\_\_\_\_(Continue additional items if required by this Change Order)

CONTRACT SUMMARY

- |    |  |          |
|----|--|----------|
| 1. | Original Contract Price  |          |
| 2. | Net change by previous Change Order No.  | \$ _____ |
| 3. | Contract Price prior to this Change Order  | \$ _____ |
| 4. | Contract Price increased/decreased/unchanged by this Change Order                                | \$ _____ |
| 5. | New Contract Price, including this Change Order  | \$ _____ |
| 6. | Contract time increased/decreased/unchanged by this Change Order No. _____ Calendar/working days | _____    |
| 7. | Date of completion of Contract as of this Change Order   | _____    |

Approvals:

- |    |                 |           |             |
|----|-----------------|-----------|-------------|
| 1. | Design Engineer | By: _____ | Date: _____ |
| 2. | Contractor      | By: _____ | Date: _____ |
| 3. | Legal Counsel   | By: _____ | Date: _____ |
| 4. | Owner           | By: _____ | Date: _____ |

The above adjustments in time and cost include all compensation and adjustments for changes in sequence of work; general conditions costs; equipment delivery; rescheduling; acceleration, delay, disruption, loss of productivity and other impacts; and extended overhead.

## MONTHLY INVOICE SUMMARY

PROJECT: Underground Storage Tank Replacement

OWNER: Tri-City Healthcare District  
4002 Vista Way  
Oceanside, CA 92056

CONTRACTOR: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
\_\_\_\_\_

INVOICE NUMBER: \_\_\_\_\_

INVOICE DATE: \_\_\_\_\_

INVOICE PERIOD: \_\_\_\_\_

PROGRESS PAYMENT NUMBER: \_\_\_\_\_

PURCHASE ORDER/CONTRACT NO.: \_\_\_\_\_

Original Contract Price: \_\_\_\_\_

No. of Approved Change Orders ( ) Value: \_\_\_\_\_

Total Contract Price: \_\_\_\_\_

TOTAL CONTRACT PRICE EARNED TO \_\_\_\_\_

DATE: \_\_\_\_\_

LESS ACCUMULATED RETENTION: \_\_\_\_\_

LESS ACCUMULATED  
PREVIOUS PAYMENT: \_\_\_\_\_

TOTAL AMOUNT DUE THIS BILLING: \_\_\_\_\_

Requested by: \_\_\_\_\_ Date: \_\_\_\_\_

(Print Name) \_\_\_\_\_

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Owner's Project Manager

\_\_\_\_\_  
CEO or Designee

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

Escrow Agreement Security Deposit In lieu of Retention Form

In the event the successful Bidder enters into the Formal Contract with Tri-City Healthcare District and chooses to substitute security deposits for retention, this form shall be mandatory and non-negotiable.

**WITHHELD CONTRACT FUNDS PUBLIC CONTRACT CODE SECTION 22300**

**ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION**

This Escrow Agreement is made and entered into by and between Tri-City Healthcare District whose address is 4002 Vista Way, Oceanside, CA hereinafter called "Owner," whose address is \_\_\_\_\_ hereinafter called "Contractor" and whose address is \_\_\_\_\_ hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for \_\_\_\_\_ in the amount of \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the Owner shall make payments of the retention earnings directly to the Escrow Agent. When the Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within ten (10) days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and the Contractor. Securities shall be held in the name of \_\_\_\_\_, and shall designate the Contractor as the beneficial owner.

(2) The Owner shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until the time that the escrow created under this Contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor, and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.

(6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the



Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

(7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the Owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (5) to (8), inclusive, of this Agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner:

Title \_\_\_\_\_  
Name \_\_\_\_\_  
Signature \_\_\_\_\_  
Address \_\_\_\_\_

On behalf of Contractor:

Title \_\_\_\_\_  
Name \_\_\_\_\_  
Signature \_\_\_\_\_  
Address \_\_\_\_\_

On behalf of Escrow Agent:

Title \_\_\_\_\_  
\_\_\_\_\_  
Name \_\_\_\_\_  
\_\_\_\_\_  
Signature \_\_\_\_\_  
\_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

On behalf of Owner:

Title \_\_\_\_\_  
Name \_\_\_\_\_  
Signature \_\_\_\_\_  
Address \_\_\_\_\_

On behalf of Contractor:

Title \_\_\_\_\_  
Name \_\_\_\_\_  
Signature \_\_\_\_\_  
Address \_\_\_\_\_

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

**PART B TECHNICAL SPECIFICATIONS**

1.