

GENERAL PROVISIONS
(Jan. 2017 Edition)

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GENERAL PROVISIONS

(Jan. 2017 Edition)

SECTION 1 DEFINITIONS

- 1.01. Definitions (Rev. Feb. 2013). Whenever in this Contract the following terms (whether initially capitalized or not) and abbreviations, or pronouns in place of them, are used, the intent and meaning shall be as follows:
- A. Directors. The Board of Directors of the Marina Coast Water District.
 - B. Contract. The Construction Contract between the Contractor and the District and including all documents incorporated into the Contract by reference.
 - C. Contracting Officer. The Contracting Officer, as stated in the bid documents, is the District's authorized representative under this Contract.
 - D. Contracting Officer's Representative. The authorized representative of the Contracting Officer acting within the limits of the authorized representative's authority.
 - E. Contractor. An individual, firm, or corporation entering into this Contract for the performance of the Work.
 - F. Day. A calendar Day. Saturdays, Sundays, and District holidays as well as weekdays are counted as Days.
 - G. District or Owner. The Marina Coast Water District, a public entity.
 - H. Engineer or Architect-Engineer. As stated in the bid documents, is the independent engineering firm retained by the District to perform certain engineering services for the project. See GP § 1.02 on the relationship between the District's Contracting Officer and the Engineer.
 - I. Shop Drawings or Drawings. All Drawings, diagrams, illustrations, schedules and other data which are specifically prepared by the Contractor, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work to be performed under this Contract and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distributor and submitted by the Contractor to illustrate material or equipment for some portions of the Work.
 - J. Specifications. Those portions of the Contract consisting of (1) written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work under this Contract, administrative provisions applicable thereto, and (2) all Drawings and designs.
 - K. Subcontractor. An individual, firm, or corporation having a direct Contract with the Contractor or with any other Subcontractor for the performance of any part of the Work or the furnishing of any materials under this Contract. The term shall include Subcontractors and suppliers at all tiers.
 - L. Work. The entire completed construction or the various separately identifiable parts thereof required to be furnished under this Contract. Work includes but is not limited to materials, workmanship, and manufacture and fabrications of components. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by this Contract.
- 1.02 Relationship between District's Contracting Officer and the Engineer (Rev. July 2009).
- A. The Engineer is the Contracting Officer's Representative. The scope of the Engineer's authority under this project is set forth in the agreement between the Engineer and the District. A copy of the agreement will be available to the Contractor.
 - B. All references in the special provisions, the Specifications, and the Drawings to "Engineer" shall be understood to refer to the Contracting Officer who may choose to delegate certain duties, functions, and responsibilities under such Parts to the Engineer as the Contracting Officer's Representative. These matters shall be covered in the pre-construction conference to be held after award of this Contract.

[End of GP § 1]

SECTION 2 GENERAL SCOPE OF WORK

- 2.01. Site Investigation, Conditions Affecting Work and Hazardous Materials (Rev. July 2009).
- A. The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the conditions which can affect the Work, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; (5) drainage on, into and out of the site; and (6) the character of equipment and facilities needed preliminary to and during prosecution of the Work. The Contractor also acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory Work done by the District, as well as from information presented by the Specifications made a part of this Contract. Any failure by the Contractor to take the actions described and acknowledged in this paragraph (A) will not relieve the Contractor from responsibility for estimating properly the difficulty or cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to the District.
 - B. The District assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the District; nor does the District assume responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers, employees, or agents before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.
- 2.02. Intent of Specifications (Rev. Jan. 1981). The intent of the Specifications is to describe a complete project and prescribe the details for the construction and completion of the Work which the Contractor undertakes to perform in accordance with the terms of this Contract. Where the Specifications describe portions of the Work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be used. Unless otherwise specified, the Contractor shall furnish all labor, materials, tools, equipment, and incidentals, and do all the Work involved in executing this Contract in a satisfactory and workmanlike manner.
- 2.03. Discovery of Errors, Omissions, or Discrepancies in the Contract (Rev. Jan. 1981). If the Contractor discovers any errors, omissions, discrepancies, or conflicts in this Contract, the Contractor shall immediately so inform the Contracting Officer in writing. The Contracting Officer will promptly clarify such matters and so inform the Contractor. Any Work affected by such discoveries which is performed by the Contractor prior to authorization by the Contracting Officer shall be at the Contractor's own risk.
- 2.04. Ownership and Use of Contract Documents (Rev. Jan. 1981). The Contractor, any Subcontractor, manufacturer, fabricator, supplier, or distributor (1) shall not have or acquire any title to or ownership rights in any of the Specifications or the other Contract documents (or copies of any thereof) prepared by the District or the District's Architect-Engineer for this Contract, and (2) shall not reuse any of them on any other project without written consent of the District.
- 2.05. Variations in Estimated Quantities (Rev. May 1988).
- A. If (1) the quantity of a unit-priced item in this Contract is an estimated quantity, (2) total price for the item (based upon the unit price multiplied by the estimated quantity) is at least equal to five percent (5%) of the Contract price, and (3) the actual quantity of the unit-priced item varies more than fifteen percent (15%) above or below the estimated quantity, then an equitable adjustment in the Contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity.
 - B. If (1) GP § 2.05(A) applies and (2) the quantity variation is such as to cause an increase in the time necessary for completion, then the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within ten (10) Days from the beginning of the delay. See GP § 2.12 for additional requirements. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of the Contracting Officer, is justified.
- 2.06. Changes (Rev. March 1987).

- A. The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make any change within the scope of the Work of this Contract, including but not limited to changes:
 - 1. in the Specifications (including Drawings and designs);
 - 2. in the method or manner of performance of the Work;
 - 3. in the District-furnished facilities, equipment, materials, services, or site; or
 - 4. directing acceleration in the performance of the Work, except that no change shall be deemed to occur if the Contractor is behind schedule as a result of other than an excusable delay (GP § 6.06(D)(1)) and the Contracting Officer has directed the Contractor to take appropriate action to bring the Contractor's Work on schedule.
- B. Any other written order or an oral order (which terms as used in this paragraph (B) shall include direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change, shall be treated as a change order under this GP.
- C. Except as provided in this GP, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.
- D. If any change under this GP causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under this Contract, the Contracting Officer shall make an equitable adjustment and modify the Contract in writing. However, except for claims based on defective Specifications, no claim for any change under (B) above shall be allowed for any costs incurred more than twenty (20) Days before the Contractor gives written notice as required. In the case of defective Specifications for which the District is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective Specifications.
- E. The Contractor must submit any claim under this GP § within thirty (30) Days after (1) receipt of a written change order under (A) above or (2) receipt of a written or oral order under (B) above which the Contractor regards as a change order, by submitting to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim. If the claim is based upon an alleged (B) change order, such written statement shall also include (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order.
- F. No claim of the Contractor under this clause shall be allowed unless the Contractor has properly complied with all applicable notice requirements of (E) above.
- G. No claim by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.
- H. Nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.
- I. The value of any Work covered by a change order or of any claim for an increase or decrease in the Contract price shall be determined in one of the following ways:
 - 1. Where the Work involved is covered by unit prices contained in this Contract, by application of such unit prices to the quantities of the items involved.
 - 2. By mutual acceptance of a lump sum.
 - 3. On the basis of the Cost of Force Account Work determined as provided in GP § 7.03.

2.07. Extra Work (Rev. Jan. 1981).

- A. Work will be classed as extra Work when determined by the Contracting Officer that such Work is not covered by any of the various items for which there is a bid price or by combinations of such items. In the event portions of such Work are determined by the Contracting Officer to be covered by some of the various items for which there is a bid price or combinations of such items, the remaining portion of such Work will be classed as extra Work. Extra Work also includes Work specifically designated as extra Work in the Specifications.
- B. The Contractor shall do such extra Work and furnish material and equipment therefor upon receipt of a change order or other written order of the Contracting Officer.

- C. Payment for extra Work, in the absence of an agreement between the parties on compensation for the extra Work, will be made by force account.

2.08. Differing Site Conditions (Rev. July 2009).

- A. The Contractor shall promptly (in no event later than five (5) days after such conditions are discovered), and before such conditions are disturbed, notify the Contracting Officer in writing of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in Work of the character provided for in this Contract, or (3) material that the Contractor believes may be hazardous material, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- B. The Contracting Officer shall promptly investigate the conditions after receiving the notice. If the Contracting Officer finds that such conditions do materially so differ or do involve hazardous material and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made under this clause and the Contract modified in writing accordingly.
- C. In the event a dispute arises between the District and the Contractor whether the conditions materially differ, or involve hazardous material, 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 whether by Contract or by law which pertain to the resolution of disputes and protests. However, no claim by the Contractor for an equitable adjustment to the Contract shall be allowed unless the Contractor has given the written notice required in (A) above.

2.09. Consent of Surety (Rev. Jan. 1981). All alterations, extensions of time, extra and additional Work, and other changes authorized by the Specifications or any other part of this Contract may be made without securing the consent of the surety or sureties on the Contract Bonds.

2.10. Cleaning Up (Rev. Jan. 1981). The Contractor shall at all times keep the construction and storage areas ("premises") free from accumulations of waste material or rubbish and, prior to completion of the Work, remove any rubbish from the premises and all tools, scaffolding, equipment, and materials not the property of the District. Upon completion of the construction the Contractor shall leave the Work and premises in a clean, neat and workmanlike condition satisfactory to the Contracting Officer. The Contractor shall restore to their original condition those portions of the premises not designated for alterations by this Contract. Full compensation for final cleaning up will be considered as included in the prices paid for the various Contract items of Work and no separate payment will be made therefor.

2.11. Notice of Potential Claim (Rev. Sept. 1984).

- A. The Contractor shall not be entitled to the payment of any additional compensation for any act, or failure to act by the Contracting Officer, including failure or refusal to issue a change order, or for the happening of any event, thing, occurrence, or other cause, unless the Contractor shall have given the Contracting Officer due written notice of potential claim as hereinafter specified; provided, however, that compliance with this GP § 2.11 shall not be a prerequisite as to matters within the scope of the notice provisions in GP § 2.06, in GP § 2.08 or in GP § 6.06(D)(2).
- B. The written notice of potential claim shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the costs involved, and, insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the Contracting Officer prior to the time that the Contractor shall have performed the Work giving rise to the potential claim for additional compensation if based on an act or failure to act by the Contracting Officer, or in all other cases within thirty (30) Days after the happening of the event, thing, occurrence, or other cause giving rise to the potential claim.
- C. It is the intention of this GP § 2.11 (as well as of all the other notice provisions in this Contract) that differences between the parties arising under and by virtue of the Contract be brought to the attention of the Contracting Officer at the earliest possible time in order that the District may know the extent of any potential additional Contract costs before they are incurred and in order that such matters may be settled, if possible, or other appropriate action promptly taken. The Contractor hereby agrees that it

shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing, or occurrence for which no written notice of potential claim as herein required was filed.

2.12. Request for Time Extensions; Time Extensions (Rev. Sept. 1986).

- A. As a part of every Contractor's proposal or claim involving a request for a time extension, the Contractor shall submit the Contractor's standard scheduling diagram if approved by the Contracting Officer, showing the detail Work necessitated by or involved in the alleged claim and the impact of the proposed time adjustment on other Work and on the project schedule.
- B. This GP § 2.12 shall apply to all requests for time extensions under this Contract, including but not limited to GP § 2.06, GP § 2.08, GP § 2.11, and GP § 3.03(G), and to delay notices under GP § 6.06(D)(2).
- C. Notwithstanding any other provision of this Contract, time extensions shall only be granted for excusable delays that actually delay scheduled project completion. The granting of time extension for changes in the Work will depend upon the extent, if any, by which the changes cause actual delay in the completion of the various elements or phases of construction. The change order or other order of the Contracting Officer granting the time extension may provide that the Contract completion date will be extended only for those specific elements or phases so delayed and that the remaining Contract completion dates for all other portions of the Work will not be altered and may further provide for an equitable readjustment of liquidated damages under the new completion schedule.

2.13. Right to Audit Accounting Records When Claim Made (June 1985). The District shall have the right to audit Contractor's accounting records, and the accounting records of any Subcontractor whose claim is included in any claim by the Contractor under this Contract, to ascertain the extent of the costs actually incurred by the Contractor and/or Subcontractor as alleged in the Contractor's claim. This provision shall be incorporated in all subcontract agreements for the Work required by this Contract.

[End of GP § 2]

SECTION 3 CONTROL OF WORK

3.01. Authority of Contracting Officer (Rev. Jan. 1981). The Contracting Officer shall decide all questions which may arise as to the quality or acceptability of materials furnished and Work performed and as to the manner of performance and rate of progress of the Work; all questions which may arise as to the interpretation of this Contract; all questions as to the acceptable fulfillment of the Contract on the part of the Contractor; and all questions as to compensation. The Contracting Officer's decision shall be final and the Contracting Officer shall have authority to enforce and make effective such decisions and orders which the Contractor fails to carry out promptly.

3.02. Contractor Supervision (Rev. Jan. 1981).

- A. The Contractor shall supervise, direct, and coordinate all Work under this Contract using its best skills and attention. It is understood and agreed that the Contractor shall act as an independent Contractor in performing Work under this Contract, maintaining complete control over its employees and all of its Subcontractors. The Contractor shall perform all Work in accordance with its own methods subject to compliance with this Contract. The Contractor shall perform all Work in an orderly and workmanlike manner, enforce strict discipline and order among its employees and assure strict discipline and order by its Subcontractors.
- B. Before starting Work, the Contractor shall designate a competent authorized representative to represent and act for the Contractor and shall inform the Contracting Officer of the name of such representative. Such representative shall be present or duly represented at the site of Work at all times when Work is actually in progress and, during periods when Work is suspended, arrangements acceptable to the Contracting Officer shall be made for any emergency Work which may be required. The Contractor's authorized representative shall be supported by competent assistants as necessary, and the authorized representative and its assistants shall be satisfactory to the Contracting Officer. All directions, instructions and other communications given to the authorized representative by the Contracting Officer shall be as binding as if given to the Contractor.

3.03. Inspection of Construction (Rev. Sept. 1986).

- A. The Contractor shall maintain an adequate inspection system and perform such inspection as will ensure that the Work called for by this Contract conforms to Contract requirements. The Contractor shall maintain complete inspection records and make them available to the District. All Work is subject to District inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.
- B. District inspections and tests are for the sole benefit of the District and do not;
 - 1. Relieve the Contractor of responsibility for providing adequate quality control measures;
 - 2. Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
 - 3. Constitute or imply acceptance; or
 - 4. Affect the continuing rights of the District after acceptance of the completed Work under (H) below.
- C. The presence or absence of a District inspector does not relieve the Contractor from any Contract requirement, nor is the inspector authorized to change any term or condition of the Specification without the Contracting Officer's written authorization.
- D. The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The District may charge to the Contractor any additional cost of inspection or test when Work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The District shall perform all inspections and tests in a manner that will not unnecessarily delay the Work. Special, full size, and performance tests shall be performed as described in the Contract.
- E. The Contractor shall, without charge, replace or correct Work found by the District not to conform to Contract requirements, unless in the District's interest the District consents to accept the Work with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
- F. If the Contractor does not promptly replace or correct rejected Work, the District may (1) by Contract or otherwise, replace or correct the Work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.
- G. If, before acceptance of the entire Work, the District decides to examine already completed Work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the Work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its Subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the Work is found to meet Contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of time if requested by the Contractor. See GP § 2.12.
- H. Unless otherwise specified in the Contract, the District shall accept, as promptly as practicable after completion and inspection, all Work required by the Contract. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the District's rights under any warranty or guarantee.
- I. Any Work done beyond the lines and grades shown on the plans or established by the Contracting Officer, or any extra Work done without written authority will be considered as unauthorized Work and will not be paid for. Upon order of the Contracting Officer unauthorized Work shall be remedied, removed, or replaced at the Contractor's expense.
- J. Upon failure of the Contractor to comply promptly with any order of the Contracting Officer made under this clause, the District may cause rejected or unauthorized Work to be remedied, removed, or replaced, and to deduct the costs from any moneys due or to become due the Contractor.

3.04. [Not Used]

3.05. Equipment and Plants (Rev. Sept. 1986).

- A. Only equipment and plants suitable to produce the quality of Work and materials required will be permitted.

- B. Plants shall be designed and constructed in accordance with general practice for such equipment and shall be of sufficient capacity to insure the production of sufficient materials to carry the Work to completion within the time limit.
- C. The Contractor shall provide adequate and suitable equipment and plants to meet the above requirements, and when ordered by the Contracting Officer shall remove unsuitable equipment from the Work and discontinue the operation of unsatisfactory plants.

3.06. [Not Used]

3.07. Normal Working Hours (Rev. Jan. 2019).

- A. The Contractor shall schedule its working hours to coincide with the business hours of the District. Marina Coast Water District's business hours are Monday through Thursday 06:30 am - 4:00 pm and every other Friday 06:30 am - 3:00 pm, District holidays excepted. Alternating Fridays, the District is closed. The Contractor shall not perform Work under this Contract on other than Work Days or during other hours without the written approval of the Contracting Officer.
- B. If the Contractor, for its convenience, desires to perform Work under this Contract during other than normal working hours or on other than normal working Days, the Contractor shall reimburse the District for any additional expense occasioned the District thereby, such as, but not limited to, overtime pay for District inspectors.

3.08. Protection of Persons and Property (Rev. July 2007).

- A. Contractor bears sole responsibility under the law for the safety of its own personnel and for all persons entering Work site. Contractor also bears sole responsibility for posting applicable danger signs and warnings against hazards, erecting safety barriers, promulgating safety regulations, and notifying owners and users of adjacent utilities. This requirement shall apply continuously under this Contract and shall not be limited to normal working hours.
- B. In the event of the occurrence of a situation wherein life and/or valuable property is in apparent imminent danger, the Contractor is hereby authorized and required without any special instructions from the Owner or Owner's representative to act at its own discretion to prevent injury to persons or damage to property.
- C. The Contractor shall comply with all applicable federal, state, county, and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss ("safety laws"). Contractor, upon becoming aware of a violation of one of the above laws, ordinances, rules, regulations or orders, or is informed of the existence of an otherwise unsafe/unhealthy condition, shall immediately take corrective measures. The District assumes no responsibility for the existence of the condition or for corrective measures, regardless of who observed the condition.
- D. The Contractor shall immediately notify the District's Contracting Officer, and any other applicable governmental agency (e.g., CAL OSHA) as required by law, of any damage, injury, death, or loss under this Contract. Contractor shall furnish to the Owner detailed written reports of all injuries occurring on the job.
- E. Should Owner, Owner's representative, or any person witness a situation wherein life is in apparent, imminent danger, upon being notified or becoming aware of the condition, Contractor will address and immediately remedy such situation and enforce the applicable safety rules. Such notification action by Owner or Owner's representative shall be viewed as exercising independent prudent judgment based on an immediate threat and shall not be construed as controlling or enforcing safety for the project or as Owner assuming the controlling authority for safety.
- F. The Contractor shall promptly remedy all damage or loss to any property caused in whole or in part by the Contractor, any Subcontractor at any tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts or omissions any of them may be liable and for which the Contractor is responsible under this Contract.
- G. The Contractor shall designate in writing to the District's Contracting Officer, a project safety officer who shall be a responsible member of its organization for safety at the Work site.

H. The Contractor shall have an Injury & Illness Prevention Program (IIPP) meeting all of the requirements of Title 8, California Code of Regulations, § 3203 and shall provide a copy of their current version to the District prior to starting Work.

3.09. Utilities (Rev. July 2009).

- A. Unless otherwise indicated, the Contractor shall at the Contractor's expense remove, relocate, and protect (1) all existing main or trunkline utility facilities identified in the Specifications with reasonable accuracy and (2) all other utility facilities (such as existing service laterals or appurtenances) whether or not identified in the Specifications. The expense to remove, relocate, and protect utility facilities or other obstructions for the convenience of construction shall also be borne by the Contractor.
- B. If a main or trunkline utility facility is not identified in the Specifications with reasonable accuracy and if such utility facility could not have been located or any damage to such utility facility could not have been prevented had the Contractor exercised reasonable care, the Contractor shall be compensated for the cost of (1) locating, (2) repairing damage not due to the failure of the Contractor to exercise reasonable care, (3) removing or relocating such utility facility, and (4) equipment on the project necessarily idled during such Work. All such costs shall be calculated in accordance with GP § 7.03.
- C. The Contractor shall not be assessed liquidated damages for a delay in the completion of this Contract to the extent such delay was primarily caused by the failure of the District to identify all existing main or trunkline utility facilities in the Specifications with reasonable accuracy and was not caused by the Contractor's failure to exercise reasonable care in locating, removing, relocating, or protecting such utility facilities.
- D. If the Contractor while performing the Contract discovers any utility facilities not identified by the District in the Specifications, the Contractor shall immediately notify the District and the owner of such facilities in writing.
- E. The District, the owners of any utility facilities, and their respective authorized agents shall have the right to enter upon the project site for the purpose of making such changes and performing such Work as are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. The Contractor shall cooperate with forces engaged in such Work and shall conduct its operations in such a manner as to avoid any unnecessary delay or hindrance to the Work being performed by such other forces. The owner of a utility facility shall have the sole discretion to perform repairs or relocation Work or permit the Contractor to do such repairs or relocation Work; the cost of such Work to be borne by the owner of the facility, the Contractor, and/or District as determined in accordance with this GP § and the applicable law.
- F. At least forty-eight (48) hours before excavating, the Contractor shall call USA Underground Service Alert at 811 or (800) 227-2600 (toll free). The Contractor shall be deemed not to have exercised reasonable care if it fails to comply with this notification requirement.

3.10. Indemnity (Rev. March 2004).

- A. To the fullest extent permitted by law, the Contractor shall indemnify, hold harmless, and defend the District and the Architect-Engineer and their respective Directors, officers, employees and agents (including any subconsultants), from and against all loss, damage, liability, claims, citations, suits, costs, and demands, arising out of or resulting from this Contract or the performance or prosecution of the Work, whether such losses, damages, liability, claims, citations, suits, costs, and demands are caused by the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, or by products installed on this project by the Contractor or any Subcontractor, and regardless of whether the entity or person indemnified hereunder was actively or passively negligent. Such Contractor obligations shall extend to losses, damages, liability claims, citations, suits, costs, and demands for injury or damage occurring within the applicable statute of limitations period after completion of the project as well as during the Work's progress.

3.11. Patent Indemnity (Rev. Sept. 1986). The Contractor shall indemnify and save harmless the District and the Architect-Engineer, their respective Directors, officers, representatives, agents and employees, from and against all losses, damages, liabilities, claims, citations, suits, costs, and demands and expenses, including attorneys' fees, incurred by the District and the Architect-Engineer, their respective Directors, officers, representatives agents and employees, as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent and arising out of the use of the equipment or materials furnished under this Contract by the Contractor, or out of the process or actions employed by the Contractor

in connection with the performance of the Work under this Contract; and the Contractor shall at its expense promptly defend against any such claim or action; provided that the Contractor's aforementioned obligations shall not apply to equipment, materials or processes specified by or furnished by the District; and provided further, that the District shall have notified the Contractor upon becoming aware of such claims or actions. The Contractor shall have the right in order to avoid such claims to substitute at its own expense non-infringing equipment, materials or processes, or to modify at its own expense such infringing equipment, materials and processes so they become non-infringing; provided that such substituted and modified equipment, materials and processes shall meet the requirements of this Contract.

- 3.12. Contractor's Responsibility for the Work and Materials (Rev. Jan. 1981). Until the final acceptance of all the Work under the Contract, the Contractor shall have the charge and care of the Work and of the materials to be used therein and shall bear the risk of injury, loss, or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the Work. The Contractor shall rebuild, repair, restore, and make good all injuries, losses, or damage to any portion of the Work or the materials occasioned by any cause before its completion and acceptance and shall bear the expense thereof. The suspension of the Work from any cause whatever shall not relieve the Contractor of its responsibility for the Work and materials herein specified.
- 3.13. Documents and Samples at Work Site (Rev. Jan. 1981). The Contractor shall maintain at the Work site for the District one (1) record copy of all Drawings, Specifications, change orders, and other modifications, in good order and marked currently to record all changes made during construction and of all approved Shop Drawings, product data, and samples. These shall be available to the Contracting Officer and shall be delivered to him upon completion of the Work.
- 3.14. Work by District or by Other Contractors (Rev. July 2009).
- A. When separate Contracts are awarded for different portions of the project or for other Work on the site by the District or by other contractors, the Contractor shall afford the District and such other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their Work, and shall connect and coordinate its Work with theirs as required by this Contract.
 - B. If any part of the Contractor's Work depends for proper execution or results upon the Work of the District or any other contractor (not including a Subcontractor at any tier of the Contractor), the Contractor shall, prior to proceeding with its Work, promptly report to the Contracting Officer any apparent discrepancies or defects in such other Work that render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acceptance by the Contractor of the District's or other contractor's Work as fit and proper to receive the Contractor's Work, except as to hidden or concealed defects which may subsequently become apparent in such Work by others.
 - C. Any costs caused by defective or ill-timed Work shall be borne by the party responsible therefor.
 - D. Should the Contractor cause damage to the Work or property of the District or to other work on the site, the Contractor shall promptly remedy such damage.
 - E. Should the Contractor cause damage to Work or property of any other contractor, the Contractor shall upon due notice promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such other contractor sues or initiates any other proceeding against the District on account of any damage alleged to have been caused by the Contractor, the District shall notify the Contractor who shall defend such proceedings and indemnify and hold the District harmless in accordance with the indemnification requirements of this Contract.
- 3.15. Shop Drawings (Rev. July 2009).
- A. If this Contract requires Shop Drawings, the Contractor shall coordinate all such Drawings and review them for accuracy, completeness, and compliance with Contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop Drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate his or her approval or disapproval of the Shop Drawings and if not approved as submitted shall indicate his reasons therefor. Any Work done prior to such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such Drawings, nor from responsibility for complying with the requirements of this Contract, except with respect to variations described and approved in accordance with (B) below.

- B. If Shop Drawings show variations from the Contract requirements, the Contractor shall describe such variations in writing, separate from the Drawings, at the time of submission. If the Contracting Officer approves any such variation(s), the Contracting Officer shall issue an appropriate Contract per GP § 2.06, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.
- C. The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated herein) of all Shop Drawings as called for under the various headings of these Specifications. Three sets (unless otherwise indicated herein) of all Shop Drawings will be retained by the Contracting Officer and one set will be returned to the Contractor.
- D. Rights in Shop Drawings. The District may duplicate, use, and disclose in any manner and for any purpose Shop Drawings delivered under this Contract.

[End of GP § 3]

SECTION 4 CONTROL OF MATERIALS

- 4.01. Source of Supply and Quality of Materials (Rev. Sept. 1986).
 - A. The Contractor shall furnish all materials required to complete the Work, except materials that are designated in the Specifications to be furnished by the District.
 - B. Only materials conforming to the requirements of the Specifications shall be incorporated in the Work.
 - C. The materials furnished and used shall be new, except as may specifically be provided elsewhere in the Specifications. The materials shall be manufactured, handled, and used in a workmanlike manner to insure completed Work in accordance with the Specifications.
 - D. The Contractor shall furnish the Contracting Officer a list of its sources of materials. The list shall be furnished to the Contracting Officer in sufficient time to permit proper inspecting and testing of materials to be furnished from such listed sources in advance of their use. The Contractor shall furnish without charge such samples as may be required. Inspection and tests will be made by the Contracting Officer or the Contracting Officer's Representative, but it is understood that such inspections and tests, if made at any point other than the point of incorporation in the Work, in no way shall be considered as a guarantee of acceptance of such material nor of continued acceptance of material presumed to be similar to that upon which inspections and tests have been made.
 - E. Manufacturer's warranties, guarantees, instruction sheets and part's lists, which are furnished with certain articles or materials incorporated in the Work, shall be delivered to the Contracting Officer before final acceptance of all Work.
 - F. Reports and records of inspections made and tests performed may be examined by the Contractor.
- 4.02. Storage of Materials (Rev. Nov. 1978). Articles or materials to be incorporated in the Work shall be stored in such a manner as to insure the preservation of their quality and fitness for the Work and to facilitate inspection.
- 4.03. Defective Materials (Rev. Nov. 1986). All materials which the Contracting Officer determined do not conform to the requirements of the Specifications will be rejected, whether in place or not. They shall be removed immediately from the site of the Work, unless otherwise permitted by the Contracting Officer. No rejected material, the defects of which have been subsequently corrected, shall be used in the Work, unless approval in writing has been given by the Contracting Officer. Upon failure of the Contractor to comply promptly with any order of the Contracting Officer made under this GP §, the Contracting Officer shall have authority to cause the removal and replacement of rejected material and to deduct the cost thereof.
- 4.04. Plant Inspection (Rev. Sept. 1986). The Contracting Officer may inspect the production of materials, or the manufacture of products at the source of supply. The District assumes no obligation to inspect materials at the source of supply. Both the Contractor and the material producer shall cooperate and assist the Contracting Officer in any plant inspection. The Contracting Officer or the Contracting Officer's authorized representative shall have free entry at all times to such parts of the plant as concerns the manufacture or production of the materials or products for this Contract. Adequate facilities shall be furnished free of charge to make the necessary inspection.
- 4.05. Testing (Rev. June 1985).

- A. If this Contract or if the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the timely notice of its readiness so the Contracting Officer may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities. Unless otherwise provided in the Contract, the District shall bear all costs of other inspections, tests or approvals.
- B. If the Contracting Officer determines that any portion of the Work requires special inspection, testing, or approval which (A) above does not include, the Contracting Officer will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in (A) above. If such special inspection or testing reveals a failure of the Work to comply with requirements of the Contract, the Contractor shall bear all cost thereof; otherwise the District shall bear such costs, and an appropriate change order shall be issued.
- C. Whenever a reference is made in the Specifications to a test method by California Number, it shall mean the test method in effect on the Day the bids for this Contract are opened.
- D. Whenever a reference is made in the Specifications to a specification or test designation of the ASTM, Federal Specifications, or any other recognized national organization, and the number or other identification accompanying the test designation representing the year of adoption or latest revision of the test is omitted, it shall mean the test method in effect on the Day the bids for this Contract are opened.
- E. When requested by the Contracting Officer, the Contractor shall furnish, without charge, samples of all materials entering into the Work, and no material shall be used prior to approval by the Contracting Officer, except as provided in this GP §. Samples of material from local sources shall be taken by or in the presence of the Contracting Officer, otherwise the samples will not be considered for testing.

4.06. District-Furnished Property (Rev. Aug. 1998).

- A. The District shall deliver to the Contractor, for use only in connection with this Contract, the property described in the Specifications (hereinafter referred to as "District-furnished property"), at the times and locations stated therein. If the District-furnished property, suitable for its intended use, is not so delivered to the Contractor, the Contracting Officer shall, upon timely written request made by the Contractor, and if the facts warrant such action, equitably adjust any affected provision of this Contract pursuant to the procedures of the GP § 2.06 clause hereof.
- B. Title to District-furnished property shall remain in the District. The Contractor shall maintain adequate property control records of District-furnished property in accordance with sound industrial practice.
- C. Unless otherwise provided in this Contract, the Contractor, upon delivery to him of any District-furnished property, assumes the risk of, and shall be responsible for, any loss thereof or damage thereto except for reasonable wear and tear, and except to the extent that such property is required to be consumed and is in fact consumed in the performance of this Contract.
- D. The Contractor shall, upon completion of this Contract, prepare for shipment, deliver f.o.b. destination, or dispose of all District-furnished property not consumed in the performance of this Contract or not theretofore delivered to the District, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the Contract price or paid in such other manner as the Contracting Officer may direct.

4.07. "Brand Name or Equal" Items; Substitutes (Rev. Nov. 1986).

- A. When the Specifications list a product or item to be furnished or used in the Work on a "Brand Name or Equal" basis, the Contractor shall have twenty (20) Days after receipt of the Notice to Proceed in which to submit a request for substitution of "equal" items along with data substantiating the request.
- B. All other requests for substitutions or product options where permitted by the Specifications shall be submitted to the Contracting Officer for review in accordance with the applicable submittals provision in the Specifications or the special provisions. No tests or action relating to the approval of a substitute will be made until the request for substitution is made in writing by the Contractor accompanied by complete data as to the equality of the product, item or material proposed. Such request shall be made in ample time to permit adequate review by the Contracting Officer and the Architect-Engineer without delaying the performance of the Work.

- C. The burden of proof as to the quality and suitability of substitutes shall be upon the Contractor and it shall furnish all information necessary as required by the Contracting Officer or the Architect-Engineer. The Contracting Officer shall be the sole judge as to the quality and suitability of substitute products, items, or materials and the Contracting Officer's decision shall be final.

[End of GP § 4]

SECTION 5 LEGAL RESPONSIBILITIES

5.01. Laws to be Observed (Rev. Jan. 2015).

A. The Contractor shall at all times observe and comply with, and shall cause all its agents and employees to observe and comply with all existing and future laws, ordinances, regulations, orders, and decrees of governmental entities having any jurisdiction or authority over the Work or any portion thereof which in any manner affect those engaged or employed in the Work, or the materials used in the Work, or which in any way affect the conduct of the Work. The Contractor shall protect and indemnify the District and all of its officers, employees, and agents thereof connected with the Work against any claim or liability arising from or based on a violation of any such law, ordinance, regulation, order or decree.

B. A Contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for Public Work, as defined in this chapter, unless currently registered and qualified to perform Public Work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

5.02. Compliance with District Rules (Dec. 2012). The Contractor shall at all times observe and comply with all District Rules. Copies of all rules are available upon request from the District.

5.03. California Environmental Protection Agency (CEPA) Air Resources Board (ARB), Truck and Bus Regulation (Dec. 2012). Contractors, who operate any vehicle(s) in the State of California, regardless of state of registration, for Work on behalf of the District, shall comply with the CEPA ARB Truck and Bus Regulation. This regulation applies to diesel-powered vehicles with a GVWR greater than 14,000 pounds which are privately or federally owned. The District requires the Contractor to declare compliance with this regulation prior to awarding any Work by submitting a statement of compliance and/or certificates of compliance with the Contractor's submittal. For Work which may over lap a calendar year, the Contractor is required to submit to the District an updated statement of compliance and/or current certificates of compliance by February 1st of each year. A Contractor who does not comply with this regulation will be subject to Work stoppages until the Contractor provides current compliance with this regulation. Contractor is responsible for confirming that all subcontractors hired by the Contractor are also in compliance with this regulation. For further information about this regulation and how it applies to the Work provided by Contractor see www.arb.ca.gov/dieseltruck.

5.04. Discrimination (Rev. Nov. 1993). Attention is directed to Section 1735 of the Labor Code which provides: "No discrimination shall be made in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of this chapter".

5.05. Prevailing Wage (Rev. April 2016).

A. Not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which this Contract is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in Chapter 1 (commencing with Section 1720), Part 7, Division 2 of the Labor Code, shall be paid to all workmen employed on this public work.

B. Information on the prevailing rate per diem wages is available by calling the State of California's Labor Market Information (LMI) at 415-703-4774 or on the Internet at www.dir.ca.gov.

A copy of the prevailing rate of per diem wages shall be posted by the Contractor at each job site.

C. The Contractor shall, as a penalty to the District, forfeit \$200.00 for each calendar Day, or portion thereof, for each workman paid less than the prevailing rates as determined by the Director of the Department of Industrial Relations for such work or craft in which such workman is employed for any public work

done under this Contract by him or by any Subcontractor under him. The difference between such prevailing wage rates and the amount paid to each workman for each calendar Day or portion thereof for which each workman was paid less than the prevailing wage rate shall be paid to each workman by the Contractor. Labor Code Section 1775.

- D. The Contractor and each Subcontractor shall keep an accurate payroll record, showing the name, address, last four digits of their social security number, work classification, straight time and overtime hours worked each Day and week, the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor or Subcontractor in connection with the project, and such other information as required by law, and such payroll records shall be certified and made available for inspection all in accordance with Labor Code Section 1776 and 8 California Code of Regulations Section 16000 et seq. The Contractor may be required to file with the District certified copies of its and all its Subcontractors' payroll records within thirty (30) calendar Days after completion of each payroll period at no cost to the District. The foregoing sentence does not bar the District from making specific requests for certified payrolls pursuant to 8 California Code of Regulations Section 16400 which only allows the Contractor ten (10) working Days to respond.
- E. The District shall not recognize any claim for additional compensation from the Contractor because of the payment by the Contractor of any wage rate in excess of the prevailing rate of per diem wages. The possibility of wage increases is one of the elements to be considered by the Contractor in determining its bid and will not, under any circumstances, be considered as the basis of a claim against the District under this Contract.
- F. The Contractor shall be required to pay travel and subsistence payments to each workman needed to execute the Work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.

5.06. Apprentices (Rev. Jan. 1981).

- A. It shall be the responsibility of the Contractor to insure that it and all Subcontractors on the project comply with the apprenticeship requirements set forth in Labor Code, Section 1777.5.
- B. Information relative to number of apprentices, identification, wages, hours of employment and standards of working conditions may be obtained from the Director of the Department of Industrial Relations, who is the Administrative Officer of the California Apprenticeship Council, or from the Division of Apprenticeship Standards and its branch offices.

5.07. Hours of Labor (Rev. Jan. 1981). Eight hours labor constitutes a legal Day's work. The Contractor shall forfeit, as a penalty to the District, \$25.00 for each workman employed in the execution of the Contract by the Contractor or any Subcontractor under it for each calendar Day during which such workman is required or permitted to work more than 8 hours in any one calendar Day and 40 hours in any one calendar week in violation of Labor Code, Sections 1810 to 1815, except that Work performed by employees of Contractors in excess of 8 hours per Day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per Day at not less than one and one-half times the basic rate of pay, as provided in Section 1815. The Contractor and each Subcontractor shall keep accurate records of the hours of employment in accordance with Labor Code, Section 1812.

5.08. Fair Labor Standard Act (Rev. Jan. 1981). The Wage and Hour Division, US Department of Labor states that contractors engaged in public construction work are required to meet the provisions of the Fair Labor Standards Act of 1938 and as amended (52 Stat. 1060).

5.09. Permits and Licenses (Rev. Nov. 1986). Except as to permits and licenses (if any) specifically stated in this Contract as being obtained by the District, the Contractor shall obtain all required permits and licenses for construction of this project and pay all charges and fees therefor at its own expense. All Contractors shall have a valid and current California State Contractor's License.

5.10. Workers' Compensation and Public Liability Insurance (Rev. April 2016).

A. Workers' Compensation and Employer's Liability Insurance.

- 1. The Contractor shall take out and maintain during the life of the Contract, Workers' Compensation and Employer's Liability Insurance for all of its employees on the project and shall comply with Labor Code, Section 3700. In lieu of evidence of Workers' Compensation Insurance, the District will accept a Self-Insuring Certificate from the State of California.

2. The following certification, required by Labor Code Section 1861, is incorporated by reference into this Contract:

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

By signing the Contract with the District, the Contractor is signing and filing the above certification with the District.

3. The Contractor shall require all Subcontractors to provide the Contractor with evidence of Workers' Compensation and Employer's Liability Insurance, all in strict compliance with California State Law.

B. Public Liability Insurance.

1. The Contractor shall take out and maintain during the life of this Contract Comprehensive Automobile Insurance and General Liability Insurance that provide protection for claims which may arise out of or result from operations or performance under this Contract, whether such operations or performance be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

2. The amount of insurance shall be not less than the following:

Single Limit Coverage applying to
Bodily and Personal Injury Liability
and Property Damage: \$1,000,000.00 each
occurrence, \$2,000,000.00 annual aggregate.

3. Coverage must include the following provisions and must be indicated on the certificate and by endorsement to the policy: The District, and the Architect-Engineer, their respective Directors, officers, employees, and agents are named as Additional Insureds in the policy with respect to the Contract

- b. The coverage is PRIMARY and no other insurance carried by the District will be called upon to contribute to a loss under this coverage;
- c. The policy covers Blanket Contractual Liability;
- d. The policy limits of liability are provided on an Occurrence basis;
- e. The policy covers Special Form Property Damage Liability;
- f. The policy covers Personal Injury as well as Bodily Injury Liability including coverage for personal injury claims against any insured by employees of any other insured;
- g. The policy covers Explosion, Collapse and Underground hazards;
- h. The policy covers Products and Completed Operations for a period of not less than three (3) years following final completion or termination of this Contract.
- i. The policy covers use of Non-owned Autos;
- j. The coverage shall not be canceled nor materially altered unless thirty (30) Days written notice is given to the District;
- k. "Cross Liability" or "Severability of Interest" clause.
- l. An insurer's waiver of subrogation in favor of all insureds and additional insureds under the policies of insurance provided.

5.11. Builder's Risk Insurance (Rev. Aug. 1998).

Not used

5.12. Insurance-General (Rev. June 1985).

- A. Within the time specified in the Bid Form and prior to commencement of any Work, the Contractor shall deliver to the District certificates of insurance issued in duplicate covering all policies providing the

required insurance. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by its authorized representative. The Contractor agrees upon written request by the District to furnish copies of such policies, certified by an authorized representative of the insurer. These certificates shall contain a provision that coverages afforded under policies will not be canceled or reduced until at least thirty (30) Days' prior notice has been given to the District. Acceptance of the certificate of insurance shall not relieve the Contractor of any of the insurance requirements nor decrease the liability of the Contractor.

- B. The foregoing requirements as to the types, limits and the District's approval of insurance coverage to be maintained by the Contractor, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under the Contract.
- C. If the Contractor fails to maintain the required insurance coverage, the District may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as set forth above, and the District may deduct the cost of such insurance from any amounts due or which may become due the Contractor under the Contract.

5.13. Performance, Payment, and Warranty Bonds (Rev. Feb. 2010).

- A. The Contractor shall furnish to the District a Performance Bond and Payment Bond as security for the faithful performance and payment of all Contractor's obligations under this Contract. The Performance and Payment Bonds shall be in an amount equal to one hundred percent (100%) of the Contract price and shall furnish a Warranty Bond in an amount at least equal to ten percent (10%) of the Contract price as security for the faithful performance of all of Contractor's warranty obligations under the Contract. The Performance Bond shall remain in effect until final acceptance of the Work by the District. The Payment Bond shall remain in effect until the last of the following occur: (1) the statutory time has expired to commence a legal action on the Payment Bond and no legal action was filed, (2) satisfaction of all judgments against the Payment Bond, and (3) as otherwise provided by law. The Warranty Bond shall remain in effect until all Contractor's warranty obligations under the Contract have expired. The Contractor shall also furnish such other Bonds as are required by the special provisions.
- B. All Bonds shall be in the forms prescribed by the bidding documents or the special provisions and be executed by such sureties as are licensed to conduct business as sureties in the State of California. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.
- C. If the surety on any Bond furnished by the Contractor is declared a bankrupt or becomes insolvent or its right to do business is terminated in California or it ceases to meet the requirements of clauses (1) and (2) of (A) above, the Contractor shall within five (5) Days thereafter substitute another Bond and surety, both of which shall be acceptable to the District.

5.14 Antitrust Claims (Rev. Nov. 1993).

The following subdivision of section 7103.5 of Chapter 7 of the Public Contract Code of the State of California shall be complied with by the Contractor and all Subcontractors under this Contract:

"Section 7103.5. Assignment by contractor to awarding body of rights under federal law arising from purchases under public works Contract.

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

[End of GP § 5]

**SECTION 6
PROSECUTION AND PROGRESS**

6.01. Progress Schedule (Rev. Aug. 1998).

- A. The Contractor may be required to, within thirty (30) Days after award of the Contract or within five (5) Days after the Work commences, whichever occurs first, prepare and submit to the Contracting Officer for approval three (3) copies of a practicable schedule showing the order in which the Contractor proposes to perform the Work, and the dates on which the Contractor contemplates starting and completing the several salient features of the Work (including, but not limited to, acquiring materials). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of Work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.
- B. The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three (3) copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the District. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, Days of Work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.
- C. Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the Work, or any separable part of it, in accordance with the default clause of this Contract.

6.02. Subcontracts (Rev. April 2016).

- A. The Contractor with its own organization shall perform Work under the Contract equaling in value to at least forty percent (40%) of the Contract price except that any designated "Specialty Items" may be performed by subcontract and the amount of any such "Specialty Items" so performed may be deducted from the Contract Price before computing the amount required to be performed by the Contractor with its own organization. Specialty Items to be identified by the District.
- B. The Contractor shall require each Subcontractor at every tier, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the term of this Contract and to assume toward the Contractor all the obligations and responsibilities which the Contractor by this Contract assumes toward the District. No subcontract shall relieve the Contractor of any of its liabilities or obligations under the Contract; and the Contractor agrees that it is fully responsible to the District for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them in the performance of the Contract. The Contractor shall assure that each Subcontractor and supplier complies with the provisions of any applicable Workmen's Compensation Act or similar law having application to Subcontractor's or supplier's employees. The Contractor shall at its expense, upon request of the Contracting Officer, furnish the Contracting officer with two (2) copies of all of its subcontracts or supply contracts; provided that the prices thereon may be deleted. Nothing contained in the Contract shall create any contractual relationship between any Subcontractor and the District.

6.03. Assignment (Rev. Nov. 1978).

- A. The performance of the Contract may not be assigned, except upon the written consent of the Contracting Officer. Consent will not be given to any proposed assignment which would relieve the original Contractor or its surety of their responsibilities under the Contract.
- B. The Contractor may assign moneys due or to become due him under the Contract and such assignment will be recognized by the District, if given proper notice thereof, to the extent permitted by law, but any assignments of moneys shall be subject to all proper set-offs in favor of the District and to all deductions provided for in the Contract and particularly all money withheld, whether assigned or not, shall be subject to being used by the District for the completion of the Work in the event that the Contractor should be in default therein.

6.04. Suspension of Work (Rev. Nov. 1986).

- A. The District may, at its sole option and discretion, suspend at any time the performance of all or any portion of the Work by the Contractor for a period of not more than ninety (90) Days by notice in writing

to the Contractor which notice shall fix the date on which Work shall be resumed. Such notice shall also designate the amount and type of labor, equipment, and plant to be committed to the project by the Contractor during the period of suspension. The Contractor shall use its best efforts to utilize its labor, equipment, and plant in such a manner as to minimize costs associated with the suspension.

- B. Upon receipt of any such notice of suspension, the Contractor shall, unless the notice requires otherwise, do the following:
 - 1. Immediately discontinue Work on the date and to the extent specified in the notice;
 - 2. Place no further orders or subcontracts for materials, services or facilities with respect to the suspended Work other than to the extent required in the notice;
 - 3. Promptly make every reasonable effort to obtain suspension, upon terms satisfactory to the Contracting Officer, of all orders, subcontracts and rental agreements to the extent they relate to performance of Work suspended; and
 - 4. Continue to protect and maintain the Work, including those portions of the Work which have been suspended, and continue to perform those portions of the Work which have not been suspended.
- C. Except as provided in (F) below, as full compensation for such suspension, the Contractor shall be reimbursed for the following costs, reasonably incurred, without duplication for any item, to the extent such costs resulted directly from such suspension:
 - 1. A standby charge to be paid to the Contractor during the period of suspension of Work, which standby charge shall be sufficient to compensate the Contractor for keeping, to the extent required in the notice, its organization and equipment committed to the Work in a standby status;
 - 2. All reasonable costs associated with demobilization and remobilization of Contractor's labor, equipment, and plant; and
 - 3. An equitable amount to reimburse the Contractor for the cost of maintaining and protecting that portion of the Work upon which Work has been suspended.
- D. On the date specified in the notice of suspension or on such other date as specified in writing by the Contracting Officer ("resumption of Work date"), the Contractor shall resume performance of the suspended Work.
- E. Any claim by the Contractor for costs under (C) above and for any extension of time under this Contract because of such suspension of Work must be made not later than ten (10) Days after the resumption of Work date. Any such claim must be accompanied by a revised construction schedule and a revised payment schedule as required by GP § 2.12 or GP § 6.01(B).
- F. To the extent the suspension of Work was caused by the failure of the Contractor to comply with any provision of this Contract, the Contractor shall not be entitled to reimbursement of costs under (C) above and shall not be entitled to an extension of time under this Contract.

6.05. Liquidated Damages (Rev. July 2009).

- A. If the Contractor fails to complete the Work within the time specified in the Contract, or any extension thereof, the Contractor shall pay to the District as liquidated damages, the sum as stated in the bid documents for each calendar Day of delay. The District may deduct the amount of such liquidated damages from any moneys due or that may become due the Contractor under this Contract.
- B. If the Contractor fails to complete the Work within the time specified in the Contract, or any extension thereof, because of a non-excusable delay or delays but the Contracting Officer determines (1) that it is in the District's interest not to terminate the Contractor's right to proceed or to impose liquidated damages and (2) grants the Contractor an extension of time in which to complete the Work, the District shall have the right to charge the Contractor for the cost of engineering, inspection, Contract administration, equipment, and related overhead expenses incurred by the District for this Contract and which accrue during the period of the extension, except that the cost of the final inspection shall not be included in such charges. The District may deduct the amount of such charges from any moneys due or that may become due the Contractor under this Contract.

6.06. Default (Rev. May 1988).

- A. If the Contractor refuses or fails to prosecute the Work or any separable part, with the diligence that will insure its completion within the time specified in this Contract including any extension, or fails to

complete the Work within this time, the District may, by written notice to the Contractor, terminate the right to proceed with the Work (or the separable part of the Work) that has been delayed. In this event, the District may take over the Work and complete it by Contract or otherwise, and may take possession of and use any materials, appliances, and plant on the Work site necessary for completing the Work. The Contractor and its sureties shall be liable for any damage to the District resulting from the Contractor's refusal or failure to complete the Work within the specified time, whether or not the Contractor's right to proceed with the Work is terminated. This liability includes any increased costs incurred by the District in completing the Work.

- B. If the District terminates the Contractor's right to proceed, the resulting damage will consist of increased costs occasioned the District in completing the Work.
- C. If the District does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the Work is accepted.
- D. The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if:
 - 1. The delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the District in its contractual capacity, (3) acts of another Contractor in the performance of a Contract with the District, (4) fires, (5) floods, (6) epidemics, (7) quarantine restrictions, (8) strikes, (9) freight embargoes, (10) unusually severe weather, or (11) delays of Subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the Subcontractors or suppliers; and
 - 2. The Contractor, within ten (10) Days from the beginning of any delay, notifies the Contracting Officer in writing of the causes of delay. See also GP § 2.12. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the Work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.
- E. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the District.
- F. The rights and remedies of the District in this clause are in addition to any other rights and remedies provided by law or under this Contract.

6.07. Termination for Convenience of District (Rev. Nov. 1978).

- A. The District may at its option terminate the Contract in whole or from time-to-time in part, at any time by written notice to the Contractor, whether or not the Contractor is in default.
- B. Upon any such cancellation and termination, the Contractor agrees to waive any claim for damages, including loss of anticipated profits on account thereof, but as the sole right and remedy of the Contractor and the District, the District shall pay the Contractor in accordance with (D) below; provided however, that the provisions of this Contract, which by their very nature survive final acceptance under this Contract, shall remain in full force and effect after such cancellation and termination to the extent provided in such provision.
- C. Upon receipt of any such notice, the Contractor shall, unless the notice directs otherwise:
 - 1. Immediately discontinue Work on the date and to the extent specified in the notice;
 - 2. Place no further orders or subcontracts for materials, services, or facilities, other than as may be necessary for completion of such portion of Work under this Contract as is not terminated;
 - 3. Promptly make every reasonable effort to obtain cancellation upon terms satisfactory to the District of all order and subcontracts to the extent they relate to the performance of Work terminated; and
 - 4. Assist the District as specifically requested, in writing, in the maintenance, protection and disposition of property acquired by the District under this Contract.
- D. Upon any such termination, the District will pay to the Contractor an amount determined in accordance with the following (without duplication of any item):

1. All amounts due and not previously paid to the Contractor for Work completed in accordance with the Contract prior to such notice, and for Work thereafter completed as specified in such notice;
2. The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as provided in (C) (3) above;
3. The reasonable costs incurred pursuant to (C) (4) above;
4. Any other reasonable costs incidental to such termination of Work;
5. The foregoing amounts shall include a reasonable sum under all of the circumstances as profit for any Work performed by the Contractor.

6.08. Disputes (Rev. Jan. 2017).

- A. Any dispute arising under this Contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his or her decision to writing and mail or otherwise furnish a copy thereof to the Contractor.
- B. The decision of the Contracting Officer shall be final and conclusive unless, within thirty (30) Days from the date of receipt of the Contracting Officer's decision, the Contractor complies with the following:
 1. In any dispute involving three hundred seventy-five thousand dollars (\$375,000) or less, the Contractor shall comply with the requirements of Article 1.5 of Part 3 of the Public Contract Code.
 - a. The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this GP § is intended to extend the time limit or supersede notice requirements otherwise provided by this Contract for the filing of claims.
 - b. (1) For claims of less than fifty thousand dollars (\$50,000), the District shall respond in writing to any written claim within forty-five (45) Days of receipt of the claim, or may request, in writing, within thirty (30) Days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the District may have against the Contractor.
 - (2) If additional information is thereafter required, it shall be requested and provided pursuant to this GP §, upon mutual agreement of the District and the Contractor.
 - (3) The District's written response to the claim, as further documented, shall be submitted to the Contractor within fifteen (15) Days after receipt of the further documentation or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater.
 - c. (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the District shall respond in writing to all written claims within sixty (60) Days of receipt of the claim, or may request, in writing, within thirty (30) Days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the District may have against the Contractor.
 - (2) If additional information is thereafter required, it shall be requested and provided pursuant to this GP §, upon mutual agreement of the District and the Contractor.
 - (3) The District's written response to the claim, as further documented, shall be submitted to the Contractor within thirty (30) Days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.
 - d. If the Contractor disputes the District's written response, or the District fails to respond within the time prescribed, the Contractor may so notify the District, in writing, either within fifteen (15) Days of receipt of the District's response or within fifteen (15) Days of the District's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the District shall schedule a meet and confer conference within thirty (30) Days for settlement of the dispute.
 - e. Following the meet and confer conference, if the claim or any portion remains in dispute, the Contractor may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government

Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to (A) above until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

- f. This GP § does not apply to tort claims and nothing in this GP § is intended nor shall be construed to change the time periods for filing tort claims or actions specified by 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.
 - g. Within sixty (60) Days, but no earlier than thirty (30) Days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within fifteen (15) Days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) Days of the submittal, and shall be concluded within fifteen (15) Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the fifteen (15) Day period, any party may petition the court to appoint the mediator.
 - h. (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this GP § consistent with the rules pertaining to judicial arbitration.
(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.
(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.
 - i. The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.
2. In any dispute involving more than three hundred seventy-five thousand dollars \$375,000, the Contractor shall personally serve the Contracting Officer with either
- a. a demand for arbitration under the Construction Industry Arbitration Rules of the American Arbitration Association ("Rules") setting forth the nature of the dispute and the claim or relief sought (including the amount, if any)
 - (1) The dispute shall be submitted to one (1) neutral arbitrator selected from the panels of arbitrators of the American Arbitration Association if the Contractor and the District cannot mutually agree on a person to serve as the neutral arbitrator.
 - (2) The District and the Contractor agree that they will faithfully observe the Rules and will abide by and perform any award rendered by the neutral arbitrator and that a judgment of the court having jurisdiction may be entered on the award. Notwithstanding the Rules, discovery shall be permitted and the provisions of the California Code of Civil Procedure Section 1283.05 are incorporated herein by reference.
 - (3) The arbitrator hearing shall be held in Turlock, California, unless the parties agree otherwise.
 - b. a written notice stating that the Contractor elects to have the dispute resolved by litigation and in addition shall, within sixty (60) Days from the date of receipt of the Contracting Officer's

decision, personally serve the District with a summons and complaint concerning the dispute filed in a California State court of proper jurisdiction.

3. Within thirty (30) Days after receipt of the Contractor's demand for arbitration under (B)(2)(a) above, the District shall have the right to elect to have the dispute resolved by litigation and, if the District so elects, the Contractor shall have sixty (60) Days from the date of receipt of the District's election to litigate the dispute in which to personally serve the District with a summons and complaint concerning the dispute filed in a California State court of proper jurisdiction.
- C. The validity, performance and all matters relating to the interpretation and effect of this Contract and any amendments thereto shall be governed by the laws of the State of California and this Contract shall be deemed to have been entered into in Monterey County, California.
- D. The Contractor hereby consents to the jurisdiction of the courts of Monterey County, California for the confirmation, correction or vacation of any arbitration award and for the adjudication of any disputes relating to this Contract.
- E. The District will comply with Public Contract Code Section 9204, which reads as follows:

9204. (a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a 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 a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project 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 the public entity.

(2) "Contractor" 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 has entered into a direct contract with a public entity for a public works project.

(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "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 with a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies 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, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity 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, the public entity 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.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity's written response, or if the public entity 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, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) 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, the public entity 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 the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity 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.

(C) 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.

(D) Unless otherwise agreed to by the public entity 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.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a 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 the public entity'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.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity 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 the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

[End of GP § 6]

SECTION 7 MEASUREMENT AND PAYMENT

7.01. Measurement of Quantities (Rev. May 1988).

- A. Quantities will be determined by the Contracting Officer in accordance with the applicable measurement provisions of the Contract. The Contractor shall complete all required measurements to determine these quantities, using such methods as the Contracting Officer considers appropriate for the class of Work to be measured.
- B. Unless otherwise provided in the measurement provisions of the Contract, the Contracting Officer will decide the method to be used in determining the weight of the parts and items to be paid for by weight. Payment will only be made on the basis of net weight. The Contractor shall, if required by the Contracting Officer, and at the Contractor's expense, furnish scales and provide assistance for weighing and measuring such materials without additional charge.
- C. Wherever the payment provisions of the Contract provide that payment for the item or items listed therein will be made at the Contract unit price or the Contract lump sum price therefor, whichever is set forth in the bidding schedule, such payment shall be full compensation to the Contractor for all Work referred to in such provision, including but not limited to the following: all labor, supervision, tools, materials, and equipment; the performance of all operations; all other direct expenses; taxes and duties; items of overhead; general and administrative expenses; and profit, for the applicable Contract item.

7.02. Scope of Payment (Rev. Nov. 1978).

- A. The Contractor shall accept the compensation provided in the Contract as full payment for furnishing all labor, materials, tools, equipment, and incidentals necessary to the completed Work and for performing all Work contemplated and embraced under this Contract; also for all loss or damage arising from the nature of the Work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the Work until final acceptance by the District and for all risks of every description connected with the prosecution of the Work, also for all expenses incurred in consequence of the suspension or discontinuance of the Work as provided in this Contract; and for completing the Work according to the Specifications. Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective Work or material.
- B. No payment will be made in any case for loss of anticipated profits.

7.03. Cost of Force Account Work (Rev. Aug. 1998).

- A. The term Cost of Force Account Work means the sum of all costs necessarily incurred and paid by the Contractor in the performance of the Force Account Work. Except as otherwise may be agreed to in writing by the District, such costs shall be in amounts no higher than those prevailing in the locality of the project, shall include only the following items and shall not include any of the costs itemized in (B) below:
 - 1. Direct Labor Costs—Payroll costs for all manual job classifications in the direct employ of the Contractor in the performance of the Force Account Work up to and including foremen, but not including those job classifications and related job classifications listed in (B) below. The District and the Contractor shall agree in writing upon a schedule of covered manual job classifications before commencing any Force Account Work. Payroll costs for employees (including but not limited to foremen) not employed full time on the Force Account Work shall be apportioned on the basis of their time spent on the Force Account Work.
 - a. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto in effect during the actual performance of the Force Account Work.
 - b. The expenses of performing Force Account Work after regular working hours, on Sunday or legal holidays, shall be included in the above to the extent such after-hours Work is authorized in writing by the District's Contracting Officer.
 - c. The Contractor employees' Work times to be charged to Force Account Work shall be subject to the daily approval of the Contracting Officer and no charges shall be accepted by the District unless evidence of such approval is submitted by the Contractor with its billing.
 - 2. Equipment Costs—Costs for the rental and operation of construction and motor vehicle equipment furnished and used by the Contractor in the Force Account Work, except equipment or tools with a current new unit cost at point of origin of five hundred dollars (\$500) or less each.
 - a. The equipment rental rates used shall be those rates listed in "Labor Surcharge and Equipment Rental Rates" as published by the California Department of Transportation ("CalTrans") in effect as of the effective date of the Contract. Those rates shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals. Such rates shall not include costs for operating labor, which will be paid as provide in (1), Direct Labor Cost, above or for transportation of equipment to and from the location of the Force Account Work. Rental rates for equipment actually used for which rental rates are not set forth in the CalTrans publication shall be agreed upon by the Contractor and the District. Unless otherwise provided in the Contract, all equipment rental rates shall be agreed upon in writing by the Contractor and the District before commencing any Force Account Work.
 - b. When the operational use of the equipment is infrequent and, as determined by the Contracting Officer, the equipment need not remain at the project site continuously, payment shall be limited to actual hours of use. Equipment not operating but retained at the location of the Force Account Work at the Contracting Officer's direction shall be paid for at a rate equal to the rental rate times the right of way delay factor in the above referenced CalTrans publication.

- c. Equipment time charged to Force Account Work shall be subject to the daily approval of the Contracting Officer and no charges shall be accepted by the District unless evidence of such approval is submitted by the Contractor with its billing.
3. Material Costs—Cost of all materials and equipment furnished and incorporated in the Force Account Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith; provided that the furnishing and use of such materials and equipment was specifically authorized by the Contracting Officer and the actual use was verified by the Contracting Officer.
 - a. All cash discounts shall accrue to the Contractor unless the District deposits funds with the Contractor with which to make payments, in which case the cash discounts shall accrue to the District. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to the District and the Contractor shall make provisions so that they may be obtained. If materials are obtained from a supply or source owned wholly or in part by the purchaser, payment therefor will not exceed the price paid by the purchaser for similar materials furnished from said source on Contract items or the current wholesale price for such materials delivered to the job site, whichever is lower.
 - b. The invoice from the vendor of the materials or equipment shall accompany the Contractor's billing to the District along with the verifications by the Contracting Officer of the actual use of such materials or equipment in the project.
 - c. The District reserves the right to furnish such materials and equipment as it deems advisable, and the Contractor shall have no claim for costs and profit on such materials or equipment.
4. Subcontract Costs—Payment for Work and services subcontracted by the Contractor in the performance of Force Account Work shall be allowed only when both the Subcontractor and the terms of payment for the Subcontractor's Work have been approved in writing by the Contracting Officer before the Subcontractor begins on the Force Account Work. If required by the District, the Contractor shall obtain competitive bids from Subcontractors acceptable to the Contractor and shall deliver such bids to the District who will then determine which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of Force Account Work plus a fixed fee, the Subcontractor's Cost of Force Account Work shall be determined in the same manner as the Contractor's Cost of Force Account Work. All subcontracts shall be subject to the other provisions of this Contract insofar as applicable.
5. Costs of special consultants (including but not limited to, Engineers, architects, testing laboratories and surveyors) who actually provide services specifically related to and needed for the Force Account Work; provided that both the consultant and the terms of payment for the consultant's Work have been approved in writing by the Contracting Officer before the consultant begins on the Force Account Work.
6. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel and subsistence expenses of the Contractor's employees incurred in discharge of duties connected with the Force Account Work.
 - b. Cost (including transportation and maintenance) of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site which are consumed in the performance of the Force Account Work, and cost less market value of such items used but not consumed which remain the property of Contractor. Transportation costs for bringing equipment to the project site and for returning the equipment to the point of origin, exclusively for use on the Force Account Work, shall be reimbursed to the Contractor based on invoices; provided that prior written approval for the use and transportation of the equipment has been given by the Contracting Officer to the Contractor.
 - c. Sales, use or similar taxes related to the Force Account Work, and for which the Contractor is liable, imposed by any governmental authority.
 - d. Royalty payments and fees for permits and licenses necessary for the Force Account Work.
 - e. Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by Contractor in connection with the execution of the Work, provided they have resulted from causes other than the negligence of Contractor, any

Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of the District. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee. If, however, any such loss or damage requires reconstruction and Contractor is placed in charge thereof, Contractor shall be paid for services a fee proportionate to that state in (C)(2) below.

- f. The cost of utilities, fuel and sanitary facilities at the site.
 - g. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.
 - h. Cost of premiums for additional Bonds and insurance required because of the Force Account Work.
- B. The term Cost of Force Account Work shall not include any of the following:
1. Payroll costs and other compensation of the Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, Engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, superintendents, assistant superintendents, general foremen, surveyors, office personnel, maintenance mechanics, timekeepers, clerks and other personnel employed by the Contractor whether at the site or in its principal or a branch office for general administration of the Force Account Work and not specifically included in the agreed upon schedule of job classifications referred to in (A)(1) above, all of which are to be considered administrative costs covered by the Contractor's fee.
 2. Expenses of the Contractor's principal and branch offices other than the Contractor's office at the site.
 3. Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Force Account Work and charges against the Contractor for delinquent payments.
 4. Cost of premiums for all Bonds and for all insurance whether or not the Contractor is required by the Contract Documents to purchase and maintain the same (except for additional Bonds and insurance required because of the Force Account Work).
 5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
 6. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in (A) above.
 7. Allowable costs under this clause shall not include the cost of presenting or prosecuting any claim under this Contract.
- C. Contractor's Fee. The Contractor's Fee allowed to Contractor for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or if none can be agreed upon,
 2. a fee based on the following percentages of the various portions of the Cost of Force Account Work:
 - a. for costs incurred under (A)(1) above, the Contractor's Fee shall be TWENTY PERCENT (20%);
 - b. for costs incurred under (A)(2) above, the Contractor's Fee shall be FIFTEEN PERCENT (15%);
 - c. for costs incurred under (A)(3) above, the Contractor's Fee shall be FIFTEEN PERCENT (15%);
 - d. for costs incurred under (A)(4) above, the Contractor's Fee shall be TEN PERCENT (10%); and if a subcontract is on the basis of cost of the Work plus a fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall be fifteen percent (15%), and
 - e. no fee shall be payable on the basis of costs itemized under (A)(5), (A)(6), and (B) above.
- D. The amount of credit to be allowed by Contractor to the District for any such change which results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are

involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any.

- E. The Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Work paid for on a force account basis and the costs of other operations.
- F. The Contractor shall furnish the Contracting Officer with report sheets in duplicate of each Day's Work paid for on a force account basis no later than seven (7) Days following the performance of said Work. The daily report sheets shall (1) itemize all cost claimed under (A) above in sufficient detail to properly determine those costs and (2) be signed by the Contractor or its authorized agent.

7.04. Progress Payments (Rev. March 2012).

- A. Unless otherwise provided in this Contract, monthly progress payments will be made as Work proceeds. Such payments will be made in accordance with estimates made by the Contracting Officer of the amount and value of Work satisfactorily performed by the Contractor up to the time of each estimate. Estimates will not include any allowance for materials or equipment not incorporated into any Work; provided that the District may in its sole discretion make progress payments thereon. In making progress payments, the District will retain five percent (5%) of the cumulative estimated amount until final acceptance of all Work under this Contract, unless a higher percentage is allowed pursuant to a finding made under California Public Contract Code section 7201(b)(4).
- B. In addition, the District may deduct from any payments due the Contractor (1) any amounts the District may be authorized to retain pursuant to Federal, State or local laws, (2) any amounts due the District from the Contractor, and (3) any other amounts which the District is otherwise authorized to retain under this Contract or under any other Contract with the District. Such Contracting Officer's estimates covering Work performed since the previous estimate will be made in writing on or about the twenty-fifth (25th) Day of each calendar month and payment will normally be made within fifteen (15) calendar Days thereafter. Such progress estimates will not be required to be made by strict measurement but may be made by measurement or by estimation or partly by one method and partly by another.
- C. Progress payments submitted by the Contractor will be administered in accordance with Public Contract Code Section 20104.50 as follows:
 - 1. Upon receipt of a progress payment request from the Contractor, the District shall review the payment request as soon as practicable for the purpose of determining that the payment request is a proper payment request.
 - 2. The District shall make payment to the Contractor within thirty (30) Days after receipt of an undisputed and properly submitted payment request.
 - 3. 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. A request returned pursuant to this GP § shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.
 - 4. The number of Days available to the District to make a payment without incurring interest shall be reduced by the number of Days by which the District exceeds the seven (7) Day return requirement set forth above.
- D. All equipment, materials and Work covered by progress payments will upon such payment become the sole property of the District, but this provision shall neither be construed as constituting acceptance of any Work or as relieving the Contractor from the sole responsibility for all equipment, materials and Work upon which payments have been made, including the restoration of any damaged or lost equipment, materials and Work until final acceptance thereof, nor as a waiver of the right of the District to require fulfillment of all of the terms of this Contract.
- E. If the Contractor's right to proceed with any Work should be discontinued, as provided in the Termination for Default Clause or Termination for Convenience of District Clause, no further progress payments will thereafter be made to the Contractor for Work so terminated until completion of such Work or final settlement thereof.

7.05. Final Payment and Release (Rev. Aug. 1998).

- A. Whenever the Contractor deems that its obligations under this Contract have been fulfilled, the Contractor shall notify the Contracting Officer. Upon receipt of such notice, the Contracting Officer will

in company with the Contractor, inspect the Work which has been performed. If the Contracting Officer determines that all Work which, by the terms of the Contract is necessary or required to be performed, has been satisfactorily performed, the Contracting Officer will cause to be filed in the office of the County Recorder of the County (or Counties) in which such Work is located, a notice of completion of all Work under the Contract.

- B. Within sixty (60) Days after the notice of completion of all Work is filed in the office of the County Recorder of the County (or Counties) in which such Work is located, the retention held by the District shall be released; provided, however, that in the event of a dispute between the District and the Contractor, the District may withhold from the final payment an amount not to exceed one hundred fifty percent (150%) of the disputed amount.
- C. Upon expiration of the statutory periods for filing of stop notices, complaints on stop notices, and complaints on the Payment Bond, and provided no such notices and complaints have been filed, the District will pay the Contractor the amount remaining after deducting from such amount all such amounts as will have been previously paid to the Contractor under this Contract, and also any amounts which by the terms of this Contract, the District is or may be authorized or required to reserve or retain.
- D. No claim shall be made or filed by the Contractor and the District will not be liable to pay any money other than as specifically provided in the Contract.
- E. Final payment by District, and acceptance of it by the Contractor, shall constitute:
 - 1. A waiver of all claims by District against the Contractor except: (1) claims arising from unsettled liens, (2) claims based on fraud or gross mistakes amounting to fraud, (3) claims for defective Work after final inspection pursuant to (A) above, or (4) any warranties or guarantees specified therein. However, it shall not constitute a waiver by District to any rights with respect to the Contractor's continuing obligations under the bid documents; and
 - 2. A waiver of all claims by the Contractor against the District other than those *previously made* in writing and still unsettled.

7.06. Substitution of Securities for Retention (Rev. July 1998). Pursuant to Public Contract Code Section 22300 and upon Contractor's request, the District will make payments into escrow of funds which would otherwise be retained from progress payments under GP § 7.04(A) if the Contractor deposits into that escrow securities eligible for investment under Public Contract Code Section 22300 (hereafter collectively referred to as "securities"), upon the following terms and conditions:

- A. The escrow agent shall be either the District Treasurer or a state or federal chartered bank acceptable to the District.
- B. The Contractor shall bear all expenses of the District and of the escrow agent in connection with the escrow.
- C. The fair market value of the securities shall be at least equal to one hundred percent (100%) of the cash amount withheld as retention under the Contract and the amount of the required securities shall be adjusted from time to time based upon changes in the fair market value of the securities on deposit with the escrow agent. Such securities shall be valued by the District Treasurer whose decision on valuation of the securities shall be final.
- D. The Contractor shall enter into an escrow agreement substantially similar in form to that prescribed in Public Contract Code Section 22300.
- E. The Contractor shall obtain the written consent to the escrow agreement of the surety or sureties furnishing Contractor with its Performance and Payment Bonds.

[End of GP § 7]

SECTION 8 WARRANTY OF CONSTRUCTION

8.01. One-Year Warranty of Construction (Rev. March 1987).

- A. In addition to any other warranties in this Contract, the Contractor warrants, except as provided in (J) of this clause, that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any Subcontractor or supplier at any tier.

- B. This warranty shall continue for a period of ONE (1) YEAR from the date of final acceptance of the Work.
- C. The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to District-owned or controlled real or personal property, when that damage is the result of:
 - 1. The Contractor's failure to conform to Contract requirements; or
 - 2. Any defect of equipment, material, workmanship, or design furnished by the Contractor.
- D. The Contractor shall restore any Work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to Work repaired or replaced will run for ONE (1) YEAR from the date of repair or replacement.
- E. The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- F. If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the District shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- G. With respect to all warranties, express or implied, from Subcontractors, manufacturers, or suppliers for Work performed and materials furnished under this Contract, the Contractor shall:
 - 1. Obtain all warranties that would be given in normal commercial practice;
 - 2. Require all warranties to be executed, in writing, for the benefit of the District, if directed by the Contracting Officer; and
 - 3. Enforce all warranties for the benefit of the District, if directed by the Contracting Officer.
- H. In the event the Contractor's warranty under (B) of this clause has expired, the District may bring suit at its expense to enforce a Subcontractor's, manufacturer's, or supplier's warranty.
- I. Unless a defect is caused by the negligence of the Contractor or Subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the District or for the repair of any damage that result from any defect in District-furnished material or design.
- J. This warranty shall not limit the District's rights under this Contract with respect to latent defects, gross mistakes, or fraud.
- K. Defects in design or manufacture of equipment specified by the District on a "brand name and model" basis shall not be included in this warranty. In that event, the Contractor shall require the Subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to the District for such equipment.

[End of GP § 8]