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## **Conditions of the Contract**

### **Special Conditions**

These Special Conditions modify, change, delete from or add to the foregoing General Conditions for Construction Contracts (HUD 5370). However, where any article, paragraph, subparagraph or clause thereof is modified or deleted, the unaltered provisions of that article, paragraph, subparagraph or clause shall remain in effect.

#### **1.0 Time of Completion**

Contractor shall commence the work within seven (7) calendar days of the Notice to Proceed. Contractor shall perform in strict accordance with activity durations indicated on the Project Schedule. In the event the Notice to Proceed is delayed beyond the anticipated date, the contract completion date stipulated on the Project Schedule shall be extended an equal number of days. Compliance with the Project Schedule on the project shall be the essence of the contract. Failure to diligently carry out the work and maintain satisfactory progress required to comply with the Project Schedule shall result in progress billings not being processed. Payment without interest will be made for the amounts withheld when the above conditions are rectified.

#### **2.0 Liquidated Damages**

As actual damages for any delay in completion are impossible to determine, the Contractor and his sureties shall be liable for and shall pay to the Agency the sum of \$500.00 per day, as fixed, agreed, for liquidated damages for each calendar day of delay until the work is completed and accepted.

#### **3.0 Communications**

3.1 All notices, demands, requests, instructions, approvals, proposals and claims must be in writing.

3.2 Any notice to or demand on the Contractor shall be sufficiently given if delivered at the office of the Contractor stated on the signature page of the Contract or at such other office as he may from time to time designate in writing to the Agency, or deposited in the United States mail in a sealed, postage prepaid envelope, or if delivered by electronic transmission, in each case addressed to such office.

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3.3 All papers required to be delivered to the Agency shall, unless otherwise specified in writing to the Contractor, be delivered to the Contracting Officer at the Fresno Housing Authority, Post Office Box 11985, Fresno, California, 93776-1985, and any notice to or demand on the Agency shall be sufficiently given if so delivered by electronic transmission to said officer at such address or to such other representatives of the Agency or to such address as the Agency may subsequently specify in writing to the Contractor for such purpose.

3.4 Any such notice shall be deemed to have been given as of the time of actual delivery; or, in the case of mailing, when the same should have been received in due course of post; or, in the case of electronic transmission, at the time of actual receipt.

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## **4.0 Signs**

Subject to prior approval of the Agency as to size, design, type and location, and to local regulations, the Contractor and his subcontractors may erect temporary signs for purposes of identification and controlling traffic. The Contractor shall furnish, erect, and maintain such signs as may be required by safety regulations and as necessary to safeguard life and property. The Contractor shall comply with CAL OSHA Standards.

## **5.0 Job Site Facilities**

5.1 The Contractor may provide a job trailer and portable sanitary facilities. This office will be located so as to cause no interference to any work to be performed on the site. The Agency shall be consulted with regard to location.

5.2 Upon completion of the project, or as directed by the Agency, the Contractor shall remove all such temporary structures and facilities from the site.

5.3 On-site storage will be permitted, as a convenience to the Contractor, in areas designated by the Agency for such purposes. Contractor shall be responsible for all security measures required against theft and vandalism. The Contractor may, at their option and expense, rent off-site facilities for the storage and securing of their materials.

## **6.0 Equipment Furnished by the Agency**

No equipment will be furnished by the Agency.

## **7.0 Termination of the Contract**

In addition to General Condition for Construction Contracts, item 32 - Default, the Agency may serve written notice on the Contractor and his surety of its intention to terminate the contract for any of the following reasons:

7.1 Adjudged bankruptcy or a general assignment for the benefit of creditors or the appointment of a receiver due to insolvency.

7.2 Persistent violation of the provisions of the contract or refusal or failure to supply sufficient skilled workmen or materials.

7.3 Failure to make prompt payment to subcontractors for materials or labor.

7.4 Persistent disregard of the laws, local ordinances, or Agency instructions.

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The notice is to contain the reasons for the intention to terminate, and the contractor shall have a period of five (5) days within which to cease all violations and make satisfactory arrangements for corrections. If the contractor fails to do so within five days, then the contract shall terminate.

In the event of a termination, the Agency shall immediately serve written notice on the surety and the contractor. The surety shall have the right to take over and perform the contract if, within 10 days of receiving the notice, it so notifies the Agency and commences work. Failure to do so may result in the Agency taking over the work and prosecuting it to completion by whatever means are necessary. The contractor and his surety shall be liable for all work and excess costs. The Agency may, without liability, take possession of and utilize in the completion of the work any materials, appliances, paint and other property belonging to the contractor on the site that is necessary for its completion.

In the event of termination, the contractor shall not be entitled to receive any further payment until the work is completed. If the unpaid balance of the contract exceeds the expense of completing the work, plus compensation for additional managerial and administrative services, the excess shall be paid to the contractor. If the expense exceeds the unpaid balance, the contractor and surety shall be liable for the difference to the Agency. All expenses incurred by the Agency, through the contractor's default, shall be certified by the Agency.

### **8.0 Supervision**

Contractor will provide his full-time representative (Superintendent) who is on the job at all times during progress, with a communication device by which the superintendent can be reached at all times of the day (personal, business or mobile phone, etc.)

### **9.0 Insurance**

Substitute Article 36, General Conditions with the following:

- i. With respect to any work required to be done under this contract, the Contractor and each of his Subcontractors shall indemnify and hold harmless the City/County of Fresno, the Agency, the United States of America, and all other participating public agencies, whether or not said agencies are named herein, who have jurisdiction within the areas in which the work is to be performed, and

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all officers and employees of the City, County, the Agency, the United States and said other participating agencies, against any and all claims, demands, causes of action, damages, (including damages to Agency property or property of the participating agencies) cost of liabilities (including cost, or liabilities of the Agency or the participating agencies with respect to its employees), in law or in equity of every kind and nature whatsoever, directly or approximately resulting from or caused by the performance of the Contractor or Subcontractor, whether such performance be performed by the Contractor, the Subcontractor or anyone directly employed by either of them. The Contractor and Subcontractor shall, at their sole risk and expense, defend any and all suits, actions, or other legal proceedings, which may be brought or instituted by third persons against the Agency, the participating agencies, their officers and employees on such claim, demands, or cause of action. The Contractor and Subcontractor shall pay and satisfy any judgment or decree which may be rendered against the Agency, the participating agencies, their officers and employees in such suit, action, or legal proceedings.

- ii. During the performance of the work and until its acceptance by the Agency, the Contractor and each Subcontractor shall maintain in full force public liability and property damage insurance ample in amount to cover all awards or judgments for any death, injury, loss or damage arising out of the performance of work by the Contractor or Subcontractor.
- iii. Before commencing work, the Contractor and each of his Subcontractors shall furnish the Agency with an original Certificate of Insurance, (naming the Housing Authority of the City/County of Fresno as the Certificate Holder) indicating insurance coverage with respect to the liability assumed under the provisions of this Article, and shall further indicate that the insurance coverage is in force and will cover all operations under the contract with minimum limits as follows:
  - Worker's compensation coverage evidencing carrier and coverage amount.
  - General Liability Insurance, \$1,000,000 per occurrence, \$1,000,000 aggregate. Damage to premises and fire damage of \$1,000,000 to include coverage for property damage caused by collapses, structural injuries or

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damage to underground utilities. Bodily Injury Liability, \$1,000,000. Deductible must not be greater than \$1,000.

- Automobile Liability coverage in a combined single limit of \$1,000,000. For every vehicle utilized during the term of this contract, when not owned by the entity, each vehicle must have evidence of automobile insurance coverage with limits of no less than \$50,000/\$100,000 and medical pay of \$5,000 with a deductible not greater than \$1,000, to protect the Contractor and each Subcontractor against claims for personal injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site or sites.
- iv. Contractor's Property Damage Liability Insurance shall also include coverage for property damage caused by blasting, collapses, structural injuries or damage to underground utilities. The policy shall not contain the so-called "x", "c", or "u" exclusions.
- v. The Certificate of Insurance shall further provide that thirty (30) days notice of cancellation or reduction in coverage shall be given in writing to the Agency.
- vi. An Additional Insured Endorsement to the Contractor's Liability insurance policy naming the Housing Authority of the County or City (whichever is applicable), the Agency, the United States and other participating public agencies (if applicable) and all officers and employees of the above, shall also be furnished in original form.
- vii. The Contractor shall carry Builder's Risk (fire and extended coverage) Insurance on all work in place and/or materials stored at the building site, including foundations and building equipment. The Builder's Risk Insurance shall be for the benefit of the Contractor and the Agency as their interests may appear and each shall be named in the policy or policies as an assured. The Contractor, in installing equipment supplied by the Agency, shall carry insurance on such equipment from the time he takes possession thereof until his contract work is accepted by the Agency. Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the superstructure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site, whether or

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not partial payment has been made by the Agency. The Contractor may terminate this insurance on buildings taken over for occupancy by the Agency as of the date said buildings are taken over. The Contractor shall furnish the Agency with an original Certificate of Insurance, (naming the Housing Authority of the City/County of Fresno as the Certificate Holder) indicating insurance coverage of materials stored off-site.

- viii. All insurance shall be carried with companies which are financially responsible and licensed by the State of California. If any such insurance is due to expire during the construction period, the Contractor and Subcontractor shall not permit the coverage to lapse and shall furnish evidence of coverage to the Agency.

### **10.0 Local Contracts during Guarantee Period**

Subcontractors whose home office is outside the County of Fresno shall retain the services of appropriate specialty contractors located within Fresno County for repairs and/or adjustments required under the guarantees. All such contractors must be approved by the Agency. At the option of the Agency, such contracts shall be assigned to the Agency.

### **11.0 Inspection**

Contractor shall arrange for proper inspections with the **City of Sanger**. All inspections must be handled according to specifications and agency inspection policy. No item for which inspection is required shall be covered with other materials without prior inspection of that item. The Contractor shall make arrange for inspections at least 48 hours prior to the time inspection is required.

- 11.1 The work shall be monitored for, but not limited to, contract compliance, safety, and labor requirements, on a regular basis by the Agency. Violations shall be written up and a Notice to Contractor may result in the withholding of payment for that portion of the work covered in the notice.

### **12.0 Agency's Right to Stop Work**

If the Contractor fails to correct defective work as required by Article 34 of the General Conditions or persistently fails to carry out the work in accordance with the contract documents, the Agency by a written order signed personally or by an agent specifically so

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empowered by the Agency in writing, may order the contractor to stop the work or any portion thereof until the cause for such order has been eliminated.

### **13.0 The Agency's Right to Carry out the Work**

If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the Agency to commence and continue correction of such defects or neglect with diligence and promptness, the Agency may, after seven days following receipt by the Contractor of an additional written notice and without prejudice to any other remedy he may have, make good such deficiencies. In such case, an appropriate change order shall be issued, deducting from the payments then or thereafter due the Contractor, the cost of correcting such deficiencies, including compensation for the Architect's additional services made necessary by such default, neglect or failure. Such actions by the Agency in the amount charged to the Contractor are both subject to the prior approval of the Architect. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Agency.

### **14.0 Permits and Codes**

The Contractor shall **secure all permits**, fees and licenses necessary for the proper execution and completion of the work. **Permit costs paid by the Contractor will be reimbursed to the Contractor** by the Agency; cost of licenses shall be paid by the Contractor.

### **15.0 Notice to the Contractor**

Notice to the Contractor shall be issued to the Contractor by the Agency for any violation of the contract documents. Failure to make corrections as specified shall result in the delay of funds for that portion of the work for which correction is required.

### **16.0 Affirmative Action to Ensure Equal Employment Opportunity**

Under Executive order 11246 and in accordance with federal contract requirements for equal opportunity in employment, the following section designated as Division C, Section 3 includes the Notice for Affirmative Action to Ensure Equal Employment Opportunity under Executive Order 11246 and under Division C, Section 4 the Standard Federal Equal Employment Opportunity Construction Contract Specifications. It is the policy of the Fresno Housing



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Authorities to take positive steps to maximize the utilization of minority and women business enterprises in all contract activity administered by the Housing Authority.

### **17.0 Section 3**

In accordance with federal contract requirements for equal opportunity for businesses and lower income persons located within the project area, commonly referred to as Division C, Section 3 is Section 3 Contract Provisions which are incorporated into these Special Conditions.

### **18.0 Lead-Based Paint Prohibition**

The contractor is hereby advised that in accordance with 24 CFR, parts 35, 905, 965, and 968, Federal Register, August 1, 1986, as ordered by the U.S. Department of Housing and Urban Development, the use of lead-based paint on any modernization or new construction work is prohibited.

### **18.0 Warranties**

Contractor to provide manufacturer's product warranty and industry standard labor and installation warranty at the end of the project.

### **19.0 Other Conditions**

19.1 Contractor will submit invoice and request for payment (form HUD51001) upon acceptance of completed contract work by the Housing Authority and Engineer. A 10% retention will be held. Retention will be released by the Housing Authority 30 days after Notice of Completion is recorded.

19.2 In accordance with State of California regulations the contractor or subcontractor is prohibited from placing a lien on the Agency's property.

19.3 It shall be the responsibility, with the Housing Authority's approval, to incorporate into the project minor deviations from plans and specifications at no additional cost to the Owner.

19.4 Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior written order from the Fresno Housing Authority.

19.5 Contractor will be on site at all times while installations are made, no exceptions.