

## CONTRACTOR TERMS AND CONDITIONS

### 1. Scope of Work.

1.1 Purchase Order Documents. Contractor agrees to perform all obligations described in the Purchase Order Documents and to furnish all tools, equipment, labor, supplies, supervision and material necessary to perform and complete, in a good and workmanlike manner, the work described in the Purchase order, which shall hereinafter be referred to as "the Work," within the time set forth below and in accordance with the drawings and specifications for the Work that are part of this Purchase Order.

1.2 Examination of Work Site. By execution of this Agreement, Contractor warrants that it has carefully examined the site of the Work contemplated and the Purchase Order Documents pertaining to the Work and has satisfied itself of all local and any special conditions affecting the Work and delivery of materials. Tests, survey results, geotechnical reports, or other data or information furnished or referred to in the Purchase Order Documents are furnished for the Contractor's convenience. The County does not guarantee that such tests or preliminary investigations or other data and information are accurate and assumes no responsibility whatsoever as to their accuracy or interpretation. Contractor shall satisfy itself as to the accuracy or interpretation of all such tests or survey results or other information or data.

1.3 Compliance With Laws. Contractor shall, at its expense, give all necessary notices and cause all Work done and materials and equipment furnished pursuant to the Purchase Order Documents to strictly comply with all applicable local, state and federal laws, ordinances, rules, regulations, codes and orders (hereinafter referred to collectively as "Legal Requirements"). Further, Contractor covenants and warrants that it shall observe and comply strictly with all Legal Requirements in connection with the performance of the Work or otherwise. Contractor shall take and observe all necessary measures and precautions for the safety and protection of all property and persons in connection with the performance of the Work.

### 2. Payment Terms.

2.1 Purchase Order Sum. County agrees to pay Contractor for performance of the Purchase Order and completion of the Work in accordance with the Purchase Order Documents the sum identified in the Purchase Order (hereinafter referred to as "Purchase Order Sum"). Contractor will be paid ninety-five percent (95%) of the Purchase Order Sum. Five percent (5%) may be retained until final payment on projects in excess of \$5,000.

2.2 Substitution of Securities. It is understood and agreed that in accordance with California Public Contract Code Section 22300, Contractor will be allowed to either substitute securities for money withheld by County to ensure performance under this Agreement, or request the County to make payment of retentions earned directly into an escrow account at the expense of Contractor under the terms of an escrow agreement substantially similar to the form provided for in California Public Contract Code Section 22300(f). To the fullest extent permitted by California Public Contract Code Section 22300, County shall have the right to draw upon the securities or escrowed funds in the event of default by Contractor without any need by County to make any evidentiary showing of Contractor's default other than the written notice required by Section 22300.

3. Bonds. For projects of \$60,000 or more, Contractor shall furnish a labor and material payment bond and a performance bond, each in the full amount of the Purchase Order Sum, to remain in effect until the date of Final Completion, and shall be issued by a surety authorized to transact business in the State of California.

### 4. Labor Requirements.

4.1 Prevailing Wage. Pursuant to California Labor Code Section 1770 and following, Contractor shall pay not less than the prevailing wage rate. Pursuant to Labor Code Section 1773, the general prevailing rate of wages has been determined by the Director of the State Department of Industrial Relations ("Director"). It shall be Contractor's responsibility to contact the Department of Industrial Relations at (415) 703-4774 for General Prevailing Wage Rates on specific job classifications. Future effective wage rates which have been predetermined are on file with the California Department of Industrial Relations. Contractor is advised that if it intends to use a craft or classification not on file on the general wage determinations, Contractor may be required to pay the wage rate of the craft or classification most closely related to it as shown in the general determinations. Contractor shall post a copy of the prevailing rates at the jobsite. Contractor shall forfeit to County, as a penalty, Fifty Dollars (\$50.00) for each laborer, workman, or mechanic for each day such laborer, workman or mechanic is paid less than the prevailing rates as determined by the Director for such work or craft in which such worker, is employed for any public work done under this Agreement by Contractor or by any subcontractor under Contractor.

The difference between such prevailing wage rates and the amount paid each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Contractor. Further, Contractor shall make all applicable travel and subsistence payments to each worker entitled thereto as required pursuant to Labor Code Section 1773.8.

4.2 Hours of Work. Pursuant to California Labor Code Section 1810 and following, eight (8) hours of labor shall constitute a legal day's work upon all work done hereunder, and it is expressly stipulated no worker employed at any time by Contractor under this Agreement, upon the Work or upon any part of the Work contemplated by this Agreement, shall be required or permitted to work thereon more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week except as provided in Labor Code Section 1815. All of the provisions of that section are incorporated into this Agreement and it is further expressly stipulated that for each and every violation of such law, Contractor shall forfeit as a penalty to County, Twenty Five Dollars (\$25.00) for each workman employed in the execution of this Agreement, for each calendar day during which said worker is required to labor more than eight (8) hours in violation of such law.

4.3 Payroll Records. Contractor and each subcontractor shall keep, or cause to be kept, an accurate payroll record pursuant to Labor Code Section 1776, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by such Contractor and subcontractor(s) in connection with the Work herein. Contractor shall have sole responsibility to comply in all respects with every requirement of Labor Code Section 1776 which is made a part hereof as though fully set forth.

4.4 Employment of Apprentices. Contractor shall comply with each and every requirement set forth in Labor Code Sections 1777.5, 1777.6, and 1777.7 concerning the employment of registered apprentices in connection with the Work herein. Responsibility for compliance with these requirements lies solely with Contractor.

4.5 Non-Discrimination. Contractor shall comply with all applicable federal, state and local laws, rules and regulations in regard to non-discrimination in employment because of race, color, ancestry, national origins, religion, sex, marital status, age, medical condition or handicap.

4.6 AIDS Discrimination. Contractor agrees to comply with the provisions of Article II of Chapter 19 of the Sonoma County Code, prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

5. Subcontracts. It is understood and agreed that Contractor may sublet a portion of the Work only to the subcontractor(s) who are named in the Contractor's proposal, and that Contractor will perform all other work unless specifically authorized by County as provided in Public Contract Code Section 4100 and following with which provisions, the parties hereto agree to comply.

6. Indemnification. Contractor agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release County, its officers, agents and employees, from and against any and all actions, claims, damages, disabilities or expenses that may be asserted by any person or entity, including Contractor, arising out of or in connection with the performance of Contractor hereunder, whether or not there is concurrent negligence on the part of County, but excluding liability due to the sole active negligence or sole willful misconduct of County. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents under workers' compensation acts, disability benefit acts, or other employee benefit acts. Contractor shall be liable to County for any loss or damage to County property arising from or in connection with Contractor's performance hereunder. County may deduct any costs and expenses incurred pursuant to this Section from payments due or which may become due Contractor.

7. Insurance. With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit [ ], which is attached hereto and incorporated herein by this reference.

8. County's Right to Terminate Agreement.

8.1 Contractor's Failure to Diligently Prosecute Work. Contractor shall diligently prosecute the Work to completion and in all events within the time specified. Whenever in the opinion of County, Contractor fails,

achieve satisfactory progress or fails to supply a satisfactory number of skilled workers and adequate equipment and materials for the efficient execution of the Work, County may give a written notice requiring Contractor to provide sufficient personnel, equipment, and material for the expeditious progress of the Work within forty-eight (48) hours after delivery of the notice. If Contractor fails to comply, County may complete the Work itself or employ other contractors to finish the Work. County shall not be held to obtain the lowest figure for completing the Work. Time is of the essence in this Agreement. If County proceeds to complete the Work itself or employs another contractor to finish the Work, Contractor shall promptly surrender possession of the job site together with all equipment and materials to the County for use by County in completing the Work. The cost of such work and necessary materials shall be charged against Contractor (including the cost for additional managerial and administrative services) and shall be deducted from the next or subsequent estimate payment for same. If payments are not sufficient to cover the charges, the balance may be recovered from Contractor or its sureties. If County declares this Agreement terminated pursuant to this Section and the amount of any such charge is less than the amount which was already due to Contractor at the time of termination, the difference shall be paid to Contractor by County. Should the amount of said charges exceed the latter, the difference shall be immediately paid by Contractor to County.

8.2 Deviations from the Plans or Specifications. County shall be entitled to terminate this Agreement in the event that there are any deviations in the Work from the Plans or Specifications without the prior written approval of County, or the appearance of defective workmanship or materials which said deviations or defects are not corrected within five (5) days after receipt by Contractor of written notice thereof, provided that if any such deviation or defect is capable of correction but cannot be reasonably corrected within such five (5) day period; County shall not be entitled to terminate the Agreement unless Contractor fails to commence the correction within such five (5) day period and completes such correction within twenty (20) days following written notice from County of such defect or deviation or to complete such correction within lesser time period if the failure to do so would, in the reasonable determination of County, cause the completion of the Work to be later than the time specified.

8.3 Insolvency of Contractor. County shall be entitled to terminate this Agreement upon the occurrence of any of the following events: (i) Contractor shall voluntarily commence any case, proceeding or other action (A) under the Federal Bankruptcy Code, as amended from time to time, or under any other existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, seeking to adjudicate Contractor a bankrupt or insolvent or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition, or other relief with respect to Contractor or its debts, or (B) seeking appointment of a receiver, custodian or other similar official for Contractor or for all or any substantial part of Contractor's assets, or Contractor shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Contractor any involuntary case, proceeding or other action of a nature referred to in clause (i) of this Section 8.3 which (A) results in the entry of an order for relief of any such adjudication or appointment or (B) remains unstayed and undismissed for a period of sixty (60) days; or (iii) there shall be commenced against Contractor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of contractor's assets, which shall not have been vacated, discharged or stayed or bonded pending appeal within thirty (30) days from the entry thereof; or (iv) Contractor shall take any action in furtherance of, or indicating Contractor's consent to approval of, or acquiescence in, any of the acts set forth in clause (i), (ii) or (iii) of this Section 8.3; or (v) Contractor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or (vi) any termination or voluntary suspension of the transaction of business of Contractor, or any attachment, execution or other judicial seizure of all or any substantial portion of Contractor's assets which attachment, execution or seizure is not discharged within thirty (30) days.

8.4 Breach of Contract Documents. In the event Contractor should refuse or should fail to make prompt payment to subcontractors or suppliers, or disregard any Legal Requirements or the instructions of the County, or otherwise be guilty of a violation of any provision of the Purchase Order Documents, then the County, may, without prejudice to any other right or remedy and after giving the Contractor three (3) days' written notice, terminate the employment of the Contractor and take possession of the premises and of all materials, tools, and appliances thereon and finish the Work by whatever method it may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Purchase Order Sum shall exceed the expense of finishing the Work, including the compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the County.

8.5 Convenience of the County. The County may, at any time, upon ten (10) days' written notice to the Contractor, which notice shall specify that portion of the Work to be terminated and the date said termination is to take effect, terminate (without prejudice to any right or remedy of the County) the whole or any portion of the

Work under the Purchase Order Documents for the convenience of the County. If the County terminates this Agreement as provided in this Section 8.5, the County, in its sole discretion, may require the Contractor to complete any Work necessary to facilitate transfer of the Contractor's responsibilities to another contractor or to ensure that the Work is protected pending completion thereof. If, after the Contractor has been terminated for cause pursuant to this Article 8, it is determined that none of the circumstances set forth hereinabove exist, then such termination shall be construed and deemed a termination for convenience and without cause hereunder.

9. Representations and Warranties of Contractor. The Contractor represents and warrants the following to the County (in addition to any other representations and warranties contained elsewhere in the Purchase Order Documents) as an inducement to the County to execute this Agreement:

- (a) that it will perform all Work called for hereunder in a good and workmanlike manner and in accordance with all Legal Requirements and the Purchase Order Documents;
- (b) that it shall strictly comply with and satisfy all Legal Requirements applicable to the Work;
- (c) that it is financially solvent, able to pay its debts as they mature and possesses sufficient working capital to complete the Work and perform its obligations hereunder;
- (d) that it is a sophisticated contractor who possesses a high level of experience and expertise in the business administration, construction, construction management and superintendence of projects of the size, complexity and nature of the Project to be constructed at the site, and it will perform the Work with care, skill and diligence of such a contractor;
- (e) that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder;
- (f) that it is authorized to do business in the State of California and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work; and
- (g) that its execution of the Agreement and its performance thereunder is within its duly authorized powers.

The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations and performance hereunder. The Contractor's liability hereunder shall survive the County's final acceptance of and payment for the Work. All representations and warranties set forth in this Agreement shall survive the final completion of the work or the earlier termination of this Agreement. The Contractor acknowledges that the County is relying upon the Contractor's skill and experience in connection with the Work called for hereunder.

10. Notices. All notices, bills, certified payroll, and payments shall be made in writing and may be given by personal delivery or by mail or by FAX (with original to follow by mail) and shall be addressed as follows:

COUNTY: See "Delivery Address" on Purchase Order

CONTRACTOR: As Listed on Purchase Order

and where so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid or in the event of personal delivery, shall be deemed given upon personal delivery to the address listed above.

11. Miscellaneous.

11.1 Assignment. This Agreement shall not be assigned by Contractor without the prior written approval of County. County may freely assign this Agreement in its sole discretion.

11.2 Waiver. The waiver by County of any breach of any term or promise herein contained shall not be deemed to be a waiver of such term or promise, or any subsequent breach of the same or any other term or promise herein contained.

11.3 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be

construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

11.4 Merger. The Purchase Order Documents are intended both as the final expression of the agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Purchase Order Documents pursuant to the Code of Civil Procedure Section 1856. No modification of the Purchase Order Documents shall be effective unless and until such modification is evidenced by a writing signed by both parties.

11.5 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

11.6 No Third Party Beneficiaries. There are no third party beneficiaries.

11.7 No Suspension or Debarment. Vendor warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Vendor also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If Vendor becomes debarred, Vendor has the obligation to inform the County.

11.8 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.