

**CITY OF DIXON  
GENERAL PROVISIONS**

**TABLE OF CONTENTS**

<b>SECTION 1</b>	<b>DEFINITIONS AND TERMS .....</b>	<b>GP - 1</b>
<b>SECTION 2</b>	<b>PROPOSAL REQUIREMENTS AND CONDITIONS .....</b>	<b>GP - 13</b>
2-1.01	Contents of Proposal Forms .....	GP - 13
2-1.02	Approximate Estimate .....	GP - 13
2-1.03	Examination of Plans, Specifications, Contract, and Site of Work.....	GP - 13
2-1.04	Addendum .....	GP - 14
2-1.05	Proposal Forms .....	GP - 14
2-1.06	Blank.....	GP - 14
2-1.07	Proposal Guarantee .....	GP - 14
2-1.08	Withdrawal of Proposals .....	GP - 14
2-1.09	Public Opening of Proposals.....	GP - 15
2-1.10	Relief of Bidders .....	GP - 15
2-1.11	Disqualification of Bidders.....	GP - 15
2-1.12	Blank.....	GP - 15
2-1.13	Blank.....	GP - 15
<b>SECTION 3</b>	<b>AWARD AND EXECUTION OF CONTRACT .....</b>	<b>GP - 17</b>
3-1.01	Award of Contract.....	GP - 17
3-1.02	Bonds .....	GP - 17
3-1.03	Execution of Contract.....	GP - 18
3-1.04	Failure to Execute Contract.....	GP - 18
3-1.05	Return of Proposal Guaranties .....	GP - 18
<b>SECTION 4</b>	<b>SCOPE OF WORK .....</b>	<b>GP - 19</b>
4-1.01	Intent of Plans and Specifications.....	GP - 19
4-1.02	Final Cleaning Up.....	GP - 20
4-1.03	Changes .....	GP - 20
4-1.04	Detours .....	GP - 22
4-1.05	Use of Materials Found in the Work .....	GP - 23
<b>SECTION 5</b>	<b>CONTROL OF WORK .....</b>	<b>GP - 25</b>
5-1.01	Authority of Engineer.....	GP - 25

5-1.02	Plan and Working Drawings .....	GP - 25
5-1.03	Conformity With Contract Documents and Allowable Deviations.....	GP - 26
5-1.04	Coordination and Interpretation of Plans, Standard Specifications, and Special Provisions .....	GP - 26
5-1.05	Order of Work.....	GP - 27
5-1.06	Superintendence .....	GP - 27
5-1.07	Lines and Grades .....	GP - 28
5-1.08	Inspection .....	GP - 28
5-1.09	Removal of Rejected and Unauthorized Work .....	GP - 29
5-1.10	Equipment and Plants .....	GP - 29
5-1.11	Alternative Equipment.....	GP - 30
5-1.12	Character of Workers.....	GP - 32
5-1.13	Final Inspection .....	GP - 32
5-1.14	Blank.....	GP - 32
5-1.15	Means and Methods.....	GP - 32

**SECTION 6 CONTROL OF MATERIALS.....GP - 33**

6-1 GENERAL

6-1.01	Source of Supply and Quality of Materials.....	GP - 33
6-1.02	City Furnished Materials .....	GP - 34
6-1.03	Storage of Materials .....	GP - 34
6-1.04	Defective Materials.....	GP - 34
6-1.05	Trade Names and Alternatives .....	GP - 35
6-1.06	Plant Inspection.....	GP - 36
6-1.07	Certificates of Compliance .....	GP - 36
6-1.08	Foreign Materials.....	GP - 36
6-1.09	State Specification Numbers.....	GP - 37

6-2 LOCAL MATERIALS

6-2.01	General.....	GP - 38
6-2.02	Possible Local Material Sources.....	GP - 39
6-2.03	Mandatory Local Material Sources .....	GP - 40

6-3 TESTING

6-3.01	General.....	GP - 42
6-3.02	Testing By Contractor .....	GP - 44

**SECTION 7 LEGAL RELATIONS AND RESPONSIBILITY .....GP - 45**

7-1.01	Laws to be Observed .....	GP - 45
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7-1.02	Load Limitations .....	GP - 59
7-1.03	Payment of Taxes .....	GP - 62
7-1.04	Permits and Licenses .....	GP - 62
7-1.05	Patents .....	GP - 63
7-1.06	Safety and Health Provisions .....	GP - 63
7-1.07	Blank.....	GP - 63
7-1.08	Public Convenience .....	GP - 63
7-1.09	Public Safety.....	GP - 66
7-1.10	Use of Explosives.....	GP - 69
7-1.11	Preservation of Property .....	GP - 69
7-1.12	Indemnification and Insurance .....	GP - 68
7-1.13	Disposal of Material Outside the Public Right of Way .....	GP - 75
7-1.14	Cooperation .....	GP - 78
7-1.15	Relief From Maintenance and Responsibility .....	GP - 78
7-1.16	Contractor's Responsibility for the Work and Materials .....	GP - 79
7-1.17	Acceptance of Contract.....	GP - 81
7-1.18	Property Rights in Materials .....	GP - 82
7-1.19	Rights in Land and Improvements .....	GP - 82
7-1.20	Personal Liability .....	GP - 82
7-1.21	Repair of Equipment .....	GP - 82
7-1.22	Material Plants.....	GP - 82

**SECTION 8 PROSECUTION AND PROGRESS.....GP - 85**

8-1.01	Subcontracting .....	GP - 85
8-1.02	Assignment.....	GP - 86
8-1.03	Beginning of Work.....	GP - 86
8-1.04	Progress Schedule.....	GP - 87
8-1.05	Temporary Suspension of Work .....	GP - 93
8-1.06	Time of Completion .....	GP - 94
8-1.07	Liquidated Damages .....	GP - 95
8-1.08	Termination of Control.....	GP - 96
8-1.09	Right of Way Delays.....	GP - 98
8-1.10	Utility and Non-Highway Facilities.....	GP - 99
8-1.11	Termination of Contract.....	GP - 100

**SECTION 9 MEASUREMENT AND PAYMENT .....GP - 105**

9-1.01	Measurement of Quantities .....	GP - 105
9-1.02	Scope of Payment .....	GP - 109
9-1.03	Force Account Payment.....	GP - 109
9-1.04	Blank.....	GP - 118
9-1.05	Stop Notices .....	GP - 118
9-1.06	Partial Payments .....	GP - 118
9-1.07	Payment After Acceptance.....	GP - 121
9-1.08	Blank.....	GP - 129
9-1.09	Clerical Errors.....	GP - 129
9-1.10	Blank.....	GP - 129
9-1.11	Contractor Not an Agent for the City.....	GP - 130
9-1.12	Third Party Claims.....	GP - 130

9-1.13	Guarantee .....	GP - 130
9-1.14	Miscellaneous Provisions.....	GP - 130
9-1.15	Public Contract Code Section 20104 Et Seq .....	GP - 131

**CITY OF DIXON**  
**GENERAL PROVISIONS**

**SECTION 1: DEFINITIONS AND TERMS**

**1-1.01 GENERAL**

Unless the context otherwise requires, wherever in the Specifications and other Contract Documents the following abbreviations and terms, or pronouns in place of them, are used, the intent and meaning shall be interpreted as provided in this section. Working titles having a masculine gender, such as "workman" and "journeyman" and the pronoun "he", are utilized in the Specifications for the sake of brevity, and are intended to refer to persons of either gender.

**1-1.02A ABBREVIATIONS**

AAN	American Association of Nurserymen.
AASHTO	American Association of State Highway and Transportation Officials.
ACI	American Concrete Institute.
AISC	American Institute of Steel Construction.
AISI	American Iron and Steel Institute.
ANSI	American National Standards Institute.
APHA	American Public Health Association.
API	American Petroleum Institute.
AREA	American Railway Engineering Association.
ASME	American Society of Mechanical Engineers.
ASTM	American Society for Testing and Materials.
AWG	American Wire Gage.

AWPA	American Wood-Preservers' Association
AWS	American Welding Society.
AWWA	American Water Works Association.
EIA	Electronic Industries Association.
IEEE	Institute of Electrical and Electronics Engineers.
NEMA	National Electrical Manufacturers Association.
UL	Underwriters' Laboratories Inc.

#### 1-1.02A UNITS OF MEASUREMENT

The units of measurement used by the City of Dixon are the United States Standard Measures. The project Special Provisions shall designate a system of units different than the United States Standard Measures if another system will apply to contracts referencing these Specifications.

Some of the symbols for units of measurement used in the Specifications and in the Engineer's Estimate are defined as follows. The symbols for other units of measurement used in the Specifications are as defined in ASTM Designation: E-380, or in the various Specifications and text referenced in the Specifications.

Symbol Used	Definitions
amp	amperes
ea	each
lb	pound
acre or ac	acre
hr	hour

LNMI	lane mile
gal	gallon
LS	lump sum
LF	linear foot
mi	mile
MSYD	thousand station yard
sf	square foot
cf	cubic foot
sy	square yard
cy	cubic yard
	ohm
sec	second
sta	100 feet
TAB	tablet
ton	2,000 pounds
W	watt
V	volt
MFBM	thousand foot board measure

Some of the symbols for International System of Units (SI or “metric”) units of measurement possibly used in the Specifications and in the Engineer's Estimate are defined as follows.

Symbols used	Symbols as used in Engineer's Estimate	Definitions
A	—	amperes
—	EA	each
g	G	gram
kg	KG	kilogram
ha	HA	hectare (10 000 m <sup>2</sup> )
h	H	hour
J	—	joule
—	LNKM	lane kilometer
L	L	liter
—	LS	lump sum
m	M	meter
km	KM	kilometer
mm	MM	millimeter
µm	—	micrometer
nm	—	nanometer
m <sup>2</sup>	M <sup>2</sup>	square meter
m <sup>3</sup>	M <sup>3</sup>	cubic meter



N	—	newton
N·m	—	newton meter
	—	ohm
Pa	—	pascal
kPa	—	kilopascal
MPa	—	megapascal
s	—	second
—	STA	station (100 m)
—	TAB	tablet
tonne	TONN	metric ton (1000 kg)
W	—	watt
V	—	volt

### **1-1.03 ACCEPTANCE**

The formal written acceptance by the Dixon City Council of an entire contract which has been completed in all respects in accordance with the plans and Specifications and any modifications thereof previously authorized in writing.

### **1-1.04 (BLANK)**

### **1-1.05 BASE**

A layer of specified material of planned thickness placed immediately below the pavement or surfacing.

### **1-1.06 BASEMENT MATERIAL**

The material in excavation or embankments underlying the lowest layer of subbase, base, pavement, surfacing or other specified layer which is to be placed.

### **1-1.07 BIDDER**

Any individual, firm, partnership, corporation, or combination thereof, submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.

### **1-1.08 BRIDGE**

Any structure, with a bridge number, which carries a utility facility, or railroad, highway, pedestrian or other traffic, over a water course or over or under or around any obstruction.

### **1-1.085 CONDUIT**

A pipe or tube in which smaller pipes, tubes or electrical conductors are inserted or are to be inserted.

### **1-1.09 CONTRACT**

The written agreement covering the performance of the work and the furnishing of labor, materials, tools and equipment in the construction of the work. The Contract shall include the Notice to Contractors, Instructions to Bidders, Proposal Forms, Plans, Technical Specifications, Special Provisions; Change Orders thereto; Standard Plans and Specifications of the State of California, Business and Transportation Agency, Department of Transportation, July 2002 edition, Sections 10 through 95, using English measurements and units, all as modified herein; and City of Dixon Engineering Standards & Specifications, April 2007 edition. All documents comprising the Contract may also be referred to as the "Contract Documents."

### **1-1.10 CONTRACTOR**

The person or persons, firm, partnership, corporation, or combination thereof, private or municipal, who have entered into a Contract with the City of Dixon, as party or parties of the second part or their legal representatives.

### **1-1.11 CULVERT**

Any structure, other than a bridge, which provides an opening under a roadway for drainage or other purposes.

### **1-1.12 DAYS**

Unless otherwise designated, "days" as used in the Specifications will be understood to mean calendar days.

### **1-1.13 DEPARTMENT**

The City of Dixon Engineering Department.

#### **1-1.14 DETOUR**

A temporary route for traffic around a closed portion of a road.

#### **1-1.15 DIRECTOR**

The City Engineer of the City of Dixon, or his/her authorized representative.

#### **1-1.16 DIVIDED HIGHWAY**

A highway with separated traveled ways for traffic, generally in opposite directions.

#### **1-1.17 (BLANK)**

#### **1-1.18 ENGINEER**

The City of Dixon, Engineering Department, Project Engineer, acting either directly or through properly authorized agents, the agents acting within the scope of the particular duties delegated to them.

#### **1-1.19 ENGINEER'S ESTIMATE**

The list of estimated quantities of work to be performed as contained in the "Proposal Form."

#### **1-1.20 FEDERAL AGENCIES**

Whenever, in the Specifications, reference is made to any Federal agency or officer, the reference shall be deemed made to any agency or officer succeeding in accordance with law to the powers, duties, jurisdiction and authority of the agency or officer mentioned.

#### **1-1.21 FIXED COSTS**

Any necessary labor, material and equipment costs directly expended on the item or items under consideration which remain constant regardless of the quantity of the work done.

#### **1-1.22 FRONTAGE ROAD**

A local street or road auxiliary to and located generally on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.

### **1-1.23 GRADING PLANE**

The surface of the basement material upon which the lowest layer of subbase, base, pavement, surfacing or other specified layer is placed.

### **1-1.24 HIGHWAY**

The whole right of way or area which is reserved for and secured for use in constructing the roadway and its appurtenances.

### **1-1.25 LABORATORY**

Any testing laboratory identified as such by the City of Dixon.

### **1-1.255 LEGAL HOLIDAYS**

Those days designated as City holidays in the Engineering Standards & Specifications or Contract Documents.

### **1-1.26 LIQUIDATED DAMAGES**

The amount prescribed in the Contract Documents, to be paid to the City of Dixon or to be deducted from any payments due or to become due the Contractor for each day's delay in completing the whole or any specified portion of the work beyond the time allowed in the Contract Documents.

### **1-1.265 MANUAL OF TRAFFIC CONTROLS**

The State of California, Department of Transportation publication entitled "MANUAL OF TRAFFIC CONTROLS for Construction and Maintenance Work Zones."

### **1-1.27 MEDIAN**

That portion of a divided highway separating the traveled ways for traffic in opposite directions including inside shoulders.

### **1-1.275 OFFICE OF STRUCTURE DESIGN**

The State of California Office of Structure Design of the Department of Transportation. When the Specifications require working drawings to be submitted to the State Office of Structure Design, the drawings shall be submitted to: Office of Structure Design, Documents Unit, Mail Station 9, 4<sup>th</sup> Floor, 1801 30th Street, Sacramento, CA 95816, Telephone (916) 227-8252.

### **1-1.28 PAVEMENT**

The uppermost layer of material placed on the traveled way or shoulders. This term is used interchangeably with surfacing.

### **1-1.29 PLANS**

The official project plans and Standard Plans, profiles, typical cross sections, working drawings and supplemental drawings, or reproductions thereof, approved by the Engineer, which show the location, character, dimensions and details of the work to be performed. These documents are to be considered as a part of the plans. In the above definition, the following terms are defined as follows:

#### **STANDARD PLANS**

The Standard Plans for Construction of Local Streets and Roads issued by the State of California, Department of Transportation.

#### **PROJECT PLANS**

The project plans are specific details and dimensions peculiar to the work and are supplemented by the Standard Plans insofar as the same may apply.

### **1-1.30 PROCESSING**

Any operation or operations of whatever nature and extent required to produce a specified material.

### **1-1.31 PROPOSAL**

The offer of the Bidder for the work when made out and submitted on the prescribed proposal form, properly signed and guaranteed.

### **1-1.32 PROPOSAL FORM**

The approved form upon which the City of Dixon requires formal bids be prepared and submitted for the work.

### **1-1.33 PROPOSAL GUARANTY**

The cash, cashier's check, certified check or bidder's bond accompanying the proposal submitted by the bidder, as a guaranty that the bidder will enter into a contract with the City of Dixon for the performance of the work if the Contract is awarded to the bidder.

### **1-1.34 ROADBED**

The roadbed is that area between the intersection of the upper surface of the roadway and the side slopes or curb lines. The roadbed rises in elevation as each increment or layer of subbase, base, surfacing or pavement is placed. Where the medians are so wide as to include areas of undisturbed land, a divided highway is considered as including 2 separate roadbeds.

### **1-1.35 ROADWAY**

That portion of the highway included between the outside lines of sidewalks, or curbs, slopes, ditches, channels, waterways, and including all the appertaining structures, and other features necessary to proper drainage and protection.

### **1-1.36 SHOULDERS**

The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

### **1-1.37 SPECIAL PROVISIONS**

The special provisions are specific clauses setting forth conditions or requirements peculiar to the work and supplementary to these Standard Specifications.

### **1-1.38 SPECIFICATIONS**

The directions, provisions and requirements contained in the Contract Documents. Whenever the term "these Specifications" or "these Standard Specifications" is used in this Contract, it means the provisions set forth in this Contract. "State Specifications" or "State Standard Specifications" also means the State of California, Department of Transportation, Standard Specifications, 2002 edition, Sections 10 through 95 only.

### **1-1.39 STATE**

The State of California.

### **1-1.40 (BLANK)**

### **1-1.41 SUBBASE**

A layer of specified material of planned thickness between a base and the basement material.

**1-1.42 SUBGRADE**

That portion of the roadbed on which pavement, surfacing, base, subbase, or a layer of any other material is placed.

**1-1.43 SUBSTRUCTURE**

All that part of the bridge below the bridge seats, tops of piers, haunches of rigid frames, or below the spring lines of arches. Backwalls and parapets of abutments and wingwalls of bridges shall be considered as parts of the substructure.

**1-1.44 SUPERSTRUCTURE**

All that part of the bridge except the bridge substructure.

**1-1.45 SURFACING**

The uppermost layer of material placed on the traveled way, or shoulders. This term is used interchangeably with pavement.

**1-1.46 TRAFFIC LANE**

That portion of a traveled way for the movement of a single line of vehicles.

**1-1.47 TRAVELED WAY**

That portion of the roadway for the movement of vehicles, exclusive of shoulders.

**1-1.48 WORK**

All the work specified, indicated, shown, contemplated or inferable from the Contract Documents to construct the improvement, including all alterations, amendments or extensions thereto made by Contract Change Order.





## **SECTION 2: PROPOSAL REQUIREMENTS AND CONDITIONS**

### **2-1.01 CONTENTS OF PROPOSAL FORMS**

Prospective bidders must use City of Dixon proposal forms which will refer to the Special Provisions and Project Plans for the work to be done and will include a schedule of items for which bid prices are requested, showing the approximate estimate of the various quantities and kinds of work to be performed or materials to be furnished.

### **2-1.02 APPROXIMATE ESTIMATE**

The quantities given in the proposal form and Contract are approximate only, being given as a basis for the comparison of bids. The City of Dixon does not, expressly or by implication, agree that the actual amount of work will correspond therewith, and reserves the right to increase or decrease the amount of any class or portion of the work, or to omit portions of the work.

### **2-1.03 EXAMINATION OF PLANS, SPECIFICATIONS, CONTRACT, AND SITE OF WORK**

All bidders shall carefully and completely examine the site of the work contemplated, the plans and Specifications, and the proposal and Contract forms therefor, and perform all tests and inspections necessary to inform bidder of all conditions that may be encountered, the character, quality and scope of work to be performed, and the quantities of materials to be furnished. The submission of a bid shall be conclusive evidence that the bidder has investigated and is satisfied as to the conditions to be encountered, as to the character, quality and scope of work to be performed, the quantities of materials to be furnished and as to the requirements of the proposal, plans, Specifications and the Contract.

Where the City of Dixon has made investigations of site conditions, including subsurface conditions in areas where work is to be performed under the Contract, or in other areas, some of which may constitute possible local material sources, bidders and Contractor may, upon written request, inspect the records of the City of Dixon as to those investigations subject to and upon the conditions hereinafter set forth. The investigations are made only for the purpose of study and design.

The records of investigations, project records, log of test borings, record of geotechnical data, investigation of subsurface conditions, "Materials Information," cross-sections, contour maps, and any other investigations provided by City of Dixon, are not a part of the Contract and are available solely for the convenience of the bidder or Contractor. It is expressly understood and agreed that the City of Dixon assumes no responsibility whatsoever in respect to the sufficiency or accuracy of the above described documents or of the interpretations set forth therein or made by the City of Dixon in its use thereof and there is no warranty or guaranty, either express or implied, as to the completeness or accuracy of the documents, that the conditions indicated by the documents are representative of those existing in or throughout those areas, or any part thereof, or that

unlooked-for developments may not occur, or that materials other than, or in proportions different from those indicated, may not be encountered.

The availability or use of information described in this section is not to be construed in any way as a waiver of the provisions of the first paragraph in this section and a bidder or Contractor shall make their own investigation and examination to be satisfied as to conditions to be encountered in the performance of the work.

No information derived from the inspection of investigations or compilation thereof made by the City of Dixon or from the Engineer, or their consultants, will in any way relieve the bidder or Contractor from any risk or from properly fulfilling the terms of the Contract.

#### **2-1.04 ADDENDUM**

If discrepancies or apparent errors are found in the Contract Documents prior to the date of bid opening, bidders shall submit a written request for clarification to City Engineer, which response to said request will be given in the form of addenda to all bidders, if time permits.

The correction of any discrepancies in, or omissions from the plans, Specifications, or other Contract Documents, or any interpretation thereof, during the bidding period will be made only by an addendum issued in writing by the City of Dixon. A copy of each such addendum issued by the City of Dixon will be mailed, faxed or delivered to each person receiving a set of the Contract Documents, and shall be made a part of the Contract. Any other interpretation or explanation of such documents will not be considered binding.

#### **2-1.05 PROPOSAL FORMS**

The City of Dixon will furnish to each bidder a standard proposal form, which, when filled out and executed shall be submitted as that bidder's bid. Bids not presented on forms so furnished, and copies or facsimiles of the bidder's completed and executed proposal forms submitted as a bid may be rejected.

#### **2-1.06 (BLANK)**

#### **2-1.07 PROPOSAL GUARANTY**

The proposal must be accompanied by cash, a bidder's bond, certified check, or cashier's check in an amount not less than ten percent (10%) of the amount bid. The bidder's bond must be signed in favor of the City of Dixon, and the certified check or cashier's check must be made payable to the City of Dixon.

#### **2-1.01 WITHDRAWAL OF PROPOSALS**

Any bid may be withdrawn at any time prior to the date and time fixed for the opening of bids only by written request for the withdrawal of the bid filed at the location at which the

bid was received by the City of Dixon. The request shall be executed by the bidder or the bidder's duly authorized representative. The withdrawal of a bid does not prejudice the right of the bidder to file a new bid. Whether or not bids are opened exactly at the time fixed for opening bids, a bid will not be received after that time, nor may any bid be withdrawn after the time fixed for the opening of bids.

#### **2-1.09 PUBLIC OPENING OF PROPOSALS**

Proposals will be opened and read publicly at the time and place indicated in the "Notice to Bidders." Bidders or their authorized agents are invited to be present.

#### **2-1.095 RELIEF OF BIDDERS**

Attention is directed to the provisions of Public Contract Code Sections 5100 to 5107, inclusive, concerning relief of bidders and in particular to the requirement therein, that if the bidder claims a mistake was made in the bid presented, the Bidder shall give the City of Dixon written notice within 5 days after the opening of the bids of the alleged mistake, specifying in the notice in detail how the mistake occurred.

#### **2-1.10 DISQUALIFICATION OF BIDDERS**

More than one proposal from an individual, firm, partnership, corporation, or combination thereof under the same or different names will not be considered. Reasonable grounds for believing that any individual, firm, partnership, corporation or combination thereof is interested in more than one proposal for the work contemplated may cause the rejection of all proposals in which that individual, firm, partnership, corporation or combination thereof is interested. If there is reason for believing that collusion exists among the Bidders any or all proposals may be rejected. Proposals in which the prices appear unbalanced may be rejected.

#### **2-1.11 (BLANK)**

#### **2-1.12 (BLANK)**



## **SECTION 3: AWARD AND EXECUTION OF CONTRACT**

### **3-1.01 AWARD OF CONTRACT**

The right is reserved to reject any and all proposals.

The award of the Contract, if it be awarded, will be to the lowest responsible bidder whose proposal complies with all the requirements prescribed. The award, if made, will be made within 60 days after the opening of the proposals. This period will be subject to extension for such further period as may be agreed upon in writing between the City of Dixon and the bidder concerned.

All bids will be compared on the basis of the Engineer's Estimate of the quantities of work to be done.

The low bid will be determined by adding the sum of the base bid and all alternates (if any). The City of Dixon reserves the right to include in the Contract, if a Contract is awarded, the base bid only, or the base bid plus any alternate bid or combinations of alternates bid.

### **3-1.02 BONDS**

Within ten (10) days of Contractor's receipt of the Contract from the City of Dixon, the Contractor shall furnish corporate surety bonds to the benefit of the City of Dixon, issued by a surety company acceptable to the City of Dixon and authorized and admitted to do business in the State of California, as follows:

A. Faithful Performance Bond -- In a sum not less than one hundred percent (100%) of the total contract price as set forth in the Contract to guarantee the Contractor's faithful performance of all covenants and stipulations of the Contract. The bond shall contain a provision that the surety thereon waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

B. Payment (Labor and Materials) Bond -- In a sum not less than one hundred percent (100%) of the total contract price as set forth in the Contract to guarantee the payment of wage, and bills contracted for materials, supplies, or equipment used in the performance of the Contract. The bond shall be in accordance with the provisions of Sections 3225, 3226, and 3247 to 3252, inclusive, of the Civil Code of the State of California, and Section 13020 of the Unemployment Insurance Code of the State of California. Said bond shall also contain a provision that the surety thereon waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

Faithful Performance Bond and Payment Bond shall be on the forms provided by City of Dixon.

The surety companies shall familiarize themselves with all provisions and conditions of the Contract. It is understood and agreed that the surety or sureties waive the right of special notification of any modifications or alterations, omissions or reductions, extra or additional

work, extensions of time, or any other act or acts by the City of Dixon or its authorized agents under the terms of the Contract; and failure to so notify the surety companies of such changes shall in no way relieve the surety or sureties of their obligations under this Contract. The surety expressly waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

### **3-1.03 EXECUTION OF CONTRACT**

The Contract shall be signed by the successful bidder and returned, together with the Contract bonds, within 10 days after the bidder has received the Contract for execution.

### **3-1.04 FAILURE TO EXECUTE CONTRACT**

The Contractor shall pay to the City of Dixon such sums from said cash, bond, certified check, or cashier's check as necessary to reimburse the City of Dixon for costs incurred for failure of the successful bidder to complete, sign and return in strict compliance with these Contract Documents, if requested to do so, Bidder's Questionnaire, or enter into a Contract. The amount of said cash, bond, certified check, or cashier's check shall not be deemed to constitute a penalty or liquidated damages. The City of Dixon shall not be precluded by such cash, bond, certified check, or cashier's check from recovering from the defaulting bidder damages in excess of the amount of said cash, bond, certified check, or cashier's check incurred as a result of the failure of the successful bidder to complete, sign and return in strict compliance with these Contract Documents, if requested to do so, Bidder's Questionnaire, or enter into a Contract.

### **3-1.05 RETURN OF PROPOSAL GUARANTIES**

The proposal guaranties accompanying the proposals of the first, second and third lowest bidders will be retained until the Contract has been finally executed, after which those proposal guaranties, may be returned to the respective bidders whose proposals they accompany. The proposal guaranties, other than bidder's bonds, submitted by all other unsuccessful bidders will be returned upon determination, by the City of Dixon, of the first, second and third lowest responsible Bidders.

## **SECTION 4: SCOPE OF WORK**

### **4-1.01 INTENT OF PLANS AND SPECIFICATIONS**

All work and materials shall be in full accordance with the latest adopted standards and regulations of the State Fire Marshal; the California Building Code; Title 24 of the California Code of Regulations; the California Electrical Code; the California Plumbing Code; Americans With Disabilities Act; and all other applicable codes, laws, rules or regulations. Nothing in these Contract Documents is to be construed to permit work not conforming to these requirements. The Contractor agrees that immediately upon signing of the Contract, Contractor will diligently review the Contract Documents and determine if any work described or inferred within the Contract Documents is not in conformance with these requirements. Should the Contractor discover work within the Contract Documents not in conformance with these requirements, the Contractor agrees to immediately notify the Engineer in writing of said nonconformance, and to not proceed with nonconforming work. When the work detailed in the Contract Documents differs from governing codes, it is understood and agreed that the Contract sum is based upon the more costly or expensive standard.

The intent of the plans and Specifications is to prescribe the details for the construction and completion of the work which the Contractor undertakes to perform in accordance with the terms of the Contract, and that the work performed under the Contract results in a complete operating system in satisfactory working condition with respect to the functional purposes of the installation, and no extra compensation will be allowed for anything omitted but fairly implied. The prices paid for the various items in the proposal shall include full compensation for furnishing all labor, materials, tools, equipment, overhead, profit, incidentals, and doing all work necessary to complete the finished product as provided in the Contract Documents. Where the plans or 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 finest quality are to be used. The Contractor shall furnish all labor, materials, tools, equipment, and incidentals, and do all the work involved in executing the Contract to the highest possible standard of workmanship.

Should it appear that the work to be done, or any of the matters relative thereto, are not sufficiently detailed or explained in the Contract Documents, or in the event of any doubt or question arising respecting the true meaning of the Contract Documents, the Contractor shall apply to the Engineer in writing for such further explanations as may be necessary, and the Engineer shall render his or her decisions thereon. The Contractor shall thoroughly review all Requests for Information (RFI's) submitted by subcontractors prior to submission to the Engineer to determine whether such RFI's is already answered in the Contract Documents. The Contractor represents to City of Dixon, that by submission of an RFI, the Contractor has thoroughly reviewed the RFI and thoroughly reviewed the Contract Documents, and determined that the RFI is not answered or reasonably inferable in the Contract Documents, and that the RFI pertains to an unforeseen condition or circumstance that is not described in the Contract Documents, that there is a conflict or discrepancy in

the Contract Documents, or there is an omission in the Contract Documents. In the event any RFI is answered or reasonably inferable from the Contract Documents, the Contractor agrees to pay the City of Dixon the reasonable cost, time and expenses associated with reviewing and responding to RFI's which are already answered or reasonably inferable from the Contract Documents. In the event of a disagreement over such compensation, the judgement of the Engineer shall be final.

#### **4-1.02 FINAL CLEANING UP**

Before final inspection of the work, the Contractor shall clean the highway, material sites and all ground occupied by the Contractor in connection with the work of all rubbish, excess materials, falsework, temporary structures and equipment. All parts of the work shall be left in a neat and presentable condition. 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. Nothing herein, however, shall require the Contractor to remove warning, regulatory, and guide signs prior to formal acceptance by the Director.

#### **4 -1.03 CHANGES**

The City reserves the right without changing the scope of work, to make such alterations deviations, additions to or deletions from the plans and Specifications, including but not limited to, the right to add or delete any portion of the work to be done with no additional compensation or change in lump sum or unit bid prices. The City also reserves the right without changing the scope of work, to increase or decrease the quantity of any item or portion of the work, as may be deemed by the Engineer to be necessary or advisable and to require such extra work as may be determined by the Engineer to be required for the proper completion or construction of the whole work contemplated. Such increases or decreases in quantities shall not be a basis for change in character of the work.

The City of Dixon may request that the Contractor provide the City of Dixon with estimated costs for proposed changes to the work. The Contractor agrees to promptly provide the City of Dixon with detailed, itemized costs for proposed changes to the work and scheduling data demonstrating the impact, if any, of the proposed changes to the work and the time for completion. Adjustments, if any, in the amount to be paid the Contractor by reason of any modifications of the work as set forth in a Contract Change Order, Construction Change Directive, or arising from claims shall be determined by one or more of the following methods as elected by the City of Dixon:

- A. Lump Sum Price - By an acceptable lump sum price fixed in agreement between the City of Dixon and the Contractor.
  
- B. Unit Prices - By unit prices fixed by agreement between the City of Dixon and the Contractor.



C. Force Account - By directing the Contractor to proceed with the work and to keep and present in such form as the City of Dixon may direct, a correct account of the cost of the change, together with all vouchers therefor. The Contractor will be paid for labor, materials, equipment rental, etc. actually used on change order work performed under Force Account as per Section 9-1.03 of these specifications.

The amount of payment agreed upon or, in the absence of agreement, selected by the City of Dixon shall be set forth in the Contract Change Order or Construction Change Directive.

Upon receipt of a Contract Change Order authorized by the Engineer, the Contractor shall proceed with the ordered work. If ordered in writing by the Engineer, the Contractor shall proceed with the work so ordered prior to actual receipt of an authorized Contract Change Order therefor. In those cases, the Engineer will, as soon as practicable, issue a Contract Change Order for the ordered work and the provisions in Section 4-1.03A, "Procedure and Protest," shall be fully applicable to the subsequently issued Contract Change Order.

When the compensation for an item of work is subject to adjustment under the provisions of this Section 4-1.03, the Contractor shall, upon request, furnish the Engineer with adequate detailed cost data for that item of work. If the Contractor requests an adjustment in compensation for an item of work, the cost data shall be submitted with the request.

#### **4-1.03A PROCEDURE AND PROTEST**

A Contract Change Order authorized by the Engineer may be issued to the Contractor at any time. Should the Contractor disagree with any terms or conditions set forth in an authorized Contract Change Order not executed by the Contractor, the Contractor shall submit a written protest to the Engineer within 15 days after the receipt of the Contract Change Order. The protest shall state the points of disagreement, and the Contract specification references, quantities and costs involved. If a written protest is not submitted, payment will be made as set forth in the Contract Change Order, and Contractor agrees that payment shall constitute full compensation for all work included therein or required thereby. Unprotested Contract Change Orders will be considered as executed Contract Change Orders.

Where the protest concerning an authorized Contract Change Order relates to compensation, the compensation payable for all work specified or required by that Contract Change Order to which the protest relates will be determined as provided in Section 4-1.03D. The Contractor shall keep full and complete records of the cost of that work and shall permit the Engineer to have access thereto as may be necessary to assist in the determination of the compensation payable for that work.

Where the protest concerning an accepted Contract Change Order relates to the adjustment of Contract time for the completion of the work, the time to be allowed therefor will be determined as provided in Section 8-1.07, "Liquidated Damages."

Proposed Contract Change Orders may be presented to the Contractor for consideration prior to authorization by the Engineer. If the Contractor signifies acceptance of the terms and conditions of the proposed Contract Change Order by executing the document and if the Contract Change Order is accepted by the Engineer and issued to the Contractor, payment in accordance with the provisions as to compensation therein set forth shall constitute full compensation for all work included therein or required thereby. An accepted Contract Change Order shall supersede a proposed, but unaccepted, Contract Change Order covering the same work.

The Engineer may provide for an adjustment of compensation as to a Contract item of work included in a Contract Change Order determined as provided in Section 4-1.03D, if that item of work is eligible for an adjustment of compensation thereunder.

Contract Change Orders shall be in the form provided by City of Dixon in the Contract Documents.

**4-1.03B NOT USED.**

**4-1.03C NOT USED.**

**4-1.03D EXTRA WORK**

New and unforeseen work will be classed as extra work when determined by the Engineer that the work is not covered by any of the various items for which there is a bid price or by combinations of those items. In the event portions of this work are determined by the Engineer to be covered by some of the various items for which there is a bid price or combinations of those items, the remaining portion of the work will be classed as extra work. Extra work also includes work specifically designated as extra work in the plans or Specifications.

The Contractor shall do the extra work and furnish all labor, material and equipment therefor upon receipt of an accepted Contract Change Order or other written order of the Engineer, and in the absence of an accepted Contract Change Order or other written order of the Engineer the Contractor shall not be entitled to payment for the extra work.

Payment for extra work required to be performed pursuant to the provisions in this Section 4-1.03D, in the absence of an executed Contract Change Order, will be made by force account as provided in Section 9-1.03; or as agreed to by the Contractor and the Engineer.

**4-1.04 DETOURS**

The Contractor shall construct and remove detours and detour bridges for the use of public traffic as provided in the Contract Documents or as directed by the Engineer. Payment for this work will be made as set forth in the Contract Documents or at the Contract prices for the items of work involved if the work being performed is covered by Contract items of work

and no other method of payment therefor is provided in the special provisions, otherwise the work will be paid for as extra work as provided in Section 4-1.03D.

The cost of repairing damage to detours caused by public traffic will be paid for as extra work as provided in Section 4-1.03D.

When public traffic is routed through the work, provision for a passageway through construction operations will not be considered as detour construction or detour maintenance, and this work shall conform to and be paid for as provided in Section 7-1.08, "Public Convenience," unless otherwise specified in the special provisions.

Detours used exclusively by the Contractor for hauling materials and equipment shall be constructed and maintained by the Contractor at the Contractor's expense.

The failure or refusal of the Contractor to construct and maintain detours at the proper time shall be sufficient cause for closing down the work until the detours are in satisfactory condition for use by public traffic.

Where the Contractor's hauling is causing such damage to the detour that its maintenance in a condition satisfactory for public traffic is made difficult or costly, the Engineer shall have authority to regulate the Contractor's hauling over the detour.

#### **4-1.05 USE OF MATERIALS FOUND ON THE WORK**

Unless designated as selected material as provided in Section 19-2.07, "Selected Material," the Contractor, with the acceptance of the Engineer, may use in the proposed construction such stone, gravel, sand or other material suitable in the opinion of the Engineer as may be found in excavation. The Contractor will be paid for the excavation of those materials at the Contract price for the excavation, but the Contractor shall replace at the Contractor's expense with other suitable material all of that portion of the material so removed and used which was contemplated for use in the work, except that the Contractor need not replace, at the Contractor's expense, any material obtained from structure excavation used as structure backfill. No charge for materials so used will be made against the Contractor. The Contractor shall not excavate or remove any material from within the highway location that is not within the excavation, as indicated by the slope and grade lines, without written authorization from the Engineer.



## **SECTION 5: CONTROL OF WORK**

### **5-1.01 AUTHORITY OF ENGINEER**

The Engineer 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 the plans and Specifications; all questions as to the acceptable fulfillment of the Contract on the part of the Contractor; and all questions as to compensation. The Engineer's decision shall be final, and the Engineer shall have authority to enforce and make effective those decisions and orders which the Contractor fails to carry out promptly.

### **5-1.02 PLANS AND WORKING DRAWINGS**

The Contract plans furnished consist of general drawings and show such details as are necessary to give a comprehensive idea of the construction contemplated. All authorized alterations affecting the requirements and information given on the Contract plans shall be in writing.

The Contract plans shall be supplemented by such working drawings prepared by the Contractor as are necessary to adequately control the work. No change shall be made by the Contractor in any working drawing after it has been accepted by the Engineer.

Working drawings for any part of the permanent work shall include, but not be limited to stress sheets, anchor bolt layouts, shop details, erection plans, equipment lists and any other information specifically required elsewhere in the Specifications.

Working drawings for cribs, cofferdams, falsework, temporary support systems, haul bridges, centering and form work and for other temporary work and methods of construction the Contractor proposes to use, shall be submitted when required by the Contract Documents or ordered by the Engineer. Working drawings shall be subject to City of Dixon review insofar as the details affect the character of the finished work and for compliance with design requirements applicable to the construction when specified or called for, but details of design will be left to the Contractor who shall be responsible for the successful construction of the work.

Working drawings shall be reviewed by the Engineer before any work involving the drawings is performed. It is expressly understood that review of the Contractor's working drawings shall not relieve the Contractor of any responsibility under the Contract for the successful completion of the work in conformity with the requirements of the plans and Specifications. Review of working drawings shall not operate to waive any of the requirements of the plans and Specifications or relieve the Contractor of any obligation thereunder, and defective work, materials and equipment may be rejected notwithstanding the review.

Full compensation for furnishing all working drawings shall be considered as included in the prices paid for the Contract items of work to which the drawings relate and no additional compensation will be allowed therefor.

#### **5-1.02A TRENCH EXCAVATION SAFETY PLANS**

Attention is directed to Section 7-1.01E, "Trench Safety." Excavation for any trench 1.5 m {5 feet} or more in depth shall not begin until the Contractor has prepared detailed plans for worker protection from the hazards of caving ground during the excavation of that trench. The detailed plan shall show the details of the design of shoring, bracing, sloping or other provisions to be made for worker protection during the excavation. No plan shall allow the use of shoring, sloping or a protective system less effective than that required by the Construction Safety Orders of the Division of Occupational Safety and Health. If the plan complies with the shoring system standards established by the Construction Safety Orders, the plan shall be submitted at least 5 days before the Contractor intends to begin excavation for the trench. If the plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared and signed by an engineer who is registered as a Civil Engineer in the State of California, and the plan and design calculations shall be submitted at least 3 weeks before the Contractor intends to begin excavation for the trench.

#### **5-1.03 CONFORMITY WITH CONTRACT DOCUMENTS AND ALLOWABLE DEVIATIONS**

Contractor's work and materials shall strictly conform to the lines, grades, typical cross sections, dimensions and material requirements, including tolerances, required in the Contract Documents. Although measurement, sampling and testing may be considered evidence as to conformity, the Engineer shall be the sole judge as to whether the work or materials deviate from the plans and Specifications, and the Engineer's decision as to any allowable deviations therefrom shall be final.

#### **5-1.04 COORDINATION AND INTERPRETATION OF PLANS, STANDARD SPECIFICATIONS, AND SPECIAL PROVISIONS**

The City Standard Specifications, the State Standard Plans, project plans, Special Provisions, Contract Change Orders and all supplementary documents are essential parts of the Contract, and a requirement occurring in one Contract Document is as binding as though occurring in all. They are intended to be complementary, and to describe and provide for a complete work.

In the event of any discrepancy or inconsistency between the Contract Documents, the order of precedence of Contract Documents, from the highest to the lowest, shall be:

1. Construction Agreement
2. All approved Contract Change Orders to the Agreement
3. Notice to Bidders
4. Bid or Proposal accepted by the City of Dixon

5. Special Provisions
6. Plans, drawings and technical specifications prepared for this project
7. City of Dixon Construction Details
8. City of Dixon Construction Specifications
9. City of Dixon Engineering Design Standards
10. State Standards and Specifications
11. All bonds and insurance required by the Contract

Should it appear that the work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Contract Documents, the Contractor shall apply in writing to the Engineer for such further explanations as may be necessary and shall conform to them as part of the Contract. In the event of any doubt or question arising respecting the true meaning of the Contract Documents, reference in writing shall be made to the Engineer, whose decision thereon shall be final.

In the event of any discrepancy between any drawing and the figures written thereon, the figures shall be taken as correct. Indicated dimensions shall govern over scaled dimensions. Detailed drawings shall prevail over general drawings. All work shown on the drawings, the dimensions which are not indicated, shall be accurately followed to the scale to which the drawings are made. The specific shall control over the general.

#### **5-1.05 ORDER OF WORK**

When required by the Contract Documents, the Contractor shall follow the sequence of operations as set forth therein.

Full compensation for conforming to those requirements will be considered as included in the prices paid for the various Contract items of work and no additional compensation will be allowed therefor.

#### **5-1.05A HOURS OF WORK**

Regular working hours are 7:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays observed by the City. No work outside of the regular working hours shall be done unless previously requested by the Contractor in writing and approved by the Engineer in writing. Contractor is subject to reimbursing the City for the costs of providing inspection outside of regular working hours.

#### **5-1.06 SUPERINTENDENCE**

The Contractor shall designate in writing before starting work, an authorized representative who shall act as Superintendent and have the authority to represent and act for the Contractor. The Superintendent shall have responsibility for overall project operations and shall not be a "working foreman".

When the Contractor is comprised of two (2) or more persons, firms, partnerships or corporations functioning on a joint venture basis, the Contractor shall designate in writing before starting work, the name of one authorized representative who shall serve as the Superintendent, and shall have the authority to represent and act for the Contractor.

The Superintendent shall be present at the site of the work at all times while work is actually in progress on the Contract. When work is not in progress and during periods when work is suspended, arrangements acceptable to the Engineer shall be made for any emergency work which may be required.

Whenever the Contractor or the Contractor's Superintendent is not present on any particular part of the work where it may be desired to give direction, orders will be given by the Engineer, which shall be received and obeyed by the foreman or other individual who may have charge of the particular work in reference to which the orders are given.

Any order given by the Engineer, not otherwise required by the Specifications to be in writing, will on request of the Contractor, be given or confirmed by the Engineer in writing.

#### **5-1.07 LINES AND GRADES**

Stakes or marks will be set by the Engineer as the Engineer determines to be necessary to establish the lines and grades required for the completion of the work specified in these Specifications, on the plans and in the special provisions.

When the Contractor requires the stakes or marks, the Contractor shall notify the Engineer of the requirements in writing a reasonable length of time in advance of starting operations that require the stakes or marks. In no event, shall a notice of less than two (2) working days be considered a reasonable length of time.

Stakes and marks set by the City, or representative of the City, shall be carefully preserved by the Contractor. In case the stakes and marks are destroyed or damaged, the Contractor will be charged for the cost of necessary replacement or restoration of stakes and marks. This charge will be deducted from any moneys due or to become due the Contractor.

#### **5-1.08 INSPECTION**

The Engineer shall, at all times, have safe access to the work during its construction, and shall be furnished with every reasonable facility for ascertaining that the materials and the workmanship are in accordance with the requirements and intentions of the Contract Documents. All work done and all materials furnished shall be subject to the Engineer's inspection.

Neither the inspection by the Engineer, a City inspector, or other representative of the City of Dixon, nor any measurement, approved or unapproved modification, Submittals, shop drawing, order, or certificate, nor acceptance of any part or whole of the work, or payment



of money, nor any possession or use by the City of Dixon or its agents, shall operate as a waiver of any provisions of the Contract or of any power or authority reserved therein, or of any right to damages thereunder; nor shall the waiver of any breach of this Contract be held to be a waiver of any subsequent or other breach.

Projects financed in whole or in part with State or Federal funds shall be subject to inspection at all times by the State or Federal agency involved, or their authorized representative.

#### **5-1.09 REMOVAL OF REJECTED AND UNAUTHORIZED WORK**

All work which has been rejected shall be remedied, or removed and replaced by the Contractor in a manner acceptable to the Engineer, and no compensation will be allowed to the Contractor for the removal, replacement or remedial work.

Any work done beyond the lines and grades shown on the plans or established by the Engineer, or any extra work done without written authority will be considered as unauthorized work and will not be paid for. Upon order of the Engineer unauthorized work shall be remedied, removed or replaced at the Contractor's expense.

Upon failure of the Contractor to comply promptly with any order of the Engineer made under this Section 5-1.09, the City of Dixon 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.

#### **5-1.10 EQUIPMENT AND PLANTS**

Only equipment and plants suitable to produce the quality of work and materials required will be permitted to operate on the project.

Plants shall be designed and constructed in accordance with general practice for the equipment and shall be of sufficient capacity to ensure the production of sufficient material to carry the work to completion within the time limit.

The Contractor shall provide adequate and suitable equipment and plants to meet the above requirements, and when ordered by the Engineer shall remove unsuitable equipment from the work and discontinue the operation of unsatisfactory plants.

The Contractor shall identify each piece of equipment, other than hand tools, by means of an identifying number plainly stenciled or stamped on the equipment at a conspicuous location, and shall furnish to the Engineer a list giving the description of each piece of equipment and its identifying number. In addition, the make, model number and empty gross mass of each unit of compacting equipment shall be plainly stamped or stenciled in a conspicuous place on the unit. The gross mass shall be either the manufacturer's rated mass or the scale weight, expressed in metric units {United States Standard Measures}.

The make, model, serial number and manufacturer's rated capacity in metric units {United States Standard Measures} for each scale shall be clearly stamped or stenciled on the load receiving element and its indicator or indicators. All meters shall be similarly identified, rated and marked. Upon request of the Engineer, the Contractor shall furnish a statement by the manufacturer, designating sectional and weighbridge capacities of portable vehicle scales.

#### **5-1.11 ALTERNATIVE EQUIPMENT**

While certain of the Contract Documents may provide that equipment of a particular size and type is to be used to perform portions of the work, it is to be understood that the development and use of new or improved equipment is to be encouraged.

The Contractor may request, in writing, permission from the Engineer to use equipment of a different size or type in place of the equipment specified.

The Engineer, before considering or granting the request, may require the Contractor to furnish, at the Contractor's expense, evidence satisfactory to the Engineer that the equipment proposed for use by the Contractor is capable of producing work equal to, or better than, that which can be produced by the equipment specified.

If permission is granted by the Engineer, it shall be understood that the permission is granted for the purpose of testing the quality of work actually produced by the equipment and is subject to continuous attainment of results which, in the opinion of the Engineer, are equal to, or better than, that which can be obtained with the equipment specified. The Engineer shall have the right to withdraw permission at any time that the Engineer determines that the alternative equipment is not producing work that is equal, in all respects, to that which can be produced by the equipment specified. Upon withdrawal of permission by the Engineer, the Contractor will be required to use the equipment originally specified and shall, in accordance with the directions of the Engineer, remove and dispose of or otherwise remedy, at the Contractor's expense, any defective or unsatisfactory work produced with the alternative equipment.

The Contractor shall not have any claim against the City of Dixon for either the withholding or the granting of permission to use alternative equipment, or for the withdrawal of the permission.

Permission to use alternative equipment in place of equipment specified will only be granted where the equipment is new or improved and its use is deemed by the Engineer to be in furtherance of the purposes of this Section 5-1.11. The permission for use of particular equipment on any project shall in no way be considered as permission of the use of the equipment on any other project.

Nothing in this Section 5-1.11 shall relieve the Contractor of the responsibility for furnishing materials or producing finished work of the quality specified in the Contract Documents

### **5-1.11A ALTERNATIVE METHODS OF CONSTRUCTION**

Whenever the plans or Specifications provide that more than one specified method of construction or more than one specified type of material or construction equipment may be used to perform portions of the work and leave the selection of the method of construction or the type of material or equipment to be used up to the Contractor, it is understood that the City of Dixon does not guarantee that every or any specified method of construction or type of material or equipment can be used successfully throughout all or any part of any project. It shall be the Contractor's responsibility to select and use the alternative or alternatives which will satisfactorily perform the work under the conditions encountered. In the event some of the alternatives are not feasible or it is necessary to use more than one of the alternatives on any project, full compensation for any additional cost involved shall be considered as included in the Contract price paid for the item of work involved and no additional compensation will be allowed therefor.

### **5-1.11B DIFFERING SITE CONDITIONS**

During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract, are encountered at the site, the Contractor shall promptly notify the Engineer in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

Upon written notification, the Engineer will investigate the conditions, and if the Engineer determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment, excluding loss of anticipated profits, will be made and the Contract modified in writing accordingly. The Engineer will notify the Contractor of the Engineer's determination whether or not an adjustment of the Contract is warranted.

No Contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice. Contractor agrees that failure to provide written notice to Engineer as required herein, or failure to otherwise abide by this Section, shall be a waiver by Contractor of any claim, demand, compensation or adjustment in the Contract time or working days.

No Contract adjustment will be allowed under the provisions specified in this section for any effects caused on unchanged work.

Any Contract adjustment warranted due to differing site conditions will be made in conformance with the provisions in Section 4-1.03, "Changes," except as otherwise provided.

### **5-1.12 CHARACTER OF WORKERS**

If any subcontractor or person employed by the Contractor shall appear to the Engineer to be incompetent or to act in a disorderly or improper manner, they shall be discharged immediately on the request of the Engineer, and that person shall not again be employed on the work.

### **5-1.13 FINAL INSPECTION**

When the work has been completed, the Engineer will make the final inspection.

### **5-1.14 BLANK**

### **5-1.15 MEANS AND METHODS**

City of Dixon will not have control over, be in charge of, nor be responsible for construction means, methods, techniques, sequences, or procedures, or for the safety precautions and programs in connection with the work, since these are solely Contractor's responsibility.

The City of Dixon or adjacent property owner may perform other work adjacent to or within the project area, concurrent with the Contractor's operations. The Contractor shall cooperate fully with City of Dixon in all operations which coincide with other work being performed, and provide City of Dixon with such scheduling and other information as may be required by City of Dixon to perform such other work. The Contractor shall conduct operations to minimize interference with the work of other forces or contractors performing such work. This work performed by a second contractor may include work which is incomplete or in dispute with the Contractor.

Any disputes or conflicts which may arise between the Contractor and any other forces or contractors retained by the City of Dixon, causing delays or hindrance to each other, shall be referred to the Engineer for resolution.

The City of Dixon shall have the right at any time during the progress of this work to take over and place in service any completed or partially completed portion of the work, notwithstanding the time for completion of the entire work or such portions which may not have expired; but such taking possession thereof shall not be deemed an acceptance of any of the work, nor work on those portions not completed in accordance with the Contract Documents.

## **SECTION 6: CONTROL OF MATERIALS**

### **6-1 GENERAL**

#### **6-1.01 SOURCE OF SUPPLY AND QUALITY OF MATERIALS**

The Contractor shall furnish all materials required to complete the work, except materials that are designated in the Specifications to be furnished by the City of Dixon and materials furnished by the City of Dixon in conformance with the provisions in Section 9-1.03, "Force Account Payment."

Only materials conforming to the requirements of the Contract Documents shall be incorporated in the work.

The materials furnished and used shall be new, except as may be provided elsewhere in the Contract Documents. The materials shall be manufactured, handled and used in a workmanlike manner to ensure completed work in accordance with the plans and Specifications.

Materials to be used in the work will be subject to inspection and tests by the Engineer or the Engineer's designated representative. The Contractor shall furnish without charge such samples as may be required.

The Contractor shall furnish the Engineer a list of the Contractor's sources of materials and the locations at which those materials will be available for inspection. The list shall be furnished to the Engineer in sufficient time to permit inspecting and testing of materials to be furnished from the listed sources in advance of their use. The Engineer may inspect, sample or test materials at the source of supply or other locations, but the inspection, sampling or testing will not be undertaken until the Engineer is assured by the Contractor of the cooperation and assistance of both the Contractor and the supplier of the material. The Contractor shall assure that the Engineer or the Engineer's authorized representative has free access at all times to the material to be inspected, sampled or tested. It is understood that the 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 guaranty of acceptance of the material nor of continued acceptance of material presumed to be similar to that upon which inspections and tests have been made, and that inspection and testing performed by the City of Dixon shall not relieve the Contractor or the Contractor's suppliers of responsibility for quality control.

Manufacturers' warranties, guaranties, instruction sheets and parts lists, which are furnished with certain articles or materials incorporated in the work, shall be delivered to the Engineer before acceptance of the Contract.

Reports and records of inspections made and tests performed, when available at the site of the work, may be examined by the Contractor.

## **6-1.02 CITY FURNISHED MATERIALS**

Materials which are listed as City of Dixon-furnished materials in the special provisions will be available to the Contractor free of charge.

The Contractor shall submit a written request to the Engineer for the delivery of City of Dixon-furnished material at least 15 days in advance of the date of its intended use, except that the written request for the delivery of City of Dixon-furnished sign panels for roadside signs and overhead sign structures shall be submitted at least 30 days in advance of their intended installation. The request shall state the quantity and the type of each material.

The City of Dixon-furnished materials will be available to the Contractor at a location designated in the special provisions. In those cases the materials shall be hauled to the site of the work by the Contractor at the Contractor's expense, including any necessary loading and unloading that may be involved. All costs of handling and placing City of Dixon-furnished material shall be considered as included in the price paid for the Contract item involving the City of Dixon-furnished material.

The Contractor shall be responsible for all City of Dixon-furnished materials furnished to the Contractor, and shall pay all demurrage and storage charges. City of Dixon-furnished materials lost or damaged from any cause whatsoever shall be replaced by the Contractor at the Contractor's expense. The Contractor shall be liable to the City of Dixon for the cost of replacing City of Dixon-furnished material, and those costs may be deducted from any moneys due or to become due the Contractor. All City of Dixon-furnished material that is not used on the work shall remain the property of the City of Dixon and shall be delivered to the location designated in the Special Provisions.

The Engineer may increase the number of sign panels in any shipment to provide economical use of the City of Dixon's transportation facilities.

The quantity of each type of City of Dixon-furnished paint required shall be determined by the Contractor subject to verification by the Engineer.

## **6-1.03 STORAGE OF MATERIALS**

Articles or materials to be incorporated in the work shall be stored in such a manner as to ensure the preservation of their quality and fitness for the work, and to facilitate inspection.

## **6-1.04 DEFECTIVE MATERIALS**

All materials which the Engineer has determined do not strictly conform to the requirements of the Contract Documents will be rejected whether in place or not. The rejected materials shall be removed immediately from the site of the work, unless otherwise permitted in writing by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used in the work, unless authorization in writing has been given by the Engineer. Upon failure of the Contractor to comply promptly with any order of the Engineer

made under the provisions in this section, the Engineer shall have authority to cause the removal and replacement of rejected material and to deduct the cost thereof from any moneys due or to become due the Contractor.

If nonconforming work, materials, or equipment not meeting the requirements and intent of the Contract Documents is discovered, and the Contractor fails to remedy the nonconforming work, materials, or equipment, or the City of Dixon agrees in writing to accept the nonconforming work, materials, or equipment, Contractor agrees to sign a Contract Change Order or otherwise reimburse City of Dixon in a sum equal to the cost to remedy the nonconforming work, materials, or equipment. It is expressly understood and agreed that the City of Dixon will be entitled to recover from Contractor the full cost of remedying nonconforming work, materials, or equipment, and that diminution in value will not be considered as a method for valuing the City of Dixon's damages for nonconforming work, materials, or equipment, and further that the doctrine of economic waste will not be a defense to the City of Dixon's recovery from Contractor of the full and complete cost and expense of remedying nonconforming work, materials, or equipment.

Re-examination of any work may be ordered by the Engineer, and such work must be uncovered by the Contractor. The Contractor shall pay the entire cost of such uncovering, re-examination, and replacement if the work does not conform to the Contract Documents.

#### **6-1.05 TRADE NAMES AND ALTERNATIVES**

For convenience in designation on the Contract Documents, certain articles or materials to be incorporated in the work may be designated under a trade name or the name of a manufacturer and the manufacturer's catalogue information. The use of an alternative article or material which is of equal or superior quality and of the required characteristics for the purpose intended will be permitted, subject to the following requirements:

The burden of proof as to the quality and suitability of alternatives shall be upon the Contractor, and the Contractor shall furnish all information necessary as required by the Engineer. The Engineer shall be the sole judge as to the quality and suitability of alternative articles or materials, and the Engineer's decision shall be final.

Whenever the Contract Documents permit the substitution of a similar or equivalent material or article, no tests or action relating to the acceptance of the substitute material 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 material or article proposed. Request for such substitution shall be made in writing by the Contractor within thirty (30) days of the Notice to Proceed. Failure by the Contractor to request substitution within thirty (30) days of the Notice to Proceed constitutes an agreement by Contractor to furnish only the materials or equipment listed in the Contract Documents. Until and unless such substitutions are authorized in writing by the Engineer, no deviations from the specifications shall be allowed.

### **6-1.06 PLANT INSPECTION**

The Engineer may inspect the production of material or the manufacture of products at the source of supply.

Plant inspection, however, will not be undertaken until the Engineer is assured of the cooperation and assistance of both the Contractor and the material producer. The Engineer or the Engineer's authorized representative shall have free entry at all times to those parts of the plant as concerns the manufacture or production of the materials. Adequate facilities shall be furnished free of charge to make the necessary inspection. The City of Dixon assumes no obligation to inspect materials at the source of supply.

### **6-1.07 CERTIFICATES OF COMPLIANCE**

A Certificate of Compliance shall be furnished prior to the use of any materials for which the Contract Documents require that a certificate be furnished. In addition, when so authorized in the Contract Documents, the Engineer may permit the use of certain materials or assemblies prior to sampling and testing if accompanied by a Certificate of Compliance. The certificate shall be signed by the manufacturer of the material or the manufacturer of assembled materials and shall state that the materials involved comply in all respects with the requirements of the Contract Documents. A Certificate of Compliance shall be furnished with each lot of material delivered to the work and the lot so certified shall be clearly identified in the certificate.

Materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material in the work which conforms to the requirements of the Contract Documents, and any material not conforming to the requirements will be subject to rejection whether in place or not.

The City of Dixon reserves the right to refuse to permit the use of material on the basis of a Certificate of Compliance.

The form of the Certificate of Compliance and its disposition shall be as directed by the Engineer.

### **6-1.08 FOREIGN MATERIALS**

Materials which are manufactured, produced or fabricated outside of the United States shall be delivered to a distribution point in California, unless otherwise required in the Contract Documents, where they shall be retained for a sufficient period of time to permit inspection, sampling and testing.

Attention is directed to the provisions in Section 8-1.07, "Liquidated Damages." The Contractor shall not be entitled to an extension of time for acts or events occurring outside of the United States, and it shall be the Contractor's responsibility to deliver materials



obtained from outside of the United States to the point of entry into the continental United States in sufficient time to permit timely delivery to the job site.

The Contractor, at no cost to the City of Dixon, shall supply the facilities and arrange for any testing required in California which the City of Dixon is not equipped to perform. All testing by the Contractor shall be subject to witnessing by the Engineer.

The manufacturer, producer or fabricator of foreign material shall furnish to the Engineer a Certificate of Compliance in conformance with the provisions in Section 6-1.07, "Certificates of Compliance." In addition, certified mill test reports clearly identifiable to the lot of material shall be furnished where required in the Contract Documents or otherwise requested by the Engineer.

If the welding of steel for structural steel members or the casting and prestressing of precast, prestressed concrete members is to be performed outside of the United States, the following requirements shall apply:

1. The fabrication shall be performed only within the plants and by fabricators who have previously established, to the satisfaction of the Engineer, that they have the experience, knowledge, trained manpower, quality controls, equipment and other facilities required to produce the quality and quantity of work required. At the option of the Engineer, prequalification of the plant and fabricator will be established either by the submission of detailed written proof thereof or through in-plant inspection by the Engineer or the Engineer's representative, or both.

2. The Contractor shall make written application to the Engineer for acceptance for the foreign fabrication at the earliest possible time and in no case later than 50 days in advance of the planned start of fabrication. The application shall list the specific units or portion of a work which will be fabricated outside of the United States.

3. The Contractor shall advise the Engineer, in writing, at least 20 days in advance of the actual start of any of the foreign fabrication.

4. All documents pertaining to the Contract, including but not limited to, correspondence, bid documents, working drawings and data shall be written in the English language and all numerical data shall use the International System of Units (SI) {United States Standard Measures} for measurement.

The use of steel manufactured outside of the United States as unidentified stock material, as provided in Section 55-2.07, "Unidentified Stock Material," will not be allowed.

#### **6-1.09 STATE SPECIFICATION NUMBERS**

The State Specification number of material furnished on the Contract shall conform to the number specified in these Specifications or the special provisions for the material involved, except that material conforming to a later specification issue will be acceptable.

## **6-2 LOCAL MATERIALS**

### **6-2.01 GENERAL**

Local material is rock, sand, gravel, earth or other mineral material, other than local borrow or selected material, obtained or produced from sources in the vicinity of the work specifically for use on the project. Local material does not include materials obtained from established commercial sources.

Local materials shall be furnished by the Contractor from any source the Contractor may elect, except that when mandatory local material sources of certain materials are designated in the Contract Documents, the Contractor shall furnish material from those designated mandatory sources.

The Contractor shall be responsible for making all arrangements necessary to obtain materials from any local material source other than a mandatory local material source. If the Contractor elects to obtain materials from a possible local material source, subject to the provisions in Section 6-2.02, "Possible Local Material Sources," the Contractor shall comply with the requirements of that section. If the Contractor elects to obtain material from any other non-mandatory source, the Contractor shall furnish the Engineer with satisfactory evidence that the Contractor has entered into an agreement with the property owner for obtaining material from that source and with copies of any necessary permits, licenses and environmental clearances before removing any material from those sources.

The furnishing of local materials from any source is subject to the provisions in Section 2-1.03, "Examination of Plans, Specifications, Contract, and Site of Work," and in Section 6-2, "Local Materials."

Unless described in the Contract Documents as a mandatory local material source, or authorized in writing by the Engineer, material sources shall not be excavated at locations where the resulting scars will present an unsightly appearance from any highway. No payment will be made for material obtained in violation of this provision.

The Contractor shall, at the Contractor's expense, make any arrangements necessary for hauling over local public and private roads from any source.

When requested by the Contractor in writing, the City of Dixon will test materials from any local material source, which has not been previously tested, at Contractor's cost and expense.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in conforming to the provisions in this Section 6-2.01, for furnishing and producing materials from any source shall be considered as included in the price paid for the Contract item of work involving the material and no additional compensation will be allowed therefor.

## **6-2.02 POSSIBLE LOCAL MATERIAL SOURCES**

Where the City of Dixon has made arrangements with owners of land in the vicinity of a project for the obtaining of material from an owner's property, the arrangements are made solely for the purpose of providing all Bidders an equal opportunity to obtain material from that property. Bidders or Contractors may, upon written request, inspect the documents evidencing those arrangements between property owners and the City of Dixon. The Contractor may, if the Contractor so elects, exercise any rights that have been obtained, which may be exercised by a Contractor under the arrangements, subject to and upon the conditions hereinafter set forth.

Arrangements made by the City of Dixon are not a part of the Contract, and it is expressly understood and agreed that the City of Dixon assumes no responsibility to the Bidder or Contractor whatsoever in respect to the arrangements made with the property owner to obtain materials therefrom and that the Contractor shall assume all risks in connection with the use of the property, the terms upon which the use shall be made, and there is no warranty or guaranty, either express or implied, as to the quality or quantity of materials that can be obtained or produced from the property or the type or extent of processing that may be required in order to produce material conforming to the requirements of the Contract Documents.

In those instances in which the City of Dixon has compiled "Materials Information" as referred to in Section 2-1.03, "Examination of Plans, Specifications, Contract, and Site of Work," the compilation may include the documents setting forth the arrangement made with some of the property owners for the obtaining of material from those owners' properties. The inclusion of these documents therein shall not in any respect operate as a waiver of any of the provisions in this Section 6-2.02 concerning the documents.

All necessary permits, licenses and environmental clearances needed to enable the Contractor to use a possible local material source for which the "Materials Information" compilation for the project does not include permits, licenses and environmental clearances issued to the City of Dixon (whether or not the arrangement made by the City of Dixon with the owner of the property is included in the compilation) shall be obtained by the Contractor, and copies thereof shall be furnished the Engineer before any material is removed from the source.

The Bidder and Contractor shall make such independent investigation and examination as the Contractor deems necessary to be satisfied as to the quality and quantity of materials available from the property, the type and extent of processing that may be required in order to produce material conforming to the requirements of the Contract Documents and the rights, duties and obligations acquired or undertaken under the arrangement with the property owner.

Notwithstanding that the Contractor may elect to obtain materials from any such property owner's property, no material may be obtained from the property unless the Contractor has first either:

1. Executed a document that will guarantee to hold the owner harmless from all claims for injury to persons or damage to property resulting from the Contractor's operations on the property owner's premises and also agree to conform to all other provisions set forth in the arrangement made between the City of Dixon and the property owner, or
2. Entered into an agreement with the owner of the material source on any terms mutually agreeable to the owner and the Contractor, provided that the Contractor shall furnish to the Engineer a release, in a form satisfactory to the Engineer, executed by the owner, relieving the City of Dixon of any and all obligations under the City of Dixon's arrangement with the owner.

If the Contractor elects to obtain material under (1), the use of the site shall be subject to the terms, conditions and limitations of the arrangement made between the property owner and the City of Dixon, and the Contractor shall pay the charges as are provided for in the arrangement made by the City of Dixon with the property owner. Deductions will be made from any moneys due or that may become due the Contractor under the Contract sufficient to cover the charges for the material removed.

If the Contractor elects to obtain material under (2), the Contractor shall pay the charges as are provided for in the agreement between the owner and the Contractor, and deductions will not be made from any moneys due or that may become due the Contractor under the Contract to cover the charges.

Before acceptance of the Contract, the Engineer may require the Contractor to submit written evidence that the owner of the material source is satisfied that the Contractor has satisfactorily complied with the provisions of either— (1), the arrangement between the City of Dixon and the owner, or (2), the agreement between the owner and the Contractor, as the case may be.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in furnishing and producing specified materials from possible local material sources, including the construction of any access roads or fences and any clearing, grubbing and stripping of material sources, and all processing of whatever nature and extent required, shall be considered as included in the price paid for the Contract item of work involving the material and no additional compensation will be allowed therefore.

### **6-2.03 MANDATORY LOCAL MATERIAL SOURCES**

The Contractor shall perform all work required to obtain and produce acceptable materials from the mandatory local material sources designated in the Contract Documents and shall have no right to obtain the materials from any other source or sources. As part of the work in producing acceptable materials from the mandatory sources, it will be necessary for the Contractor to perform certain processing of the material as set forth in the Contract

Documents. Any processing of the material required in addition to that specified in the Contract Documents which, in the opinion of the Engineer, is necessary to produce acceptable material from the mandatory sources will be paid for as extra work as provided in Section 4-1.03D.

If the Engineer determines that the designated mandatory local material source or sources are no longer to be used because they are exhausted or for other reasons, the Engineer will designate an alternative mandatory local material source or sources from which the Contractor shall obtain the balance of the material required.

In this case the City of Dixon will pay the Contractor for the cost of moving the Contractor's plant to the new mandatory source and erecting the plant as extra work as provided in Section 4-1.03D. Construction of access roads, fences, clearing and grubbing or stripping of the new mandatory source, ordered by the Engineer to be performed, will be paid for as extra work as provided in Section 4-1.03D. The City of Dixon will also allow or deduct, as the case may be, the increase or decrease in haul cost due to an increase or decrease in the length of haul involved. Increased haul costs will be paid for as extra work as provided in Section 4-1.03D, and deductions for decreased haul will be determined in the same manner. No allowance or additional compensation will be made for lost time or for delay in completing the work due to moving the Contractor's plant from the designated mandatory source to the alternative mandatory source, other than an extension of time pursuant to the provisions in Section 8-1.07, "Liquidated Damages." Any processing of the material required in addition to that specified in the special provisions for the originally designated mandatory source which, in the opinion of the Engineer, is necessary to produce acceptable material from the alternative mandatory source will be paid for as extra work as provided in Section 4-1.03D. The Contractor will be charged the same royalty as provided in the special provisions for the original designated mandatory local material source.

The Contractor shall, prior to entering a mandatory local material source or an alternative mandatory local material source, execute a document that will guarantee to hold the owner of the property harmless from all claims for injury to persons or damage to property resulting from the Contractor's operations on the property owner's premises. The document will be prepared by the Engineer for execution by the Contractor.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in obtaining and producing specified materials from mandatory sources, including the construction of any access roads or fences and any clearing, grubbing and stripping of mandatory local material sources, except as otherwise provided for in this Section 6-2.03, shall be considered as included in the price paid for the Contract item of work involving the material and no additional compensation will be allowed therefor.

## **6-3 TESTING**

### **6-3.01 GENERAL**

All materials incorporated in the project shall meet the requirements of tests specified in the Standard Specifications and other minimum requirements specified herein or in the Contract documents.

The Contractor shall furnish written laboratory reports from a reputable testing or inspection agency, or written certification from the manufacturer as to compliance with the Specifications as to the composition, durability and performance of the all materials used in the project. Certain specification sections may require special items or materials to be included in the submittal. Reference is made to the Technical Specifications for specific instructions.

These reports on any material must be submitted to the Engineer in writing and approved by the Engineer before incorporating that material in the work. All materials shall be adequately identified by tags or other means as that material which has been tested and approved. Lack of proper identification shall be considered adequate cause for rejection of any material, which cannot be properly inspected on the job.

The City reserves the right to make such additional inspections or tests as it may require prior to acceptance of any materials, and also reserves the right to reject any material previously approved because of serious defects or damage discovered subsequent to such acceptance. Any material rejected by the City shall immediately be removed from the job site, and no payment will be allowed therefor.

The Contractor shall bear the expense for all unsatisfactory tests and deductions will be made from any moneys due or to become due the Contractor, sufficient to cover the cost of the tests.

Unless otherwise specified, all tests shall be performed in accordance with the methods used by the City of Dixon and shall be made by the Engineer or the Engineer's designated representative.

The State of California has developed methods for testing the quality of materials and work. These methods are identified by number and are referred to in the Specifications as California Test. Copies of individual California Tests are available at the Transportation Laboratory, Sacramento, California, and will be furnished to interested persons upon request.

Whenever the Specifications require compliance with specified values for the following properties, tests will be made by the California Test indicated unless otherwise specified:

Properties	California Test
Relative Compaction	216 or 231
Sand Equivalent	217
Resistance (R-value)	301
Grading (Sieve Analysis)	202
Durability Index	229

Whenever a reference is made in the Specifications to a California Test by number, it shall mean the California Test in effect on the day the Notice to Bidders for the work is dated.

Whenever the Specifications provide an option between two (2) or more tests, the Engineer will determine the test to be used.

Whenever a reference is made in the Specifications to a specification, manual or test designation either of the American Society for Testing and Materials, the American Association of State Highway and Transportation Officials, Federal Specifications or any other recognized national organization, and the number or other identification representing the year of adoption or latest revision is omitted, it shall mean the specification, manual or test designation in effect on the day the Notice to Bidders for the work is dated. Whenever the specification, manual or test designation provides for test reports (such as certified mill test reports) from the manufacturer, copies of those reports, identified as to the lot of material, shall be furnished to the Engineer. The manufacturer's test reports shall supplement the inspection, sampling and testing provisions in Section 6, "Control of Materials," and shall not constitute a waiver of the City of Dixon's right to inspect. When material which cannot be identified with specific test reports is proposed for use, the Engineer may, at the Engineer's discretion, select random samples from the lot for testing. Test specimens from the random samples, including those required for retest, shall be prepared in accordance with the referenced specification and furnished by the Contractor at the Contractor's expense. The number of the samples and test specimens shall be entirely at the discretion of the Engineer. Unidentified metal products, such as sheet, plate and hardware shall be subject to the requirements of Section 55-2.07, "Unidentified Stock Material."

When requested by the Engineer, the Contractor shall furnish, without charge, samples of all materials entering into the work, and no material shall be used prior to acceptance by

the Engineer, except as provided in Section 6-1.07, "Certificates of Compliance." Samples of material from local sources shall be taken by or in the presence of the Engineer; otherwise, the samples will not be considered for testing.

### **6-3.02 TESTING BY CONTRACTOR**

The Contractor shall be responsible for controlling the quality of the material entering the work and of the work performed, and shall perform testing as necessary to ensure control. The test methods used for quality control testing shall be as determined by the Contractor.

The results of the testing shall be made available to the Engineer upon request. These tests are for the Contractor's use in controlling the work and will not be accepted for use as acceptance tests.

Full compensation for performing quality control tests and making the results available to the Engineer shall be considered as included in the Contract prices paid for the various items of work involved and no additional compensation will be allowed therefor.



## **SECTION 7: LEGAL RELATIONS AND RESPONSIBILITY**

### **7-1.01 LAWS TO BE OBSERVED**

The Contractor shall keep fully informed of all existing and future laws, ordinances and regulations 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, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. The Contractor shall at all times observe and comply with, and shall cause all the Contractor's agents and employees to observe and comply with all existing and future laws, ordinances, regulations, orders and decrees of bodies or tribunals having any jurisdiction or authority over the work; and shall protect and indemnify the City of Dixon, and all officers and employees thereof connected with the work, including but not limited to the Director and the Engineer, against any claim or liability arising from or based on the violation of any law, ordinance, regulation, order or decree, whether by the Contractor or the Contractor's employees. If any discrepancy or inconsistency is discovered in the Contract Documents for the work in relation to any law, ordinance, regulation, order or decree, each Bidder and the Contractor shall forthwith report the same to the Engineer in writing.

#### **7-1.01A LABOR CODE REQUIREMENTS**

Attention is directed to the following requirements of the Labor Code:

##### **7-1.01A(1) HOURS OF LABOR**

Eight hours labor constitutes a legal day's work. The Contractor or any subcontractor under the Contractor shall forfeit, as a penalty to the State of California, \$25 for each worker employed in the execution of the Contract by the respective Contractor or subcontractor for each calendar day during which that worker 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 the requirements of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, 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 thereof.

##### **7-1.01A(2) PREVAILING WAGE**

The Contractor and any subcontractor under the Contractor shall comply with Labor Code Sections 1774 and 1775. Pursuant to Section 1775, the Contractor and any subcontractor under the Contractor shall forfeit to the City of Dixon or political subdivision on whose behalf the Contract is made or awarded a penalty of not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the Contract by the Contractor or by any subcontractor under the Contractor in violation of the requirements of the Labor Code and

in particular, Labor Code Sections 1770 to 1780, inclusive. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Contractor or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Contractor or subcontractor in meeting their respective prevailing wage obligations, or the willful failure by the Contractor or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Contractor or subcontractor had knowledge of the obligations under the Labor Code. In addition to the penalty and pursuant to Labor Code Section 1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor or subcontractor. If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, the prime Contractor of the project is not liable for the penalties described above unless the prime Contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime Contractor fails to comply with all of the following requirements:

1. The Contract executed between the Contractor and the subcontractor for the performance of work on the public works project shall include a copy of the requirements in Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 of the Labor Code.
2. The Contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.
3. Upon becoming aware of the subcontractor's failure to pay the specified prevailing rate of wages to the subcontractor's workers, the Contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.
4. Prior to making final payment to the subcontractor for work performed on the public works project, the Contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to the subcontractor's employees on the public works project and any amounts due pursuant to Section 1813 of the Labor Code.

Pursuant to Section 1775 of the Labor Code, the Division of Labor Standards Enforcement shall notify the Contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages. If the Division of Labor Standards Enforcement determines that employees of a subcontractor were not paid the general prevailing rate of per diem wages and if the City of Dixon did not retain sufficient money under the Contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the Contractor shall withhold an amount of moneys due the subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by the Division

of Labor Standards Enforcement. The Contractor shall pay any money retained from and owed to a subcontractor upon receipt of notification by the Division of Labor Standards Enforcement that the wage complaint has been resolved. If notice of the resolution of the wage complaint has not been received by the Contractor within 180 days of the filing of a valid notice of completion or acceptance of the public works project, whichever occurs later, the Contractor shall pay all moneys retained from the subcontractor to the City of Dixon. These moneys shall be retained by the City of Dixon pending the final decision of an enforcement action.

Pursuant to the requirements in Section 1773 of the Labor Code, the City of Dixon has obtained the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided for in Section 1773.8 of the Labor Code, apprenticeship or other training programs authorized by Section 3093 of the Labor Code, and similar purposes) applicable to the work to be done, for straight time, overtime, Saturday, Sunday and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of workmen concerned.

The general prevailing wage rates and any applicable changes to these wage rates are available at the City of Dixon, Engineering Department. General prevailing wage rates are also available from the California State Department of Industrial Relations' Internet Web Site at: <http://www.dir.ca.gov>.

The wage rates determined by the Director of Industrial Relations for the project refer to expiration dates. Prevailing wage determinations with a single asterisk after the expiration date are in effect on the date of advertisement for bids and are good for the life of the Contract. Prevailing wage determinations with double asterisks after the expiration date indicate that the wage rate to be paid for work performed after this date has been determined. If work is to extend past this date, the new rate shall be paid and incorporated in the Contract. The Contractor shall contact the Department of Industrial Relations as indicated in the wage rate determinations to obtain predetermined wage changes.

Pursuant to Section 1773.2 of the Labor Code, general prevailing wage rates shall be posted by the Contractor at a prominent place at the site of the work.

Changes in general prevailing wage determinations which conform to Labor Code Section 1773.6 and Title 8 California Code of Regulations Section 16204 shall apply to the project when issued by the Director of Industrial Relations at least 10 days prior to the date of the Notice to Bidders for the project.

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

### **7-1.01A(2)(A) TRAVEL AND SUBSISTENCE PAYMENTS**

Attention is directed to the requirements in Section 1773.8 of the Labor Code. The Contractor shall make travel and subsistence payments to each workman, needed to execute the work, in conformance with the requirements in Labor Code Section 1773.8.

Full compensation for conforming to the requirement of this section shall be considered as included in the prices paid for the various contract items of work involved and no additional compensation will be allowed, therefore.

### **7-1.01A(3) PAYROLL RECORDS**

Attention is directed to the requirements in Labor Code Section 1776, a portion of which is quoted below. Regulations implementing Labor Code Section 1776 are located in Sections 16016 through 16019 and Sections 16207.10 through 16207.19 of Title 8, California Code of Regulations.

“(a) Each Contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct.
- (2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

- (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
- (2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the Contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
- (3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding

the Contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the Contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(d) A Contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in a manner so as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or the subcontractor performing the Contract shall not be marked or obliterated.

(f) The Contractor shall inform the body awarding the Contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The Contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the Contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the Contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section."

The penalties specified in subdivision (g) of Labor Code Section 1776 for noncompliance with the requirements in Section 1776 may be deducted from any moneys due or which may become due to the Contractor.

A copy of all payrolls shall be submitted weekly to the Engineer unless otherwise specified by the Engineer in writing. Payrolls shall contain the full name, address and social security number of each employee, the employee's correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's

address and social security number need only appear on the first payroll on which that name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or the employer's agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the Contract. The "Statement of Compliance" shall be on a form approved by the Engineer. The Contractor shall be responsible for the submission of copies of payrolls of all subcontractors.

If by the 15th of the month, the Contractor has not submitted satisfactory payrolls for all work performed during the monthly period ending on or before the 1st of that month, the City of Dixon may retain an amount equal to 10 percent of the estimated value of the work performed (exclusive of Mobilization) during the month from the next monthly estimate, except that this retention shall not exceed \$10,000 nor be less than \$1,000. Retentions for failure to submit satisfactory payrolls shall be additional to all other retentions provided for in the Contract. The retention for failure to submit payrolls for any monthly period will be released for payment on the monthly estimate for partial payments next following the date that all the satisfactory payrolls for which the retention was made are submitted.

The Contractor and each subcontractor shall preserve their payroll records for a period of 3 years from the date of completion of the Contract.

#### **7-1.01A(4) LABOR NONDISCRIMINATION**

Attention is directed to Section 1735 of the Labor Code, which reads as follows:

"No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical handicap, 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."

Attention is directed to the following "Nondiscrimination Clause" that is required by Chapter 5 of Division 4 of Title 2, California Code of Regulations.

#### **NONDISCRIMINATION CLAUSE**

1. During the performance of this Contract, Contractor and its SUBCONTRACTORS shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Contractors and SUBCONTRACTORS shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and SUBCONTRACTORS shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, Section 12990 et seq.) and the

applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its SUBCONTRACTORS shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

2. The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

### **7-1.01A(5) APPRENTICES**

Attention is directed to Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code and Title 8, California Code of Regulations Section 200 et seq. To ensure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, each Contractor or subcontractor should, where some question exists, contact the Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, CA 94102, or one of its branch offices prior to commencement of work on the public works Contract. Responsibility for compliance with this section lies with the Contractor.

It is City of Dixon policy to encourage the employment and training of apprentices on public works Contracts as may be permitted under local apprenticeship standards.

A. Only registered apprentices within a written agreement in an approved apprentice-training program providing no less than 2,000 hours of continuous employment and education are eligible for employment on public works (in compliance with Labor Section 3077).

B. A contractor is no longer required to submit Form DAS-7, but must submit award information to the local applicable joint apprenticeship committee. The award information must include:

1. an estimate of the journeyman hours;
2. the number of apprentices to be employed; and
3. the approximate dates of apprentice employment.

C. The minimum statutory 1:5 hourly ratio of work stipulates that no less than one hour of apprentice work for every five hours of journeyman labor on any day of work. (Any journeyman work performed beyond 8 hours per day or 40 hours per week shall not be used to calculate the hourly ratio).

This section shall not apply to specialty contractors or general contractors whose contracts involve less than Thirty Thousand Dollars (\$30,000.00) or 20 working days.

The Division of Apprenticeship Standards may grant a certificate exempting the contractor from the minimum 1:5 hourly ratios under any one of the following:

1. Unemployment exceeds an average of 15% in the area for the previous 3-month period;
2. The number of apprentices in training in such area exceeds a ratio of 1:5;
3. The apprentice able craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either locally or statewide;
4. The specific task would jeopardize the apprentice's life or public safety or no training can be provided to an apprentice by a journeyman for the specific task.

D. Apprentices employed on public works projects can only be assigned to perform work of the craft or trade to which the apprentice is registered.

E. All contractors with employees in any apprentice able occupation, regardless of the actual employment of journeymen or apprentices for the awarded public work, must either contribute to the local training trust fund or to the California Apprenticeship Council, P.O. Box 603, San Francisco, CA 94101 (as set forth in Section 227).

F. All violations of Section 1777.5 shall pay a civil penalty of Fifty Dollars (\$50.00) for each calendar day of noncompliance.

All willful violations of Section 1777.5 shall pay the \$50.00 fine for each calendar day of noncompliance and shall be denied the right to bid on, or to receive, any public works contract for a period of up to one year for the first violation and up to three years for any additional violations.

Compliance disputes arising under Section 177.5 shall be adjudicated under 8 California Code of Regulations, Article 1.

G. Within five (5) days of a public works contract award, the awarding agency must send a copy of the award to the Division of Apprenticeship Standards under Section 1773.3.

Within five (5) days of finding any discrepancy regarding the hourly ratio of apprentices to journeymen, the awarding agency shall notify the Division of Apprenticeship Standards.

H. The Contractor shall be responsible for compliance for all occupations within these sections where apprenticeships may apply.



### **7-1.01A(6) WORKERS' COMPENSATION**

Pursuant to the requirements in Section 1860 of the Labor Code, the Contractor will be required to secure the payment of workers' compensation to the Contractor's employees in conformance with the requirements in Section 3700 of the Labor Code.

Prior to the commencement of work, the Contractor shall sign and file with the Engineer a certification in the following form:

"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."

This certification is incorporated in the Contract by reference, and signature and return of the Contract as provided in Section 3-1.03, "Execution of Contract," shall constitute signing and filing of the certificate.

### **7-1.01A(7) SUITS TO RECOVER PENALTIES AND FORFEITURES**

Attention is directed to Sections 1730 to 1733, inclusive, of the Labor Code concerning suits to recover amounts withheld from payment for failure to comply with requirements of the Labor Code or Contract provisions based on those laws.

Those sections provide that a suit on the Contract for alleged breach thereof in not making the payment is the exclusive remedy of the Contractor or the Contractor's assignees with reference to amounts withheld for those penalties or forfeitures; and that the suit must be commenced and actual notice thereof received by the awarding authority prior to 90 days after completion of the Contract and the formal acceptance of the job.

### **7-1.01B FAIR LABOR STANDARDS ACT**

The attention of Bidders is invited to the fact that the City of Dixon has been advised by the Wage and Hour Division, U.S. Department of Labor, that Contractors engaged in highway construction work are required to meet the provisions of the Fair Labor Standards Act of 1938 and as amended (52 Stat. 1060).

### **7-1.01C CONTRACTOR'S LICENSING LAWS**

Attention is directed to the provisions of Chapter 9 of Division 3 of the Business and Professions Code concerning the licensing of Contractors. Contractor shall be properly licensed at all times during the performance of the work and performance of the Contract.

All Bidders and Contractors shall be licensed in accordance with the laws of this State and any bidder or Contractor not so licensed is subject to the penalties imposed by those laws.

Attention is also directed to the requirements in Public Contract Code Section 10164. In all projects where Federal funds are involved, the Contractor shall be properly licensed at the time the Contract is awarded.

#### **7-1.01D VEHICLE CODE**

Pursuant to the authority contained in Vehicle Code Section 591, the City of Dixon has determined that within those areas that are within the limits of the project and are open to public traffic, the Contractor shall comply with all the requirements set forth in Divisions 11, 12, 13, 14 and 15 of the Vehicle Code. The Contractor shall also comply with all requirements in the Dixon Traffic Ordinance, Chapter 12 of the Municipal Code.

Attention is directed to the statement in Vehicle Code Section 591 that this section shall not relieve the Contractor or any person from the duty of exercising due care. The Contractor shall take all necessary precautions for safe operation of the Contractor's equipment and the protection of the public from injury and damage from the Contractor's equipment.

#### **7-1.01E TRENCH SAFETY**

Attention is directed to the requirements in Section 6705 of the Labor Code concerning trench excavation safety plans.

The Contractor is warned that when the work involves existing sewers and appurtenances that have been exposed to sewage and industrial wastes, these facilities shall be considered contaminated with disease-causing organisms. Personnel in contact with contaminated facilities, debris, waste water, or similar items shall be advised by the Contractor of the necessary precautions that must be taken to avoid becoming diseased. It is the Contractor's responsibility to urge his/her personnel to observe a strict regimen of proper hygienic precautions, including any inoculations recommended by the local public health officer.

Because of the potential danger of solvents, gasoline, and other hazardous material in the existing sewers and storm drain pipes, these areas shall be considered hazardous. The Contractor shall be aware of these dangers and shall comply with Article 108, "Confined Spaces," of the General Industrial Safety Orders contained in Title 8 of the California Administrative Code.

In the event that this Contract requires the excavation of any trench or trenches in excess of five feet in depth, Contractor shall prepare a detailed design plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trenches. Said detailed design plan and subsequent excavating operations shall fully comply with all local, state and federal regulations including, but not limited to, the Construction Safety Orders, Section 1539, Permits and Section 1540 et seq., Excavation.

### **7-1.01F AIR POLLUTION CONTROL**

The Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any work performed pursuant to the Contract, including any air pollution control rules, regulations, ordinances and statutes, specified in Section 11017 of the Government Code.

Unless otherwise provided in the special provisions, material to be disposed of shall not be burned, either inside or outside the highway right of way.

### **7-1.01G WATER POLLUTION**

The Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, bays, and coastal waters from pollution with fuels, oils, bitumens, calcium chloride and other harmful materials and shall conduct and schedule operations so as to avoid or minimize muddying and silting of streams, lakes, reservoirs, bays and coastal waters. Care shall be exercised to preserve roadside vegetation beyond the limits of construction.

Water pollution control work is intended to provide prevention, control and abatement of water pollution to streams, waterways and other bodies of water, and shall consist of constructing those facilities which may be shown on the plans, specified herein or in the special provisions, or directed by the Engineer.

In order to provide effective and continuous control of water pollution it may be necessary for the Contractor to perform the Contract work in small or multiple units, on an out of phase schedule, and with modified construction procedures. The Contractor shall provide temporary water pollution control measures, including but not limited to, dikes, basins, ditches, and applying straw and seed, which become necessary as a result of the Contractor's operations. The Contractor shall coordinate water pollution control work with all other work done on the Contract.

Before starting any work on the project, the Contractor shall submit, for acceptance by the Engineer, a program to control water pollution effectively during construction of the project. The program shall show the schedule for the erosion control work included in the Contract and for all water pollution control measures which the Contractor proposes to take in connection with construction of the project to minimize the effects of the operations upon adjacent streams and other bodies of water. The Contractor shall not perform any clearing and grubbing or earthwork on the project, other than that specifically authorized in writing by the Engineer, until the program has been reviewed and accepted.

If the measures being taken by the Contractor are inadequate to control water pollution effectively, the Engineer may direct the Contractor to revise the operations and the water pollution control program. No further work shall be performed on those items until the

water pollution control measures are adequate and, if also required, a revised water pollution control program has been reviewed and accepted.

The Engineer will notify the Contractor of the acceptance or rejection of any submitted or revised water pollution control program.

The City of Dixon will not be liable to the Contractor for failure to accept all or any portion of an originally submitted or revised water pollution control program, nor for any delays to the work due to the Contractor's failure to submit an acceptable water pollution control program.

The Contractor may request the Engineer to waive the requirement for submission of a written program for control of water pollution when the nature of the Contractor's operation is such that erosion is not likely to occur. Waiver of this requirement will not relieve the Contractor from responsibility for compliance with the other provisions of this section. Waiver of the requirement for a written program for control of water pollution will not preclude requiring submittal of a written program at a later time if the Engineer deems it necessary because of the effect of the Contractor's operations.

Unless otherwise authorized by the Engineer in writing, the Contractor shall not expose a total area of erodible earth material, which may cause water pollution, exceeding 70 000 m<sup>2</sup> {750,000 square feet} for each separate location, operation or spread of equipment before either temporary or permanent erosion control measures are accomplished.

Where erosion which will cause water pollution is probable due to the nature of the material or the season of the year, the Contractor's operations shall be so scheduled that permanent erosion control features will be installed concurrently with or immediately following grading operations.

Nothing in the terms of the Contract Documents nor in the provisions in this Section 7-1.01G shall relieve the Contractor of the responsibility for compliance with Sections 5650 and 12015 of the Fish and Game Code, or other applicable statutes relating to prevention or abatement of water pollution.

When borrow material is obtained from other than commercially operated sources, erosion of the borrow site during and after completion of the work shall not result in water pollution. The material source shall be finished, where practicable, so that water will not collect or stand therein.

The requirements of this section shall apply to all work performed under the Contract and to all non-commercially operated borrow or disposal sites used for the project.

The Contractor shall also conform to the following provisions:

1. Where working areas encroach on live streams, barriers adequate to prevent the flow of muddy water into streams shall be constructed and maintained between working areas and

streams, and during construction of the barriers, muddying of streams shall be held to a minimum.

2. Removal of material from beneath a flowing stream shall not be commenced until adequate means, such as a bypass channel, are provided to carry the stream free from mud or silt around the removal operations.

3. Should the Contractor's operations require transportation of materials across live streams, the operations shall be conducted without muddying the stream. Mechanized equipment shall not be operated in the stream channels of the live streams except as may be necessary to construct crossings or barriers and fills at channel changes.

4. Water containing mud or silt from aggregate washing or other operations shall be treated by filtration, or retention in a settling pond, or ponds, adequate to prevent muddy water from entering live streams.

5. Oily or greasy substances originating from the Contractor's operations shall not be allowed to enter or be placed where they will later enter a live stream.

6. Portland cement or fresh Portland cement concrete shall not be allowed to enter flowing water of streams.

7. When operations are completed, the flow of streams shall be returned as nearly as possible to a meandering thread without creating possible future bank erosion, and settling pond sites shall be graded so they will drain and will blend in with the surrounding terrain.

8. Material derived from roadway work shall not be deposited in a live stream channel where it could be washed away by high stream flows.

9. Where there is possible migration of anadromous fish in streams affected by construction on the project, the Contractor shall conduct work operations so as to allow free passage of the migratory fish.

Compliance with the provisions in this section shall in no way relieve the Contractor from the responsibility to comply with the other provisions of the Contract, in particular the responsibility for damage and for preservation of property.

Full compensation for conforming to the provisions in this section shall be considered as included in the prices paid for the various items of work and no additional compensation will be allowed therefore.

#### **7-1.01H USE OF PESTICIDES**

The Contractor shall comply with all rules and regulations of the Department of Food and Agriculture, the Department of Health, the Department of Industrial Relations and all other agencies which govern the use of pesticides required in the performance of the work on the Contract.

Pesticides shall include but shall not be limited to herbicides, insecticides, fungicides, rodenticides, gerrnicides, nematocides, bactericides, inhibitors, fumigants, defoliants, desiccants, soil sterilants and repellents.

Any substance or mixture of substances intended for preventing, repelling, mitigating, or destroying weeds, insects, diseases, rodents, or nematodes and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant shall be considered a pesticide.

#### **7-1.01I SOUND CONTROL REQUIREMENTS**

The Contractor shall comply with all local sound control and noise level laws, rules, regulations and ordinances, which apply to any work performed pursuant to the Contract.

Each internal combustion engine, used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler.

The noise level from the Contractor's operations, between the hours of 9:00 p.m. and 7:00 a.m. shall not exceed 50 dBA and between the hours of 7:00 a.m. and 9:00 p.m. shall not exceed 80 dBA at a distance of 50 feet.

Said noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings except those required by safety laws for the protection of personnel.

Full compensation for conforming to the requirements of this section shall be considered as included in the prices paid for the various contract items of work involved and no additional compensation will be allowed therefore.

#### **7-1.01J ASSIGNMENT OF ANTITRUST ACTIONS**

The Contractor's attention is directed to the following requirements in Public Contract Code 7103.5 and Government Code Sections 4553 and 4554, which shall be applicable to the Contractor and the Contractor's subcontractors:

"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.

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action."

### **7-1.02 LOAD LIMITATIONS**

Unless expressly permitted in the special provisions, construction equipment or vehicles of any kind which, laden or unladen, exceed the maximum weight limitations set forth in Division 15 of the Vehicle Code, shall not be operated over completed or existing treated bases, surfacing, pavement or structures in any areas within the limits of the project, whether or not the area is subject to weight limitations under Section 7-1.01D, "Vehicle Code," except as hereinafter provided in this Section 7-1.02.

After application of the curing seal, no traffic or Contractor's equipment will be permitted on cement treated base or lean concrete base for a period of 72 hours. After 72 hours, traffic and equipment operated on the base shall be limited to that used in paving operations and placing additional layers of cement treated base. No traffic or Contractor's equipment will be permitted on treated permeable base except for that equipment required to place the permeable base and the subsequent layer of pavement. Trucks used to haul treated base, Portland cement concrete, or asphalt concrete shall enter onto the base to dump at the nearest practical entry point ahead of spreading equipment. Empty haul trucks shall exit from the base at the nearest practical exit point. Entry and exit points shall not be more than 300 m {1,000 feet} ahead of spreading equipment except in locations where Specifications prohibit operation of trucks outside the area occupied by the base or where steep slopes or other conditions preclude safe operation of hauling equipment. In those locations, entry and exit points shall be established at the nearest point ahead of spreading equipment permitted by Specifications and allowing safe operation of hauling equipment. Damage to curing seal or base shall be repaired promptly by the Contractor, at the Contractor's expense, as directed by the Engineer.

Within the limits of the project and subject to the control of the Engineer, and provided that the Contractor, at the Contractor's expense, shall provide such protective measures as are

deemed necessary by the Engineer and shall repair any damage caused by the operations, the Contractor will be permitted to:

1. Make transverse crossings of those portions of an existing public road or street that are within the highway right of way, with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code.
2. Make transverse crossings of treated bases, surfacing or pavement which are under construction or which have been completed, with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code.
3. Cross bridge structures that are not open to public traffic and which are designed for HS20-44 Live Loading (culverts and pipes excluded), with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code, but not exceeding the load limitations hereinafter specified, provided that the Contractor furnishes to the Engineer the dimensions and maximum axle loadings of equipment proposed for use on bridge structures:

(a) The maximum loading on bridge structures due to pneumatic-tired truck and trailer combinations shall not exceed (1) 12 700 kg {28,000 pounds} for single axles, (2) 21 700 kg {48,000 pounds} for tandem axles, nor (3) 27 200 kg {60,000 pounds} total gross load for single vehicles or 50 000 kg {110,000 pounds} total gross load for truck and trailer or semi-trailer combinations.

(b) The loading on bridge structures due to 2 and 3 axle pneumatic-tired earthmovers shall not exceed that shown in the following table.

Allowable Construction Loading On Bridges For 2 and 3 Axle Earthmovers	
Spacing of Bridge Girders (center to center in meters {feet})	Maximum Axle Loading (in kilograms {pounds})
1.2 {4}	12 700 {28,000}
1.5 {5}	13 100 {29,000}
1.8 {6}	13 600 {30,000}
2.1 {7}	14 500 {32,000}



2.4 {8}	15 400 {34,000}
2.7 {9}	16 700 {37,000}
3.0 {10} and over	18 000 {40,000}
Minimum axle spacing: For 3-axle earthmovers Axles 1 to 2 = 2.4 m {8 feet} Axles 2 to 3 = 6.1 m {20 feet} For 2-axle earthmovers Axles 1 to 2 = 6.1 m {20 feet}	

4. Move equipment within the limits of the project over completed or existing base, surfacing, pavement and structures, whether or not open to the public, in accordance with the limitations and conditions in the "Permit Policy" of the City of Dixon of Transportation.

Within the limits of the project and subject to the condition that the Contractor shall repair, at the Contractor's expense, any damage caused thereby, the Contractor will be permitted to cross culverts and pipes with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code in accordance with the conditions set forth on the plans. If the conditions are not set forth on the plans, the provisions in the first paragraph in this Section 7-1.02 will apply.

Should the Contractor desire to increase the load carrying capacity of a structure or structures which are to be constructed as a part of the Contract, in order to facilitate the Contractor's own operations, the Contractor may request the Engineer to consider redesigning the structure or structures. Proposals by the Contractor to increase the load carrying capacity of structures above 59 000 kg {130,000 pounds} per single axle or pair of axles less than 2.4 m {8 feet} apart, or above 149 000 kg {330,000 pounds} total gross vehicle weight, will not be approved. The request shall include a description of the structure or structures involved and a detailed description of the overloads to be carried, the date the revised plans would be required, and a statement that the Contractor agrees to pay all costs involved in the strengthening of the structure or structures, including the cost of revised plans, and further that the Contractor agrees that no extension of time will be allowed by reason of any delay to the work which may be due to the alteration of the structure or structures. If the Engineer determines that strengthening the structure or structures will be permitted, the Engineer will inform the Contractor of the estimated cost of the alterations, including engineering, and the date that revised plans could be furnished. If the cost and date are satisfactory to the Contractor, the Engineer will prepare a change order providing for the agreed upon alterations.

Pursuant to the authority contained in Section 591 of the Vehicle Code, the Department has determined that, within such areas as are within the limits of the project and are open to public traffic, the Contractor shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Attention is directed to the statements in Section 591 that this section shall not relieve him or any person from the duty of exercising due care. The Contractor shall take all necessary precautions for safe operation of his/her equipment and the protection of the public from injury and damage from such equipment.

### **7-1.03 PAYMENT OF TAXES**

The Contract prices paid for the work shall include full compensation for all taxes which the Contractor is required to pay, whether imposed by Federal, State or local government, including, without being limited to, Federal excise tax. No tax exemption certificate nor any document designed to exempt the Contractor from payment of any tax will be furnished to the Contractor by the City of Dixon, as to any tax on labor, services, materials, transportation, or any other items furnished pursuant to the Contract.

### **7-1.04 PERMITS AND LICENSES**

The City will waive all required City of Dixon permit fees for this project.

Prior to award of the Contract, the Contractor and all subcontractors shall obtain and keep current for the duration of the project a City of Dixon Business License.

The Contractor shall give all notices required by and comply with all laws, codes, ordinances and regulations. Before installing any work, the Contractor shall carefully examine the Contract Documents for compliance with all laws, codes, ordinances and regulations and shall immediately report any discrepancy to the Engineer.

Should the Contractor proceed with the construction and/or install any utility variance, notwithstanding the fact that such installation is in compliance with the Contract Documents, or should the Contractor install any work not in compliance with all laws, codes, ordinances and regulations, the Contractor shall remove such work without cost to the City of Dixon.

The Contractor shall commit no trespass on any public or private property in any operation due to or connected with the improvements embraced in this contract.

The Environmental Quality Act (Public Resources Code, Sections 21000 to 21176, inclusive) may be applicable to permits, licenses and other authorizations which the Contractor must obtain from local agencies in connection with performing the work of the Contract. The Contractor shall comply with the provisions of those statutes in obtaining the permits, licenses and other authorizations and they shall be obtained in sufficient time to prevent delays to the work.

In the event that the City of Dixon has obtained permits, licenses or other authorizations, applicable to the work, in conformance with the requirements in the Environmental Quality Act or any other authority, the Contractor shall comply with the provisions of those permits, licenses and other authorizations.

#### **7-1.05 PATENTS**

The Contractor shall assume all costs arising from the use of patented materials, equipment, devices or processes used on or incorporated in the work, and agrees to indemnify and save harmless the City of Dixon, the Director, the Engineer, and their duly authorized representatives, from all suits at law, or actions of every nature for, or on account of the use of any patented materials, equipment, devices or processes.

#### **7-1.06 SAFETY AND HEALTH PROVISIONS**

The Contractor shall conform to all applicable occupational safety and health standards, rules, regulations and orders established by the State of California.

Working areas utilized by the Contractor to perform work during the hours of darkness, shall be lighted to conform to the minimum illumination intensities established by California Division of Occupational Safety and Health Construction Safety Orders.

All lighting fixtures shall be mounted and directed in a manner precluding glare to approaching traffic, adjacent residences, and businesses.

Full compensation for conforming to the provisions in this section shall be considered as included in the Contract prices paid for the various items of work involved and no separate payment will be made therefor.

#### **7-1.07 (BLANK)**

#### **7-1.08 PUBLIC CONVENIENCE**

This Section 7-1.08 defines the Contractor's responsibility with regard to convenience of the public and public traffic in connection with the Contractor's operations.

Attention is directed to Section 4-1.04, "Detours," for provisions relating to the passage of traffic around the work over detours.

Attention is directed to Section 7-1.09, "Public Safety," for provisions relating to the Contractor's responsibility for the safety of the public. The provisions in Section 7-1.09 are in addition to the provisions in this Section 7-1.08, and the Contractor will not be relieved of the responsibilities as set forth in Section 7-1.09 by reason of conformance with any of the provisions in this Section 7-1.08.

Attention is directed to Section 12, "Construction Area Traffic Control Devices," for provisions concerning flagging and traffic-handling equipment and devices used in carrying out the provisions in this Section 7-1.08 and Section 7-1.09.

In the event of a suspension of the work, attention is directed to Section 8-1.05, "Temporary Suspension of Work."

The Contractor shall so conduct operations as to offer the least possible obstruction and inconvenience to the public and shall have under construction no greater length or amount of work than can be prosecuted properly with due regard to the rights of the public.

Unless otherwise provided in the special provisions, all public traffic shall be permitted to pass through the work with as little inconvenience and delay as possible. Where possible, public traffic shall be routed on new or existing paved surfaces.

Spillage resulting from hauling operations along or across any public traveled way shall be removed immediately by the Contractor at the Contractor's expense.

Existing traffic signals and highway lighting shall be kept in operation for the benefit of the traveling public during progress of the work, and other forces will continue routine maintenance of existing systems.

Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners.

Convenient access to driveways, houses, and buildings along the line of the work shall be maintained and temporary approaches to crossings or intersecting highways shall be provided and kept in good condition. When the abutting property owner's access across the right of way line is to be eliminated, or to be replaced under the Contract by other access facilities, the existing access shall not be closed until the replacement access facilities are usable.

The Contractor may be required to cover certain signs which regulate or direct public traffic to roadways that are not open to traffic. The Engineer will determine which signs shall be covered. Except as otherwise provided for construction area signs in Section 12, "Construction Area Traffic Control Devices," furnishing, installing and removing covers will be paid for as extra work as provided in Section 4-1.03D.

Roadway excavation and the construction of embankments shall be conducted in such a manner as to provide a reasonably smooth and even surface satisfactory for use by public traffic at all times; sufficient fill at culverts and bridges to permit traffic to cross shall be placed in advance of other grading operations; and if ordered by the Engineer roadway cuts shall be excavated in lifts and embankments constructed part width at a time, construction being alternated from one side to the other and traffic routed over the side opposite the one under construction. Culvert installation or culvert construction shall be conducted on but one-half the width of the traveled way at a time, and that portion of the

traveled way being used by public traffic shall be kept open and unobstructed until the opposite side of the traveled way is ready for use by traffic.

Upon completion of rough grading at the grading plane, or placing any subsequent layer thereon, the surface of the roadbed shall be brought to a smooth, even condition free of humps and depressions, satisfactory for the use of public traffic.

After the surface of the roadbed has been brought to a smooth and even condition for the passage of public traffic as above provided, any work ordered by the Engineer for the accommodation of public traffic prior to commencing subgrade operations will be paid for as extra work as provided in Section 4-1.03D. After subgrade preparation for a specified layer of material has been completed, the Contractor shall, at the Contractor's expense, repair any damage to the roadbed or completed subgrade, including damage caused by the Contractor's operations or use by public traffic.

While subgrade and paving operations are underway, public traffic shall be permitted to use the shoulders and, if half-width paving methods are used, shall also be permitted to use the side of the roadbed opposite the one under construction. When sufficient width is available, a passageway wide enough to accommodate at least 2 lanes of traffic shall be kept open at locations where subgrade and paving operations are in active progress. Any shaping of shoulders or reshaping of subgrade necessary for the accommodation of public traffic thereon during subgrade preparation and paving operations will be paid for as extra work as provided in Section 4-1.03D.

When ordered by the Engineer, the Contractor shall furnish a pilot car and driver and flaggers for the purpose of expediting the passage of public traffic through the work under one-way controls, and the cost thereof will be paid for as extra work as provided in Section 4-1.03D, except that the cost of flaggers furnished for this purpose will be paid for as provided in Section 12-2.02, "Flagging Costs." At locations where traffic is being routed through construction under one-way controls and when ordered by the Engineer, the movement of the Contractor's equipment from one portion of the work to another shall be governed in accordance with the one-way controls.

Water or dust palliative shall be applied if ordered by the Engineer for the alleviation or prevention of dust nuisance as provided in Section 10, "Dust Control."

In order to expedite the passage of public traffic through or around the work and where ordered by the Engineer, the Contractor shall install signs, lights, flares, temporary railing (Type K), barricades and other facilities for the sole convenience and direction of public traffic. Also where directed by the Engineer, the Contractor shall furnish competent flaggers whose sole duties shall consist of directing the movement of public traffic through or around the work. The cost of furnishing and installing the signs, lights, flares, temporary railing (Type K), barricades, and other facilities, not to be paid for as separate Contract items, will be paid for as extra work as provided in Section 4-1.03D.

The cost of furnishing flaggers for the sole convenience and direction of public traffic will be paid for as provided in Section 12-2.02, "Flagging Costs."

The Contractor will be required to pay the cost of replacing or repairing all facilities installed under extra work for the convenience or direction or warning of public traffic that are lost while in the Contractor's custody, or are damaged by reason of the Contractor's operations to such an extent as to require replacement or repair, and deductions from any moneys due or to become due the Contractor will be made to cover the cost.

Whenever a section of surfacing, pavement or the deck of a structure has been completed, the Contractor shall open it to use by public traffic if the Engineer so orders or may open it to use by public traffic if the Engineer so consents. In either case the Contractor will not be allowed any compensation due to any delay, hindrance or inconvenience to the Contractor's operations caused by public traffic, but will thereupon be relieved of responsibility for damage to completed permanent facilities caused by public traffic, within the limits of that use. The Contractor will not be relieved of any other responsibility under the Contract nor will the Contractor be relieved of cleanup and finishing operations.

Except as otherwise provided in this Section 7-1.08 or in the special provisions, full compensation for conforming to the provisions in this Section 7-1.08 shall be considered as included in the prices paid for the various Contract items of work and no additional compensation will be allowed therefor.

Contractor shall furnish, install and maintain all traffic warning and directional signs necessary to maintain the facility in a passable condition at all times. Traffic control shall meet the requirements of the latest State of California Department of Transportation Manual of Traffic Controls for Construction and Maintenance Work Zones. The contractor shall submit a Traffic Control Plan for review and acceptance by the Engineer at the pre-construction meeting.

The Contractor shall designate in writing the name, address and telephone number of the employee and the superintendent to contact after working hours for the proper maintenance of barriers and signs.

Barricades of the flashing beacon variety shall be placed at each excavation site and left until the Engineer deems there is no longer a hazard.

Full compensation for furnishing all flag persons necessary for the direction of public traffic either through or around the work shall be considered as included in the various contract items of work, and no additional compensation will be allowed therefor.

#### **7-1.09 PUBLIC SAFETY**

It is the Contractor's responsibility to provide for the safety of traffic and the public during construction.

Attention is directed to Section 7-1.12, "Indemnification and Insurance."

Attention is directed to Section 7-1.08, "Public Convenience," for provisions relating to the Contractor's responsibility for providing for the convenience of the public in connection with the Contractor's operations.

Attention is directed to Section 12, "Construction Area Traffic Control Devices," for provisions concerning flagging and traffic-handling equipment and devices used in carrying out the provisions of Section 7-1.08 and this Section 7-1.09.

Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall, at the Contractor's expense and without cost to the City of Dixon, furnish, erect and maintain those fences, temporary railing (Type K), barricades, lights, signs and other devices and take such other protective measures that are necessary to prevent accidents or damage or injury to the public.

Fences, temporary railing (Type K), barricades, lights, signs, and other devices furnished, erected and maintained by the Contractor, at the Contractor's expense, are in addition to any construction area traffic control devices for which payment is provided for elsewhere in the Contract Documents.

The Contractor shall also furnish such flaggers as are necessary to give adequate warning to traffic or to the public of any dangerous conditions to be encountered, and payment therefor will be made as provided in Section 12-2.02, "Flagging Costs."

Signs, lights, flags, and other warning and safety devices and their use shall conform to the requirements set forth in the current Manual of Traffic Controls. Signs or other protective devices furnished and erected by the Contractor, at the Contractor's expense, as above provided, shall not obscure the visibility of, nor conflict in intent, meaning and function of either existing signs, lights and traffic control devices or any construction area signs and traffic control devices for which furnishing of, or payment for, is provided elsewhere in the Specifications. Signs furnished and erected by the Contractor, at the Contractor's expense, shall be approved by the Engineer as to size, wording and location.

The installation of general roadway illumination shall not relieve the Contractor of the responsibility for furnishing and maintaining any of the protective facilities herein before specified.

Construction equipment shall enter and leave the highway via existing ramps and crossovers and shall move in the direction of public traffic. All movements of workmen and construction equipment on or across lanes open to public traffic shall be performed in a manner that will not endanger public traffic.

The Contractor's trucks or other mobile equipment which leave a freeway lane, that is open to public traffic, to enter the construction area, shall slow down gradually in advance of the location of the turnoff to give following public traffic an opportunity to slow down.

When leaving a work area and entering a roadway carrying public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic.

Lanes, ramps and shoulders shall be closed in accordance with the details shown on the plans, the provisions of Section 12, "Construction Area Traffic Control Devices," and as provided in the special provisions.

The Contractor shall notify the Engineer not less than 15 days before the anticipated start of each falsework and girder erection operation whenever the falsework or girders will reduce clearances available to public traffic.

Pedestrian openings through falsework shall be paved or provided with full width continuous wood walks and shall be kept clear. Pedestrians shall be protected from falling objects and curing water for concrete. Overhead protection for pedestrians shall extend not less than 1.2 m {4 feet} beyond the edge of the bridge deck. All pedestrian openings through falsework shall be illuminated in conformance with the provisions in Section 86-6.11, "Falsework Lighting."

Where the height of vehicular openings through falsework is less than 4.6 m {15 feet}, a W34B "Vertical Clearance" sign shall be provided above each opening facing approaching traffic. The signs shall have black letters and numbers on an orange reflectorized background and shall be illuminated so that the signs are clearly visible. The minimum height of the letters and numbers shall be 150 mm {6 inches} and 250 mm {10 inches}, respectively.

No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic, and at the end of each day's work and at other times when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the roadway open for use by public traffic.

Temporary facilities which the Contractor uses to perform the work shall not be installed or placed where they will interfere with the free and safe passage of public traffic.

Temporary facilities which could be a hazard to public safety if improperly designed shall comply with design requirements specified in the Contract for those facilities or, if none are specified, with standard design criteria or codes appropriate for the facility involved. Working drawings and design calculations for the temporary facilities shall be prepared and signed by an engineer who is registered as a Civil Engineer in the State of California and shall be submitted to the Engineer for review pursuant to Section 5-1.02, "Plans and Working Drawings." The submittals shall designate thereon the standard design criteria or codes used. Installation of the temporary facilities shall not start until the Engineer has reviewed and accepted the drawings.

Should the Contractor appear to be neglectful or negligent in furnishing warning devices and taking protective measures as above provided, the Engineer may direct attention to the existence of a hazard and the necessary warning devices shall be furnished and installed and protective measures taken by the Contractor at the Contractor's expense. Should the Engineer point out the inadequacy of warning devices and protective measures, that action



on the part of the Engineer shall not relieve the Contractor from responsibility for public safety or abrogate the obligation to furnish and pay for these devices and measures.

Provision for the payment for signs, lights, flares, temporary railing (Type K), barricades, and other facilities by extra work as provided in Section 7-1.08, "Public Convenience," or by Contract item as provided in Section 12, "Construction Area Traffic Control Devices," shall in nowise relieve the Contractor from the responsibility as provided in this Section 7-1.09.

Except as otherwise provided in this Section 7-1.09 or in the special provisions, full compensation for conforming to all of the provisions in this Section 7-1.09 shall be considered as included in the prices paid for the various Contract items of work and no additional compensation will be allowed therefor.

The Contractor shall note that the work may be performed on or in the vicinity of private property. The Contractor shall, at all times, remove all litter, debris, and construction waste, minimize noise, dust, standing water, vibrations, hazardous conditions and provide safe access to these properties. The Contractor is prohibited from using any and all privately owned utilities. The Contractor's materials and equipment shall not be stored upon private property without written approval from the resident and/or owner.

Construction on private property during overtime, weekend, holiday or any other irregular period shall be performed only when the Contractor has requested and received written approval from the adjacent residents and the City Engineer.

No separate payment shall be made for the above considerations. Full compensation for the above construction restrictions shall be considered as included in the price paid for the various items of work involved.

#### **7-1.10 USE OF EXPLOSIVES**

Explosives shall not be used unless explicitly required in the Contract documents.

When explosives are used, the Contractor shall exercise the utmost care not to endanger life or property.

In advance of doing any blasting work within 60 m {200 feet} of any railroad's tracks or structures, the Contractor shall notify the railroad of the location, date, time and approximate duration of the blasting operations.

#### **7-1.11 PRESERVATION OF PROPERTY**

Attention is directed to Section 7-1.12, "Indemnification and Insurance," and to Section 8-1.10, "Utility and Non-Highway Facilities." Due care shall be exercised to avoid injury to existing highway improvements or facilities, utility facilities, adjacent property, and roadside trees, shrubs and other plants that are not to be removed.

Roadside trees, shrubs and other plants that are not to be removed, and pole lines, fences, signs, markers and monuments, buildings and structures, conduits, pipelines under or above ground, sewer and water lines, all highway facilities and any other improvements or facilities within or adjacent to the highway shall be protected from injury or damage, and if ordered by the Engineer, the Contractor shall provide and install suitable safeguards, accepted by the Engineer, to protect the objects from injury or damage. If the objects are injured or damaged by reason of the Contractor's operations, the objects shall be replaced or restored at the Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor entered upon the work, or as good as required by the Specifications accompanying the Contract, if any of the objects are a part of the work being performed under the Contract. The Engineer may make or cause to be made those temporary repairs that are necessary to restore to service any damaged highway facility. The cost of the repairs shall be borne by the Contractor and may be deducted from any moneys due or to become due to the Contractor under the Contract.

The fact that any underground facility is not shown upon the plans shall not relieve the Contractor of the responsibility under Section 8-1.10, "Utility and Non-Highway Facilities." It shall be the Contractor's responsibility, pursuant thereto, to ascertain the location of those underground improvements or facilities which may be subject to damage by reason of the Contractor's operations.

Any damage to private property caused by the Contractor and adjudged to be the responsibility of the Contractor by the Engineer shall be rectified to the satisfaction of the Engineer within a reasonable time, depending upon the extent of the damage. Said reasonable time shall be as determined by the Engineer, and if the condition is not rectified, the Engineer shall have the power and authority to rectify said damage and the cost thereof to be paid for by the Contractor, either by direct payment to the City of Dixon, or by deducting said amount from moneys due the Contractor.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in protecting or repairing property as specified in this Section 7-1.11, shall be considered as included in the prices paid for the various Contract items of work and no additional compensation will be allowed therefor.

#### **7-1.12 INDEMNIFICATION AND INSURANCE**

The Contractor's obligations regarding indemnification of the City of Dixon and the requirements for insurance shall conform to the provisions in Sections 7-1.12A, "Indemnification," and 7-1.12B, "Insurance," of this Section 7-1.12.

##### **7-1.12A INDEMNIFICATION**

Contractor shall defend, indemnify, and save harmless City of Dixon (including its inspectors, project managers, trustees, officers, agents, members, employees, affiliates, consultants, subconsultants, and representatives), and each of them, of and from any and all claims, demands, suits, causes of action, damages, costs, expenses, attorneys' fees,

losses, or liability, in law or in equity, of every kind and nature whatsoever arising out of, or in connection with, Contractor's operations to be performed under this Contract, including, but not limited to:

1. Personal injury (including, but not limited to, bodily injury, emotional injury or distress, sickness, or disease) or death to persons, including, but not limited to, any employees or agents of Contractor, City of Dixon, or any subcontractor, or damage to property of anyone including the work itself (including loss of use thereof), caused or alleged to be caused in whole or in part by any negligent act or omission of Contractor, City of Dixon, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable;
2. Penalties threatened, sought, or imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance, or statute, caused by the action or inaction of Contractor;
3. Alleged infringement of any patent rights which may be brought arising out of Contractor's work;
4. Claims and liens for labor performed or materials used or furnished to be used on the job, including all incidental or consequential damages from such claims or liens;
5. Contractor's failure to fulfill any of the covenants set forth in these Contract Documents;
6. Failure of Contractor to comply with the provisions of the Contract Documents relating to insurance; and,
7. Any violation or infraction by Contractor of any law, order, citation, rule, regulation, standard, ordinance, or statute in any way relating to the occupational, health, or safety of employees.

The indemnities set forth in this section shall not be limited by the insurance requirements set forth in these Contract Documents.

Contractor's indemnification of City of Dixon will not include indemnification for claims which arise as the result of the active negligence of City of Dixon, or the sole negligence or willful misconduct of City, its agents, servants or independent contractors who are directly responsible to City, or for defects in design furnished by such persons.

#### **7-1.12B INSURANCE**

Insurance shall conform to the following requirements: The Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his/her agents, representatives, employees or SUBCONTRACTORS. Such insurance shall not be construed to relieve the Contractor of any liability in excess of such coverage. The cost of such insurance shall be included in the Contractor's bid.

1. Minimum Scope of Insurance Coverage shall be at least as broad as:

a. Insurance Services Office form number GL 0002 (Ed. 1/73) covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).

b. Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.

c. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

2. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

a. General Liability: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

c. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

3. Deductibles and Self-Insured Retention

Any deductibles or self-insured retention must be declared to and accepted by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4. Other Insurance Provisions

The policies are to contain, or be endorsed to contain the following provisions:

a. General Liability and Automobile Liability Coverage

i. The City, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations of the Contractor, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

ii. The Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

iv. The Contractor's coverage applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

b. Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Contractor for the City.

c. All Coverage

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City.

5. Acceptability of Insurers

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

6. Verification of Coverage

Contractor shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms approved by the City. All certificates and endorsements are to be received and accepted by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. All

certificates of insurance must include the City as an additional insured providing necessary endorsements and the cancellation clause shall be amended to read as follows:

“Should any of the policies described herein be cancelled before the expiration date thereof, the insurer affording coverage shall mail 30 days written notice to the certificate holder named herein.”

## 7. Subcontractors

Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

Builder's Risk Insurance – Unless otherwise stated in the Special Provisions, the Contractor shall effect and maintain in the name of the Contractor and the City, "All Risk" Builders Risk Insurance upon the entire work of this contract to 100% of replacement cost valuation thereof, including items of labor and materials in place including surplus miscellaneous materials and supplies incident to the work, and such scaffolding, staging, towers, forms, and equipment as are not owned or rented by the Contractor, the cost of which is not included in the cost of the work.

Exclusions - This insurance does not cover tools owned by mechanics, any tools, equipment, scaffolding, staging, towers, and forms rented or owned by the Contractor, the capital value of which is not included in the cost of the work or any shanties or other structures erected for the sole convenience of the workers.

### **7-1.12B(4) ENFORCEMENT**

The City of Dixon may take any steps as are necessary to assure Contractor's compliance with its obligations. Should any insurance policy lapse or be canceled during the Contract period the Contractor shall, within thirty (30) days prior to the effective expiration or cancellation date, furnish the City of Dixon with evidence of renewal or replacement of the policy. Failure to continuously maintain insurance coverage as herein provided is a material breach of Contract. In the event the Contractor fails to maintain any insurance coverage required, the City of Dixon may, but is not required to, maintain this coverage and charge the expense to the Contractor or terminate Contractor's control over the work. The required insurance shall be subject to the review and acceptance of City of Dixon, but any acceptance of insurance certificates by the City of Dixon shall in no way limit or relieve the Contractor of the Contractor's duties and responsibilities under the Contract to indemnify, defend and hold harmless the City of Dixon, its officers, agents, and employees. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor for liability in excess of such coverage, nor shall it preclude the City of Dixon from taking other actions as is available to it under any other provision of the Contract or law. Failure of the City of Dixon to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date.

#### **7-1.12B(5) SELF-INSURANCE**

Self-insurance programs and self-insured retentions in insurance policies are subject to separate annual review and acceptance by the City of Dixon of evidence of the Contractor's financial capacity to respond. Additionally, self-insurance programs or retentions must provide the City of Dixon with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance.

#### **7-1.12B(6) MISCELLANEOUS**

Nothing contained in the Contract is intended to make the public or any member thereof a third party beneficiary of the Insurance or Indemnity provisions of these Standard Specifications, nor is any term, condition or other provision of the Contract intended to establish a standard of care owed to the public or any member thereof.

#### **7-1.125 LEGAL ACTIONS AGAINST THE CITY OF DIXON**

In the event litigation is brought against the City of Dixon concerning compliance by the City of Dixon with State or Federal laws, rules or regulations applicable to public works construction, the provisions of this Section 7-1.125 shall apply.

A. If, pursuant to court order, the City of Dixon prohibits the Contractor from performing all or any portion of the work, the delay will be considered a right of way delay within the meaning of Section 8-1.09, "Right of Way Delays," unless the Contract is terminated as hereinafter provided.

B. If, pursuant to court order (other than an order to show cause) the City of Dixon is prohibited from requiring the Contractor to perform all or any portion of the work, the City of Dixon may, if it so elects, eliminate the enjoined work pursuant to Section 4-1.03, "Changes," or terminate the Contract.

C. If the final judgment in the action prohibits the City of Dixon from requiring the Contractor to perform all or any portion of the work, the City of Dixon will either eliminate the enjoined work pursuant to Section 4-1.03, "Changes," or terminate the Contract.

D. If the Contract is to be terminated, the termination and the determination of the total compensation payable to the Contractor shall be governed by the provisions in Section 8-1.11, "Termination of Contract."

#### **7-1.13 DISPOSAL OF MATERIAL OUTSIDE THE PUBLIC RIGHT OF WAY**

If the Contractor elects to dispose of materials at locations other than those where arrangements have been made by the City of Dixon, or, if material is to be disposed of and the City of Dixon has not made arrangements for disposal of the material, the Contractor

shall make arrangements for disposing of the materials outside the public right of way and shall pay all costs involved. Arrangements shall include, but not be limited to, entering into agreements with property owners and obtaining necessary permits, licenses and environmental clearances. Before disposing of any material outside the public right of way, the Contractor shall furnish to the Engineer satisfactory evidence that the Contractor has entered into agreements with the property owners of the site(s) involved and has obtained the appropriate permits, licenses and clearances.

When any material is to be disposed of outside the public right of way, and the City of Dixon has not made arrangements for disposal of the material, the Contractor shall first obtain written authorization from the property owner on whose property the disposal is to be made and the Contractor shall file with the Engineer the authorization or a certified copy thereof together with a written release from the property owner absolving the City of Dixon from any and all responsibility in connection with the disposal of material on the property. Before any material is disposed of on the property, the Contractor shall obtain written permission from the Engineer to dispose of the material at the location designated in the authorization.

When material is disposed of as above provided and the disposal location is visible from public view, the Contractor shall dispose of the material in a neat and uniform manner to the satisfaction of the Engineer.

Where the City of Dixon has made arrangements with owners of land in the vicinity of a project for the disposal of materials on an owner's property, the arrangements are made solely for the purpose of providing all Bidders an equal opportunity to dispose of the materials on the property. Bidders or Contractors may, upon written request, inspect the documents evidencing the arrangements between property owners and the City of Dixon. The Contractor may, if the Contractor so elects, exercise any rights that have been obtained, which may be exercised by a Contractor under the arrangements, subject to and upon the conditions hereinafter set forth.

Such arrangements are not a part of the Contract and it is expressly understood and agreed that the City of Dixon assumes no responsibility to the Bidder or Contractor whatsoever in respect to the arrangements made with the property owner to dispose of materials thereon and that the Contractor shall assume all risks in connection with the use of the property, the terms upon which the use shall be made, and there is no warranty or guaranty, either express or implied, as to the quantity or types of materials that can be disposed of on the property, or that any material can be disposed of on the property.

In those instances in which the City of Dixon has compiled "Materials Information" as referred to in Section 2-1.03, "Examination of Plans, Specifications, Contract, and Site of Work," the compilation will include the documents setting forth the arrangement made with some of the property owners for the disposal of material on those owners' properties. The inclusion of the documents therein shall not in any respect operate as a waiver of any of the provisions in this Section 7-1.13 concerning the documents.



The Bidder or Contractor shall make such independent investigation and examination as the Bidder or Contractor deems necessary to be satisfied as to the quantity and types of materials which may be disposed of on the property (if any) and the rights, duties and obligations acquired or undertaken under the arrangement with the property owner.

Notwithstanding that the Contractor may elect to dispose of materials on any such property owner's property, no material may be disposed of on that property unless the Contractor has first either:

1. Executed a document that will guarantee to hold the owner harmless from all claims for injury to persons or damage to property resulting from the Contractor's operations on the property owner's premises and also agree to conform to all other provisions set forth in the arrangement made between the City of Dixon and the property owner, or
2. Entered into an agreement with the owner of the disposal site on any terms mutually agreeable to the owner and the Contractor; provided that the Contractor shall furnish to the Engineer a release, in a form satisfactory to the Engineer, executed by the owner, relieving the City of Dixon of any and all obligations under the City of Dixon's arrangement with the owner.

If the Contractor elects to dispose of material under (1), the use of the site shall be subject to the terms, conditions and limitations of the arrangement made between the property owner and the City of Dixon and the Contractor shall pay those charges that are provided for in the arrangement made by the City of Dixon with the property owner, and deductions will be made from any moneys due or that may become due the Contractor under the Contract sufficient to cover the charges for the material disposed of.

If the Contractor elects to dispose of material under (2), the Contractor shall pay those charges that are provided for in the agreement between the owner and the Contractor and deductions will not be made from any moneys due or that may become due the Contractor under the Contract to cover the charges.

Before acceptance of the Contract, the Engineer may require the Contractor to submit written evidence that the owner of the disposal site is satisfied that the Contractor has satisfactorily complied with the provisions of either - (1), the arrangement between the City of Dixon and the owner, or (2), the agreement between the owner and the Contractor, as the case may be.

Full compensation for all costs involved in disposing of materials as specified in this Section 7-1.13, including all costs of hauling, shall be considered as included in the price paid for the Contract item of work involving the materials and no additional compensation will be allowed therefor.

#### **7-1.14 COOPERATION**

Should construction be under way by other forces or by other Contractors within or adjacent to the limits of the work specified or should work of any other nature be under way by other forces within or adjacent to those limits, the Contractor shall cooperate with all the other Contractors or other forces to the end that any delay or hindrance to their work will be avoided. The City reserves the right to perform, or to have performed, other or additional work at or near the site (including material sources) at any time, by the use of other forces, without changing the character of the work.

When 2 or more Contractors are employed on related or adjacent work, or obtain materials from the same material source, as provided in Section 6-2.02, "Possible Local Material Sources," or Section 6-2.03, "Mandatory Local Material Sources," each shall conduct their operations in such a manner as not to cause any unnecessary delay or hindrance to the other.

Each Contractor shall be responsible to the other for all damage to work, to persons or property caused to the other by their operations, and for loss caused the other due to unnecessary delays or failure to finish the work within the time specified for completion.

#### **7-1.15 RELIEF FROM MAINTENANCE AND RESPONSIBILITY**

Upon request of the Contractor, the Director, or the Director's designated representative, may relieve the Contractor of the duty of maintaining and protecting certain portions of the work as described below, which have been completed in all respects in accordance with the requirements of the Contract and to the satisfaction of the Engineer, and thereafter except with the Contractor's consent, the Contractor will not be required to do further work thereon. In addition, the action by the Director will relieve the Contractor of responsibility for injury or damage to those completed portions of the work resulting from use by public traffic or from the action of the elements or from any other cause but not from injury or damage resulting from the Contractor's own operations or from the Contractor's negligence.

Portions of the work for which the Contractor may be relieved of the duty of maintenance and protection as provided in the above paragraph include, but are not limited to, the following:

1. The completion of 0.5-km {0.3-mile} of roadway or 0.5-km {0.3-mile} of one roadway of a divided highway or a frontage road including the traveled way, shoulders, drainage control facilities, planned roadway protection work, lighting and any required traffic control and access facilities.
2. A bridge or other structure of major importance.
3. A complete unit of a traffic control signal system or of a highway lighting system.

#### 4. Non-highway facilities constructed for other agencies.

However, nothing in this Section 7-1.15 providing for relief from maintenance and responsibility will be construed as relieving the Contractor of full responsibility for making good any defective work or materials found at any time before the formal written acceptance of the entire Contract by the Director. Furthermore, nothing in this section shall obligate the Director to relieve the Contractor for responsibility for any portion of the work and the Director may refuse to relieve the Contractor from responsibility for any reason, at the Director's (or his delagee's) sole discretion.

#### **7-1.16 CONTRACTOR'S RESPONSIBILITY FOR THE WORK AND MATERIALS**

The Contractor shall be completely responsible for the care and condition of the project improvements in their entirety until completion of the maintenance period and acceptance by the City. The Contractor shall provide all watchmen, guards, and security devices, as he/she deems necessary.

Until the acceptance of the Contract, the Contractor shall have the charge and care of the work and of the materials to be used therein (including materials for which the Contractor has received partial payment as provided in Section 9-1.06, "Partial Payments," or materials which have been furnished by the City of Dixon) 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, except as provided in Sections 7-1.08, "Public Convenience," and 7-1.15, "Relief From Maintenance and Responsibility." The Contractor shall rebuild, repair, restore, and make good all injuries, losses or damages to any portion of the work or the materials occasioned by any cause before its completion and acceptance and shall bear the expense thereof, except as otherwise expressly provided in Section 7-1.165, "Damage by Storm, Flood, Tsunami or Earthquake," and in Section 19-2.04, "Slides and Slipouts," and except for those injuries, losses, or damages that are directly and proximately caused by acts of the Federal Government or the public enemy. Where necessary to protect the work or materials from damage, the Contractor shall, at the Contractor's expense, provide suitable drainage of the roadway and erect those temporary structures that are necessary to protect the work or materials from damage. The suspension of the work from any cause whatever shall not relieve the Contractor of the responsibility for the work and materials as herein specified. If ordered by the Engineer, the Contractor shall, at the Contractor's expense, properly store materials which have been partially paid for by the City of Dixon or which have been furnished by the City of Dixon. Storage by the Contractor shall be on behalf of the City of Dixon and the City of Dixon shall at all times be entitled to the possession of the materials, and the Contractor shall promptly return the materials to the site of the work when requested. The Contractor shall not dispose of any of the materials so stored except on written authorization from the Engineer.

## **7-1.16A DAMAGE BY STORM, FLOOD, TSUNAMI OR EARTHQUAKE**

Attention is directed to Section 7-1.16, "Contractor's Responsibility for the Work and Materials." In the event damage to the work is caused by a storm, flood, tsunami, earthquake or other natural disaster which constitutes an "Occurrence," as hereinafter defined, the provisions in this Section 7-1.165 shall be applicable, and the Contractor may apply in writing to the Engineer for the City of Dixon to pay or participate in the cost of repairing damage to the work from that cause or, in lieu thereof, and at the sole discretion of the City of Dixon, terminate the Contract and relieve the Contractor of further obligation to perform the work, subject to the following:

A. Occurrence— "Occurrence" shall include tsunamis, earthquakes in excess of a magnitude of 3.5 on the Richter Scale, and storms, floods and other natural disasters as to which the Governor has proclaimed a state of emergency when the damaged work is located within the territorial limits to which the proclamation is applicable or, which were, in the opinion of the Engineer, of a magnitude at the site of the work sufficient to have caused such a proclamation had they occurred in a populated area or in an area in which such a proclamation was not already in effect.

B. Application by Contractor— The Contractor's written request for the City of Dixon to pay or to participate in the cost of rebuilding, repairing, restoring or otherwise remedying the damage to the work caused by the Occurrence shall be submitted to the Engineer before performing any work other than emergency work, including emergency work necessary to provide for passage of public traffic.

C. Protecting the Work from Damage— Nothing in this section shall be construed to relieve the Contractor of the responsibility to protect the work from damage. The Contractor shall bear the entire cost of repairing damage to the work caused by the Occurrence which the Engineer determines was due to the failure of the Contractor to comply with the requirements of the Contract Documents, take the best measures to protect the work or exercise the best engineering and construction practices in the conduct of the work, and those repair costs shall be excluded from consideration under the provisions of this section.

D. Repair Work— Repair of damaged work under the provisions of this section shall be pursuant to a Contract Change Order issued hereunder and specifying the repair work to be performed on the damaged facility. The repair work shall consist of restoring the in-place construction (for the purposes of this section erected falsework and formwork shall be considered in-place construction) to the same state of completion to which the work had advanced prior to the Occurrence. Emergency work which the Engineer determines would have been part of the repair work if it had not previously been performed, will be considered to be part of the repair work.

The City of Dixon reserves the right to make changes in the plans and Specifications applicable to the portions of the work to be repaired, and if those changes will increase the cost of repairing the damage over the Engineer's estimate of the cost of repair without the

changes, the Contractor will be paid for the increased costs in accordance with Subsection E and the increased cost amount shall not be considered in determining the cost of repair to be borne by the Contractor under Subsection F.

Nothing in this section shall be construed to relieve the Contractor of full responsibility for the risk of injury, loss or damage to materials not yet incorporated in the work and to materials, tools and equipment (except erected falsework and formwork) used to perform the work, or to relieve the Contractor of responsibility under Section 7-1.12, "Indemnification and Insurance." The provisions of this section shall not be applicable to the repair of damage caused by an Occurrence to any portion of the work as to which the Contractor has been granted relief from maintenance and responsibility pursuant to Section 7-1.15, "Relief From Maintenance and Responsibility," or to the removal of slides and slipouts or the repair and restoration of damage to the work resulting from slides and slipouts pursuant to Section 19-2.04, "Slides and Slipouts."

E. Determination of Costs— Unless otherwise agreed between the Engineer and the Contractor, the cost of the work performed pursuant to this Section 7-1.165 will be determined in conformance with the provisions in Section 9-1.03, "Force Account Payment," except there shall be no markup allowance pursuant to Section 9-1.03A, "Work Performed by Contractor," unless the Occurrence that caused the damage was a tsunami or earthquake. The cost of emergency work, which the Engineer determines would have been part of the repair work if it had not previously been performed, will be determined in the same manner as the authorized repair work. The cost of repairing damaged work which was not in compliance with the requirements of the plans and Specifications shall be borne solely by the Contractor, and those costs shall not be considered in determining the cost of repair under this Subsection E.

F. Payment for Repair Work— **Not Applicable**

G. Termination of Contract— If the City of Dixon elects to terminate the Contract, the termination and the determination of the total compensation payable to the Contractor shall be governed by the provisions of Section 8-1.11, "Termination of Contract."

#### **7-1.17 ACCEPTANCE OF CONTRACT**

When the Engineer has made the final inspection as provided in Section 5-1.13, "Final Inspection," and determines that the Contract work has been completed in all respects in accordance with the Contract Documents, the Engineer will recommend that the Director formally accept the Work as complete. Upon satisfactory completion of the Work and following the written acceptance of the Work as such by the Director or the Director's designated representative, the Engineer shall recommend the acceptance of the Contract to the City Council. Upon acceptance of the Contract as complete by the City Council, the said Council shall cause a Notice of Completion to be filed and recorded in the records of the Solano County Recorder's Office.

#### **7-1.18 PROPERTY RIGHTS IN MATERIALS**

Nothing in the Contract Documents shall be construed as vesting in the Contractor any right of property in the materials used after they have been attached or affixed to the work or soil or after partial payment has been made as provided in Section 9-1.06, "Partial Payments," for material delivered on the ground or stored subject to or under the control of the City of Dixon and unused. All the material shall become the property of the City of Dixon upon being so attached or affixed or upon payment for materials delivered on the ground or stored subject to or under the control of the City of Dixon and unused, as provided in Section 9-1.06.

#### **7-1.19 RIGHTS IN LAND AND IMPROVEMENTS**

Nothing in the Contract Documents shall be construed as allowing the Contractor to make any arrangements with any person to permit occupancy or use of any land, structure, or building within the limits of the Contract for any purpose whatsoever, either with or without compensation, in conflict with any agreement between the City of Dixon and any owner, former owner, or tenant of the land, structure, or building.

The Contractor shall not occupy City of Dixon-owned property outside the right of way as shown on the plans or maps, unless the Contractor enters into a rental agreement with the City of Dixon. The agreement will be based on the fair rental values.

#### **7-1.20 PERSONAL LIABILITY**

Neither the Director, the Engineer nor any other officer or authorized employee of the City of Dixon, nor any officer or employee of any county, city or district shall be personally responsible for any liability arising under or by virtue of the Contract.

#### **7-1.21 REPAIR OF EQUIPMENT**

The work of installing, assembling, repairing or reconditioning, or other work of any nature on machinery, equipment or tools used in or upon the work shall be considered a part of the work to be performed under the Contract and any laborers, workers or mechanics working on the machinery, equipment or tools, unless employed by bona fide commercial repair shops, garages, blacksmith shops or machine shops, which have been established and operating on a commercial basis for a period of at least 2 months prior to the award of the Contract, shall be subject to all the requirements relating to labor set forth in these Contract Documents.

#### **7-1.22 MATERIAL PLANTS**

The construction, erection and operation of material production, proportioning or mixing plants from which material is used wholly on the Contract or on Contracts with the City of Dixon shall be considered a part of the work to be performed under the Contract and any

laborers, workers or mechanics working on those plants shall be subject to all of the requirements relating to labor set forth in these Contract Documents.





## **SECTION 8: PROSECUTION AND PROGRESS**

### **8-1.01 SUBCONTRACTING**

The Contractor shall give personal attention to the fulfillment of the Contract and shall keep the work under the Contractor's control.

No subcontractor will be recognized as such, and all persons engaged in the work of construction will be considered as employees of the Contractor and the Contractor will be held responsible for their work, which shall be subject to the provisions of the Contract Documents.

The Contractor shall perform, with the Contractor's own organization, Contract work amounting to not less than 30 percent of the original total Contract price, except that any designated "Specialty Items" may be performed by subcontract and the amount of any designated "Specialty Items" performed by subcontract may be deducted from the original total Contract price before computing the amount of work required to be performed by the Contractor with the Contractor's own organization. When items of work in the Engineer's Estimate are preceded by the letters (S) or (S-F), those items are designated as "Specialty Items." Where an entire item is subcontracted, the value of work subcontracted will be based on the Contract item bid price. When a portion of an item is subcontracted, the value of work subcontracted will be based on the estimated percentage of the Contract item bid price, determined from information submitted by the Contractor, subject to acceptance by the Engineer.

Subcontracts shall include provisions that the Contract between the City of Dixon and the Contractor is part of the subcontract, and that all terms and provisions of the Contract are incorporated in the subcontract. Subcontracts shall also contain certification by the subcontractor that the subcontractor is experienced in and qualified to do, and knowledgeable about, the subcontracted work. Copies of subcontracts shall be available to the Engineer upon written request, and shall be provided to the Engineer within three (3) days of the Engineer's request.

Before work is started on a subcontract, the Contractor shall file with the Engineer a written statement showing the work to be subcontracted, the names of the subcontractors and the description of each portion of the work to be subcontracted.

Pursuant to the provisions of Section 6109 of the Public Contract Code, the Contractor shall not perform work on a public works project with a subcontractor who is ineligible to perform work on the public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

When a portion of the work which has been subcontracted by the Contractor is not being prosecuted in a manner satisfactory to the City of Dixon, the subcontractor shall be removed immediately on the request of the Engineer and shall not again be employed on the work.

The roadside production of materials produced by other than the Contractor's forces shall be considered as subcontracted. Roadside production of materials shall be construed to be production of aggregates of all kinds with portable, semi-portable or temporary crushing or screening, proportioning and mixing plants established or reopened for the purpose of supplying aggregate or material for a particular project or projects. The erection, establishment or reopening of the plants and the operation thereof in the production of materials for use on the work shall conform to the requirements relating to labor set forth in these Specifications and in the special provisions.

In no case shall the use of subcontractors in any way alter the position of the Contractor or Contractor's sureties with relation to this Contract. When a subcontractor is used, the responsibility for every portion of the work shall still remain with the Contractor.

The Contractor shall pay, when due, all valid claims of subcontractors, suppliers, and workmen with respect to the project.

The mention herein of any specific duty or responsibility imposed upon the Contractor shall not be construed as a limitation or restriction of any other responsibility or duty imposed upon the Contractor by the Contract, said reference being made herein merely for the purpose of explaining the specific duty or responsibility.

#### **8-1.02 ASSIGNMENT**

The performance of the Contract may not be assigned, except upon the written consent of the Director. Consent will not be given to any proposed assignment which would relieve the original Contractor or the Contractor's surety of their responsibilities under the Contract nor will the Director consent to any assignment of a part of the work under the Contract.

The Contractor may assign moneys due or to become due the Contractor under the Contract and the assignment will be recognized by the City of Dixon, if given proper notice thereof, to the extent permitted by law, but any assignment of moneys shall be subject to all proper set-offs in favor of the City of Dixon and to all deductions provided for in the Contract and particularly all money withheld, whether assigned or not, shall be subject and subordinate to claims of the City of Dixon.

#### **8-1.03 BEGINNING OF WORK**

The Contractor shall begin work within 10 calendar days after receiving the Notice to Proceed, and shall diligently prosecute the same to completion within the time limit provided in the special provisions.

The Contractor shall notify the Engineer, in writing, of the Contractor's intent to begin work at least 72 hours before work is begun. The notice shall be delivered to the Engineer and shall specify the date the Contractor intends to start. If the project has more than one location of work, a separate notice shall be given for each location.

Should the Contractor begin work in advance of receiving written Notice to Proceed, any work performed by the Contractor in advance of the date of Notice to Proceed shall be considered as having been done by the Contractor at the Contractor's own risk and as a volunteer.

The Notice to Proceed shall constitute authority for the Contractor to enter upon the site of the work and to begin operations, upon condition that the Contractor has strictly complied with all requirements of these Contract Documents, including but not limited to, furnishing all required documentation and certificates of insurance. If Contractor has not provided City of Dixon with all documents required by these Contract Documents as of the date of the Notice to Proceed, Contractor shall not be allowed on the site of the work or allowed to start work on the Project, notwithstanding the issuance of a Notice to Proceed.

The counting of working days shall begin on the date of the Notice to Proceed, whether or not Contractor is allowed on the work site due to Contractor's failure to furnish City of Dixon with all documentation required by these Contract Documents. In no event shall there be a period of time greater than thirty (30) days, from the time the Contract forms are first received by the Contractor and the commencement of the contract time, regardless of the receipt or lack thereof by City of Dixon of all documents required by these Contract Documents. The Contractor shall, on commencing operations, take all precautions required for public safety and shall observe all the provisions in these Specifications and the special provisions.

#### **8-1.04 PROGRESS SCHEDULE**

The Contractor shall submit to the Engineer a practicable progress schedule within 20 working days of the execution of the Contract. The Contractor shall develop an initial Critical Path Method (CPM) construction schedule, and perform monthly updating of the schedule (Progress Schedules) to reflect the progress of the work and any changes or modifications of the work during construction.

The initial CPM construction schedule and subsequent Progress Schedules shall be prepared using Microsoft Project 2000, or another CPM software package approved in writing by the Engineer. The Contractor shall submit the initial CPM schedule, and each Progress Schedule, to the City in the form required in these specifications.

The Contractor shall employ experienced scheduling personnel qualified in Critical Path Method scheduling techniques, and the use of Microsoft Project 2000. Experience level required is set forth below. The Contractor may employ such personnel directly or may employ a services consultant for this purpose. After bid opening, the apparent successful low bidder shall provide the City with a written verification that the Contractor has the required personnel under its employ or that the Contractor will utilize a qualified CPM scheduling consultant. The written statement shall identify the individual who will perform CPM scheduling. The qualifications of the individual shall be verified by descriptions of construction projects on which the individual has successfully applied computerized CPM

scheduling. The required level of experience shall include at least two projects of a similar nature, scope, and value. The written statement shall provide contact persons for referenced projects with current telephone and address information.

The City reserves the right to reject the Contractor's scheduler, or consultant, at any time. The City also reserves the right to refuse replacement of the Contractor's scheduler or consultant, if it believes such replacement will negatively affect performance of the Contract Documents.

The CPM construction schedule shall consist of an orderly and realistic plan for completion of the work. The CPM schedule shall include a series of activities and milestones, linked by relationships, set forth in a time-scaled manner. The CPM schedule shall be based on and incorporate milestone and completion dates specified in the Contract Documents. The overall time of completion and time of completion for each milestone shown on the CPM schedule shall adhere to times in the Contract Documents, unless an earlier (advanced) time of completion is requested by the Contractor and agreed to by the City. Any such agreement shall be formalized in a written Change Order. The City is not required to accept an earlier (advanced) schedule, i.e., one that shows completion dates earlier than that required in the Contract Documents. The Contractor shall not be entitled to additional compensation for completing the work prior to the completion date set forth in the Contract Documents, even if an earlier (advanced) time of completion is accepted by the City.

Neither the City nor the Contractor own float time. The Project owns the float time. As such, liability for delay of the Project Completion Date rests with the party whose unexcused delay, last in time, actually causes a delay to the Project Completion Date. For example, if Party A incurs an unexcused delay and uses some, but not all, of the float, and Party B later incurs an unexcused delay which uses all of the remaining float as well as additional time beyond the remaining float, then Party B shall be liable for the delay that represents a delay to the Completion Date. Party A would not be responsible for the delay to the Completion Date since it did not consume all of the float with its unexcused delay, and additional float remained; therefore, the Completion Date was unaffected by Party A.

The Progress Schedule shall be the basis for evaluating project progress, payment requests, and time extension requests. Responsibility for developing all Contract CPM schedules and monitoring actual progress as compared to the Progress Schedule rests with the Contractor.

Failure of the initial CPM schedule or Progress Schedules to include any element of the work or any inaccuracy in Progress Schedules shall not relieve the Contractor from responsibility for accomplishing the work in accordance with the Contract Documents. The City's shall use the Contractor's schedule for monitoring and evaluating project progress, payment requests, and time extension requests, and the City's receipt of schedules shall not, in any manner, impose a duty of care upon the City, or act to relieve the Contractor of its responsibility for the means and methods of construction.

The Contractor shall submit the initial CPM schedule to the City for review within ten (10) working days after receipt of the Notice to Proceed. The initial CPM schedule shall consist

of a realistic, detailed proposal of how the Contractor will proceed with the orderly completion of the work, in conformance with the Contract Documents. By way of the Contractor assigning activity durations and proposing the sequence of the work, the Contractor agrees to utilize sufficient and necessary management of resources to perform the work in accordance with the schedule. Submission of the Contractor's schedule to the City shall not relieve the Contractor of total responsibility for scheduling, sequencing, and performing the work to comply with the Contract Documents, including dealing with adverse effects such as delays resulting from ill-timed work.

The initial CPM schedule shall be time-scaled. Each activity that requires actual labor to complete shall have a duration assigned, in working days. Milestones, or zero-duration activities, can be assigned to major task completion points, such as Sewer Installation Complete, or single-event activities, such as Submittal of Pump Cut-Sheets.

The initial CPM schedule shall include all major activities pertaining to the completion of the work. Each activity will have a discrete activity name and number. No activity on the schedule shall have a duration of longer than fifteen (15) working days, with the exception of submittal, review and approval, fabrication, and procurement activities, unless otherwise approved by the City in writing.

All dependencies, or relationships, between activities shall be included in the initial CPM schedule. Only relationships of the Finish-to-Start and Start-to-Start type shall be used in the schedule.

The first activity on the schedule shall be a milestone activity corresponding to the issuance of the Notice to Proceed. The last activity on the schedule shall be a milestone activity corresponding to the final acceptance of the project as complete by the Engineer (Project Acceptance). All intervening activities shall have their start date linked directly to the Notice to Proceed, or to another activity that can be traced back to the Notice to Proceed.

The completion of each activity in the CPM schedule shall be linked to a subsequent activity or series of activities that can ultimately be traced to Project Acceptance. All activities, including predecessor activities proceeding through a Start-to-Start relationship to a successor activity, shall have a relationship subsequent to the completion of the predecessor activity that ultimately leads to Project Acceptance.

The CPM schedule shall clearly identify the activities that constitute the controlling operations, or Critical Path. Only one Critical Path from the Notice to Proceed activity to the Project Acceptance activity shall exist in the schedule. No more than twenty-five percent (25%) of the activities in the schedule shall be critical or near critical. Near critical is defined as having float of less than or equal to five (5) days.

City furnished materials, equipment, or activities playing a defined role in the project, if any, shall be identified as separate, individual activities. City review and/or processing activities shall be identified as separate, individual activities. The CPM schedule shall include the appropriate amount of time for submittals, City review of submittals, revisions to submittals, and re-review. The Contractor shall be responsible for any additional review cycles as a

result of rejected submittals, without compensation for working days lost.

The CPM schedule shall include the procurement of major equipment or materials through receipt and inspection at the job site, including time for ordering, fabrication, delivery, and inspection. The CPM schedule shall show the dependencies (relationships) between procurement and construction.

The CPM schedule shall include a separate activity with a minimum of ten (10) working days for City to develop a punch list after project completion. Additionally, the CPM schedule shall include a separate activity with a minimum of ten (10) working days for the Contractor to complete punch list activities

The CPM schedule shall show separate activities which identify periods of interface with utilities and other agencies.

Within ten (10) working days of the submittal of the initial CPM schedule, the City and the Contractor shall meet to review and discuss the initial CPM schedule, after the City has completed a review of the initial submittal. The City's review and comment on the schedule will be limited to conformance with the Contract Documents and these specifications. The Contractor shall make the necessary corrections to the schedule to comply with the Contract Documents, and shall adjust the schedule to incorporate any missing information requested by the City. The Contractor shall resubmit the revised initial CPM schedule within five (5) working days of the meeting. The resubmitted, revised schedule shall be considered as the "Original CPM Schedule". The City may receive the Original CPM Schedule with no exceptions taken, or may require that the Contractor make additional revisions to the first updated CPM schedule (Progress Schedule).

The City reserves the right to require the Contractor to adjust, add to, or clarify any portion of the Original CPM Schedule which may later be discovered to be insufficient for monitoring the progress of the work or approval of partial payment requests. No additional compensation will be provided for such adjustments, additions, or clarifications.

Submittal of the Original CPM Schedule, and subsequent Progress Schedules, shall be understood to be the Contractor's representation that the schedule meets the requirements of the Contract Documents and that work shall be executed in the sequence indicated on the schedule.

The Contractor shall monitor progress of the work and shall update and adjust the schedule each month to reflect actual progress on schedule activities, any changes to activities, and the additional and/or subtraction of any activities due to change orders, additions, deletions, etc.

Each Progress Schedule submitted shall continue to show all activities, including those completed. Completed activities shall accurately reflect "as-built" information by showing when activities were actually started and actually completed.

Progress Schedules shall be submitted by the fifth working day of each month, with

progress updated through the last calendar day of the previous month.

Within ten (10) working days of the submittal of the Progress Schedule, the City will complete a review and provide comments on the schedule. The City may reject the Progress Schedule, receive it with no exceptions taken, or may require that the Contractor make additional revisions to the next Progress Schedule.

The Progress Schedule will be utilized as part of the basis for the Contractor's monthly application for payment. If the Progress Schedule is rejected, the Contractor's application for payment will not be processed until the Progress Schedule has been revised, resubmitted, and either received with no exceptions taken or received with revisions to be made the following month.

Updating the schedule to reflect actual progress shall not be considered revisions to the schedule. However, the CPM schedule is recognized as a dynamic tool which changes as new information is acquired. Therefore, it is anticipated that revisions to activity durations and sequences may be expected on a monthly basis as the project proceeds.

To reflect revisions to the schedule, the Contractor shall provide the City with a written revision request prior to incorporation into a Progress Schedule. The revision request shall consist of a narrative with an itemized, full description and reason for each revision to the schedule.

Schedule revisions shall not be incorporated into any Progress Schedule until the City has reviewed the revision request. The City may request additional information and justification for schedule revisions and the Contractor shall, within three (3) working days, provide the City with a complete written narrative response to the City's request.

If the Contractor's revision request is not accepted by the City, and the Contractor disagrees with the City's position, the Contractor has seven (7) calendar days from receipt of the City's letter rejecting the revision request, to provide a narrative providing full justification and explanation for the revision. The Contractor's failure to respond in writing within seven (7) calendar days of the City's letter rejecting the revision request shall be contractually interpreted as acceptance of the City's position, and the Contractor waives its rights to subsequently dispute or file of claims regarding the City's position.

If the Progress Schedule shows Project Completion, or any other specified milestone date, occurring after the date required in the Contract Documents, the Contractor shall submit to the City a proposed plan to recover the lost time. The proposed plan shall be in writing and shall include a written narrative of any activity revisions, sequence changes, and other revisions proposed. If the revisions include sequence changes, the Contractor shall submit a schedule diagram comparing the proposed revised sequence of work to the Original CPM Schedule.

The proposed revisions shall not be incorporated into the Progress Schedule until reviewed by the City. If the Contractor's proposed revisions are not accepted by the City, the Contractor shall follow the procedures in paragraph 3.04.C and 3.04.D above.



When the Contractor is directed to perform additional work under a Change Order, the Contractor shall prepare and submit to the City within ten (10) working days from the direction to proceed, a Schedule Impact Statement (SIS). The SIS shall include both a written narrative and a schedule diagram depicting any impacts the Contractor feels that the Change Order work will have on other project activities and on the Critical Path. The SIS schedule diagram shall show how the Contractor proposes to incorporate the changed work into the CPM schedule, and whether a time extension will be required. Time extensions will only be granted if the Contractor can show conclusively that the changed work impacts the Critical Path.

The City will review the Schedule Impact Statement to confirm that the Contractor's logic behind projected impacts to the schedule is appropriate. If the City concurs with the Contractor's projected impacts, the Contractor shall incorporate the revisions into the next Progress Schedule, and the Contract Time will be appropriately adjusted, if required. If the City does not concur with the Contractor's projected revisions, and they are not accepted by the City, the Contractor shall follow the procedures in paragraph 3.04.C and 3.04.D above.

The Contractor shall be responsible for all costs associated with the preparation of the Schedule Impact Statement, and the process of incorporating revisions into the Progress Schedule.

The Contractor is responsible for requesting time extensions for time impacts resultant from Change Orders that, in the opinion of the Contractor, impact the Critical Path of the current Progress Schedule. Failure of the Contractor to request time extensions; provide an SIS, or provide required Recovery Schedules will result in the Contractor waiving its right to a time extension and any costs to mitigate delays.

The City shall not be obligated to consider any time extension request unless requirements of the Contract Documents are complied with. Failure of the Contractor to perform in accordance with the current Progress Schedule shall not be excused by the submittal of SISs. If the Contractor does not submit an SIS within the required ten (10) working days for any Change Order, it is mutually agreed that the Change Order has no impact to the schedule and the Contractor does not require any time extensions for that Change Order.

The Contractor shall submit the initial CPM schedule to the City within ten (10) working days of receipt of the Notice to Proceed. Subsequent Progress Schedules shall be submitted by the fifth working day of each month, with progress updated through the last calendar day of the previous month.

All CPM schedules shall be submitted in Microsoft 2000, with a file copy submitted on a CD R/RW disk.

Copies of a summary report shall be included in each submittal on 8-1/2 x 11-inch bond paper. The Summary report shall be sorted by activity number in ascending order, and shall include activity number; activity name; original duration; remaining duration;



predecessor and successor activities for each activity, including relationship type; early and late start dates; early and late finish dates; and total float.

A network plot of the schedule shall also be included in each submittal on 30 x 42-inch bond paper, showing activity name, activity number, links between activities, and showing a single critical path from the first activity through the last activity in the schedule. The network plot shall be in color, with the Critical Path clearly shown in red.

The Contractor shall submit to the City four copies of all schedule submittals.

Full compensation for all costs involved in the preparation of the CPM schedule and supporting documents, such as Schedule Revisions, Recovery Schedules, and Schedule Impact Statements, including all labor, tools, equipment and incidentals, and for doing all work involved to revise, correct, and modify complete in place, as required in these specifications, and as directed by the Engineer, shall be considered as included in the prices paid for the various items of work, and no additional compensation shall be allowed therefore.

#### **8-1.05 TEMPORARY SUSPENSION OF WORK**

The Engineer shall have the authority to suspend the work wholly or in part, for any time period as the Engineer deems necessary, due to unsuitable weather, or to such other conditions considered unfavorable for the suitable prosecution of the work, or for any time period as the Engineer deems necessary due to the failure on the part of the Contractor to carry out orders given, or to perform any provision of the Contract, or for any other reason.

The Contractor shall immediately comply with the written order of the Engineer to suspend the work wholly or in part. The suspended work shall be resumed when conditions are favorable and methods are corrected, as ordered or accepted in writing by the Engineer, or as directed by the Engineer.

In the event that a suspension of work is ordered as provided above, and should that suspension be ordered by reason of the failure of the Contractor to carry out orders or to perform any provision of the Contract; or by reason of weather conditions being unsuitable for performing any item or items of work, which work, in the sole opinion of the Engineer, could have been performed prior to the occurrence of the unsuitable weather conditions had the Contractor diligently prosecuted the work when weather conditions were suitable; the Contractor, at the Contractor's expense, shall do all the work necessary to provide a safe, smooth, and unobstructed passageway through construction for use by public traffic during the period of that suspension as provided in Sections 7-1.08, "Public Convenience," and 7-1.09, "Public Safety," and as specified in the special provisions for the work. In the event that the Contractor fails to perform the work above specified, the City of Dixon will perform that work and the cost thereof will be deducted from moneys due or to become due the Contractor.

In the event that a suspension of work is ordered by the Engineer due to unsuitable weather conditions, and in the sole opinion of the Engineer, the Contractor has prosecuted the work with energy and diligence prior to the time that operations were suspended, the

cost of providing a smooth and unobstructed passageway through the work will be paid for as extra work as provided in Section 4-1.03D or, at the option of the Engineer, that work will be performed by the City of Dixon at no cost to the Contractor.

If the Engineer orders a suspension of all of the work or a portion of the work which is the current controlling operation or operations, due to unsuitable weather or to other conditions considered unfavorable to the suitable prosecution of the work, the days on which the suspension is in effect shall not be considered working days as defined in Section 8-1.06, "Time of Completion." If a portion of work at the time of the suspension is not a current controlling operation or operations, but subsequently does become the current controlling operation or operations, the determination of working days will be made on the basis of the then current controlling operation or operations.

If a suspension of work is ordered by the Engineer, due to the failure on the part of the Contractor to carry out orders given or to perform any provision of the Contract, the days on which the suspension order is in effect shall be considered working days if those days are working days within the meaning of the definition set forth in Section 8-1.06, "Time of Completion."

No Contract adjustment will be allowed under the provisions specified in this section to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any term or condition of this Contract.

Any Contract adjustment warranted due to suspension of work ordered by the Engineer will be made in the same manner as provided for right of way delays in Section 8-1.09, "Right of Way Delays."

In the event of a suspension of work under any of the conditions set forth in this Section 8-1.05, the suspension of work shall not relieve the Contractor of the responsibilities as set forth in Section 7, "Legal Relations and Responsibility."

#### **8-1.06 TIME OF COMPLETION**

The Contractor shall complete all or any designated portion of the work called for under the Contract Documents in all parts and requirements within the time set forth in the Contract Documents.

A working day is defined as any day, except as follows:

1. Saturdays, Sundays and legal holidays;
2. Days on which the Contractor is prevented by inclement weather or conditions resulting immediately therefrom adverse to the current controlling operation or operations, as determined by the Engineer, from proceeding with at least 75 percent of the normal labor

and equipment force engaged on that operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations; or

3. Days on which the Contractor is prevented, by reason of requirements in "Maintaining Traffic" of the special provisions, from working on the controlling operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations.

Should the Contractor prepare to begin work at the regular starting time of any day on which inclement weather, or the conditions resulting from the weather, or the condition of the work, prevents the work from beginning at the usual starting time and the crew is dismissed as a result thereof and the Contractor does not proceed with at least 75 percent of the normal labor and equipment force engaged in the current controlling operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations, the Contractor will not be charged for a working day whether or not conditions should change thereafter during that day and the major portion of the day could be considered to be suitable for those construction operations.

The current controlling operation or operations is to be construed to include any feature of the work (e.g., an operation or activity, or a settlement or curing period) considered at the time by the Engineer and the Contractor, which, if delayed or prolonged, will delay the time of completion of the Contract.

Determination that a day is a non-working day by reason of inclement weather or conditions resulting immediately therefrom, shall be made by the Engineer. The Contractor will be allowed 15 days from the issuance of the weekly statement of working days in which to file a written protest setting forth in what respects the Contractor differs from the Engineer; otherwise, the decision of the Engineer shall be deemed to have been accepted by the Contractor as correct. The Engineer will furnish the Contractor a weekly statement showing the number of working days charged to the Contract for the preceding week, the number of working days of time extensions being considered or accepted, the number of working days originally specified for the completion of the Contract and the number of working days remaining to complete the Contract and the extended date for completion thereof, except when working days are not being charged in conformance with the provisions in Section 8-1.05, "Temporary Suspension of Work."

### **8-1.07 LIQUIDATED DAMAGES**

It is agreed by the parties to the Contract that in case all the work called for under the Contract in all parts and requirements is not completed within the number of working days as set forth in the Contract Documents, damage will be sustained by the City of Dixon, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the City of Dixon will sustain in the event of and by reason of the delay; and it is therefore agreed that the Contractor will pay to the City of Dixon, the sum set forth in the Contract Documents per day for each and every calendar day's delay in completing the work in excess of the number of working days prescribed; and the

Contractor agrees to pay the liquidated damages herein provided for, and further agrees that the City of Dixon may deduct the amount thereof from any moneys due or that may become due the Contractor under the Contract.

The Contractor will be granted an extension of time and will not be assessed with liquidated damages or the cost of engineering and inspection for any portion of the delay in completion of the work beyond the time named in the Contract Documents for the completion of the work caused by acts of God or of the public enemy, fire, floods, tsunamis, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes, shortage of materials and freight embargoes, provided that the Contractor shall notify the Engineer in writing of the causes of delay within 3 days from the beginning of that delay. The Engineer shall ascertain the facts and the extent of the delay, and the Engineer's findings thereon shall be final and conclusive.

No extension of time will be granted for a delay caused by a shortage of materials unless the Contractor furnishes to the Engineer documentary proof that the Contractor has made every effort to obtain the materials from all known sources in a diligent and timely manner, and further proof in the form of supplementary progress schedules, as required in Section 8-1.04, "Progress Schedule," that the inability to obtain the materials when originally planned, did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the Contractor's operations. The term "shortage of materials," as used in this section, shall apply only to materials, articles, parts or equipment which are standard items and are to be incorporated in the work. The term "shortage of materials," shall not apply to materials, parts, articles or equipment which are processed, made, constructed, fabricated or manufactured to meet the specific requirements of the Contract. Only the physical shortage of material will be considered under these provisions as a cause for extension of time. Delays in obtaining materials due to priority in filling orders will not constitute a shortage of materials.

Except for the additional compensation provided for in Section 8-1.09, "Right of Way Delays," the Contractor shall have no claim for damage or compensation for any delay or hindrance.

It is the intention of the above provisions that the Contractor shall not be relieved of liability for liquidated damages or engineering and inspection charges for any period of delay in completion of the work in excess of that expressly provided for in this Section 8-1.07.

#### **8-1.08 TERMINATION OF CONTROL**

Whenever, in the opinion of the City of Dixon, the Contractor has failed to supply an adequate force of labor, equipment, or materials of proper quality, or has failed in any other respect to prosecute the work with the diligence specified in the Contract; or if Contractor should refuse or fail to comply with laws, ordinances, or directions of the Engineer; or if Contractor should fail to make prompt payments to subcontractors or for labor or materials; or otherwise be in breach of this Contract; the City of Dixon may give written notice of at least five (5) calendar days to the Contractor and Contractor's sureties that if the defaults

are not remedied within a time specified in such notice, the Contractor's control over the work will be terminated.

If the Contractor should be adjudged a bankrupt, or make an assignment for the benefit of Contractor's creditors, or if a receiver should be appointed on account of Contractor's insolvency, the City of Dixon may declare the Contractor's control over the work terminated, and so notify the Contractor and Contractor's sureties.

Upon such termination, the City of Dixon may take possession, and use all or any part, of the Contractor's materials, tools, equipment, and appliances upon the premises to complete the work; the City of Dixon assuming responsibility for the final relinquishment of such equipment at the conclusion of the work, or sooner, at its option, in as good condition as when it was taken over, reasonable wear and tear excepted; and the City of Dixon agrees to pay for such materials and the use of said equipment at a reasonable compensation.

Upon such termination or the City of Dixon's declaration that the Contractor is in default, the City of Dixon may direct the surety to complete, or cause to be completed, the Contract work, or the City of Dixon may direct that all or any part of the work be completed by day labor, or by employment of other contractors on informal contracts, or both. If the City of Dixon directs the surety to complete or cause to be completed, the Contract work, Contractor's performance bond surety agrees to immediately undertake to complete or cause to be completed, all Contract work. If surety fails or refuses to immediately complete or cause to be completed, all Contract work, surety agrees that damage will be sustained by the City of Dixon, and that it is and will be impracticable to determine the actual amount of damage by reason of such acts; and the Contractor and surety agree that in addition to any other damages City of Dixon may sustain and may be recovered pursuant to these Contract Documents, including but not limited to, other liquidated damages for delay, or actual damages, the sum of FIVE HUNDRED DOLLARS (\$500.00) is a reasonable amount to be charged as liquidated damages for each day surety fails or refuses to complete or cause to be completed, all Contract work, and it is therefore agreed that the Contractor and surety will pay to the City of Dixon this sum, for each and every calendar day surety fails or refuses to complete or cause to be completed, the Contract work; and the Contractor and surety further agree that the City of Dixon may deduct and retain the amount thereof from any monies due the Contractor under the Contract.

If the Contractor's control over the work is terminated as provided above, the Contractor is not entitled to receive any portion of the amount to be paid under the Contract until it is fully completed. After completion, if the unpaid balance exceeds the sum of the amount expended by the City of Dixon in finishing the work, plus all damages sustained, or to be sustained, by the City of Dixon, plus any unpaid claims on account of labor, materials, tools, equipment, or supplies contracted for by the Contractor for the work herein contemplated, the excess not otherwise required by these Contract Documents to be retained shall be paid the Contractor. If the sum so expended exceeds the unpaid balance, the Contractor and Contractor's surety are liable to the City of Dixon for the amount of such excess. If the surety completes the Contract work as provided above, such surety shall be subrogated to money due under the Contract, and to money which shall

become due in the course of completion by the surety. However, Contractor and surety agree that any subrogation rights of surety are subordinate to and inferior to rights of City of Dixon.

The City of Dixon reserves the right to terminate the work for its convenience upon written notice to Contractor. In such event, the Contractor shall be paid its reasonable costs for that portion of the work performed to the date of termination, reasonable costs associated with demobilization, plus fifteen percent (15%) of all such costs for overhead and profit.

#### **8-1.09 RIGHT OF WAY DELAYS**

If, through the failure of the City of Dixon to acquire or clear right of way, the Contractor sustains loss which could not have been avoided by the judicious handling of forces, equipment and plant, there shall be paid to the Contractor that amount that the Engineer may find to be a fair and reasonable compensation for that part of the Contractor's actual loss, that, in the opinion of the Engineer, was unavoidable, determined as follows:

Compensation for idle time of equipment will be determined in the same manner as determinations are made for equipment used in the performance of extra work paid for on a force account basis, as provided in Section 9-1.03A(3), "Equipment Rental," with the following exceptions:

- (1) The right of way delay factor for each classification of equipment shown in the State of California, Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is a part of the Contract Documents, will be applied to that equipment rental rate.
- (2) The time for which the compensation will be paid will be the actual normal working time during which the delay condition exists, but in no case will exceed 8 hours in any one day.
- (3) The days for which compensation will be paid will be the calendar days, excluding Saturdays, Sundays and legal holidays, during the existence of the delay, except that when rental of equipment is paid for under the provisions in Section 9-1.03A (3b), "Equipment not on the Work," no payment will be made for right of way delays in conformance with the provisions in this Section 8-1.09.

Actual loss shall be understood to include no items of expense other than idle time of equipment and necessary payments for idle time of workers, cost of extra moving of equipment and cost of longer hauls. Compensation for idle time of equipment will be determined as provided in this Section 8-1.09 and compensation for idle time of workers will be determined as provided in Section 9-1.03A(1), "Labor," and no markup will be added in either case for overhead and profit. The cost of extra moving of equipment and the cost of longer hauls will be paid for as extra work as provided in Section 4-1.03D.

If performance of the Contractor's work is delayed as the result of the failure of the City of Dixon to acquire or clear right of way, an extension of time determined pursuant to the provisions in Section 8-1.07, "Liquidated Damages," will be granted.

## **8-1.10 UTILITY AND NON-HIGHWAY FACILITIES**

It is anticipated that some or all of the utility and other non-highway facilities, both above ground and below ground, that are required to be rearranged (as used herein, rearrangement includes installation, relocation, alteration or removal) as a part of the highway improvement will be rearranged in advance of construction operations. Where it is not anticipated that the rearrangement will be performed prior to construction, or where the rearrangement must be coordinated with the Contractor's construction operations, the existing facilities that are to be rearranged will be indicated on the plans or in the special provisions. Where a rearrangement is indicated on the plans or in the special provisions, the Contractor will have no liability for the costs of performing the work involved in the rearrangement.

The right is reserved to the City of Dixon and the owners of facilities, or their authorized agents, to enter upon the highway right of way for the purpose of making those changes that 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 this work and shall conduct operations in such a manner as to avoid any unnecessary delay or hindrance to the work being performed by the other forces. Wherever necessary, the work of the Contractor shall be coordinated with the rearrangement of utility or other non-highway facilities, and the Contractor shall make arrangements with the owner of those facilities for the coordination of the work.

Attention is directed to the possible existence of underground facilities and utilities not indicated in the Contract Documents and to the possibility that utilities may be in a location different from that which is indicated in the Contract Documents. The Contractor shall ascertain the exact location of all utilities, the location of their service laterals or other appurtenances, and of existing service lateral or appurtenances of any other underground facilities prior to doing work.

If the Contractor cannot locate an underground facility or utility whose presence is indicated in the Contract Documents after a diligent search and investigation, the Contractor shall immediately so notify the Engineer in writing. If the facility for which the notice is given is in a substantially different location from that indicated on the plans or in the special provisions, the additional cost of locating the facility will be paid for as extra work as provided in Section 4-1.03D.

If the Contractor discovers utilities not indicated in the Contract Documents, the Contractor shall immediately give the Engineer and the Utility Company written notification of the existence of those facilities. The utilities shall be located and protected from damage as directed by the Engineer, and the cost of that work will be paid for as extra work as provided in Section 4-1.03D. The Contractor shall, if directed by the Engineer, repair any damage which may occur to the utilities. The cost of that repair work, not due to the failure of the Contractor to exercise reasonable care or to comply with the terms of the Contract Documents, will be paid for as extra work as provided in Section 4-1.03D. Damage due to



the Contractor's failure to exercise reasonable care or comply with the Contract Documents shall be repaired at the Contractor's cost and expense.

Where it is determined by the Engineer that the rearrangement of an underground facility is essential in order to accommodate the highway improvement and the plans and Specifications do not provide that the facility is to be rearranged, the Engineer will provide for the rearrangement of the facility by other forces or the rearrangement shall be performed by the Contractor and will be paid for as extra work as provided in Section 4-1.03D.

When ordered by the Engineer in writing, the Contractor shall rearrange any utility or other non-highway facility necessary to be rearranged as a part of the highway improvement, and that work will be paid for as extra work as provided in Section 4-1.03D.

Should the Contractor desire to have any rearrangement made in any utility facility, or other improvement, for the Contractor's convenience in order to facilitate the Contractor's construction operations, which rearrangement is in addition to, or different from, the rearrangements indicated on the plans or in the special provisions, the Contractor shall make whatever arrangements are necessary with the owners of the utility or other non-highway facility for the rearrangement and bear all expenses in connection therewith.

The Contractor shall immediately notify the Engineer of any delays to the Contractor's operations as a direct result of underground main or trunk line facilities which were not indicated on the plans or in the special provisions or were located in a position substantially different from that indicated on the plans or in the special provisions, or as a direct result of utility or other non-highway facilities not being rearranged as herein provided (other than delays in connection with rearrangements made to facilitate the Contractor's construction operations or delays due to a strike or labor dispute). These delays will be considered right of way delays within the meaning of Section 8-1.09, "Right of Way Delays," and compensation for the delay will be determined in conformance with the provisions in Section 8-1.09. The Contractor shall be entitled to no other compensation for that delay.

Any delays to the Contractor's operations as a direct result of utility or other non-highway facilities not being rearranged as provided in this Section 8-1.10, due to a strike or labor dispute, will entitle the Contractor to an extension of time as provided in Section 8-1.07, "Liquidated Damages." The Contractor shall be entitled to no other compensation for that delay.

#### **8-1.11 TERMINATION OF CONTRACT**

The Contract may be terminated by the Director when termination is authorized by Section 7-1.125, "Legal Actions Against the City of Dixon," Section 7-1.165, "Damage by Storm, Flood, Tsunami or Earthquake," or by other provisions of the Contract which authorize termination. The City of Dixon also reserves the right to terminate the Contract at any time upon a determination by the Director that termination of the Contract is in the best interest of the City of Dixon.



If the Director elects to terminate the Contract, the termination of the Contract and the total compensation payable to the Contractor shall be governed by the following:

A. The Engineer will issue the Contractor a written notice signed by the Director, specifying that the Contract is to be terminated. Upon receipt of the written notice, the Contractor will be relieved of further responsibility for damage to the work (excluding materials) as specified in Section 7-1.16, "Contractor's Responsibility for the Work and Materials," and, except as otherwise directed in writing by the Engineer, the Contractor shall:

1. Stop all work under the Contract except that specifically directed to be completed prior to acceptance.
2. Perform work the Engineer deems necessary to secure the project for termination.
3. Remove equipment and plant from the site of the work.
4. Take action that is necessary to protect materials from damage.
5. Notify all subcontractors and suppliers that the Contract is being terminated and that their Contracts or orders are not to be further performed unless otherwise authorized in writing by the Engineer.
6. Provide the Engineer with an inventory list of all materials previously produced, purchased or ordered from suppliers for use in the work and not yet used in the work, including its storage location, and such other information as the Engineer may request.
7. Dispose of materials not yet used in the work as directed by the Engineer. It shall be the Contractor's responsibility to provide the City of Dixon with good title to all materials purchased by the City of Dixon hereunder, including materials for which partial payment has been made as provided in Section 9-1.06, "Partial Payments," and with bills of sale or other documents of title for those materials.
8. Subject to the prior written acceptance of the Engineer, settle all outstanding liabilities and all claims arising out of subcontracts or orders for materials terminated hereunder. To the extent directed by the Engineer, the Contractor shall assign to the City of Dixon all the right, title and interest of the Contractor under subcontracts or orders for materials terminated hereunder.
9. Furnish the Engineer with the documentation required to be furnished by the Contractor under the provisions of the Contract including, on projects as to which Federal funds are involved, all documentation required under the Federal requirements included in the Contract.

10. Take other actions directed by the Engineer.

B. Acceptance of the Contract as hereinafter specified shall not relieve the Contractor of responsibility for damage to materials. The Contractor shall continue to be responsible for damage to materials after issuance of the Notice of Termination, except as follows:

1. The Contractor's responsibility for damage to materials for which partial payment has been made as provided in Section 9-1.06, "Partial Payments," and for materials furnished by the City of Dixon for use in the work and unused shall terminate when the Engineer certifies that those materials have been stored in the manner and at the locations the Engineer has directed.

2. The Contractor's responsibility for damage to materials purchased by the City of Dixon subsequent to the issuance of the notice that the Contract is to be terminated shall terminate when title and delivery of those materials has been taken by the City of Dixon.

When the Engineer determines that the Contractor has completed the work under the Contract directed to be completed prior to termination and such other work as may have been ordered to secure the project for termination, the Engineer will recommend that the Director formally accept the Contract.

C. Termination of the Contract shall not relieve the Contractor or surety of their obligation for any claims arising out of the work performed.

D. The total compensation to be paid to the Contractor shall be determined by the Engineer on the basis of the following:

1. The reasonable cost to the Contractor, without profit, for all work performed under the Contract, including mobilization, demobilization and work done to secure the project for termination. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by the Contractor, amounts realized by the sale of materials, and for other appropriate credits against the cost of the work. Deductions will also be made, when the Contract is terminated under the authority of Section 7-1.165, "Damage by Storm, Flood, Tsunami or Earthquake," for the cost of materials damaged by the "occurrence."

When, in the opinion of the Engineer, the cost of a Contract item of work is excessively high due to costs incurred to remedy or replace defective or rejected work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that work in compliance with the requirements of the Contract Documents and the excessive actual cost shall be disallowed.

2. A reasonable allowance for profit on the cost of the work performed as determined under Subsection (1), provided the Contractor establishes to the satisfaction of the Engineer that it is reasonably probable that the Contractor would have made a profit

had the Contract been completed and provided further, that the profit allowed shall in no event exceed 4 percent of the cost.

3. The reasonable cost to the Contractor of handling material returned to the vendor, delivered to the City of Dixon or otherwise disposed of as directed by the Engineer.

4. A reasonable allowance for the Contractor's administrative costs in determining the amount payable due to termination of the Contract.

All records of the Contractor and the Contractor's subcontractors, necessary to determine compensation in conformance with the provisions in this Section 8-1.11, shall be open to inspection or audit by representatives of the City of Dixon at all times after issuance of the notice that the Contract is to be terminated and for a period of 3 years, thereafter, and those records shall be retained for that period.

After acceptance of the work by the Director, the Engineer may make payments on the basis of interim estimates pending issuance of the Final Estimate in conformance with the provisions in Section 9-1.07B, "Final Payment and Claims," when, in the Engineer's opinion, the amount thus paid, together with all amounts previously paid or allowed, will not result in total compensation in excess of that to which the Contractor will be entitled.

All payments, including payment upon the Final Estimate shall be subject to deduction for prior payments and amounts, if any, to be kept or retained under the provisions of the Contract.



## **SECTION 9: MEASUREMENT AND PAYMENT**

### **9-1.01 MEASUREMENT OF QUANTITIES**

All work to be paid for at a Contract price per unit of measurement will be measured by the Engineer in accordance with the United States Standard Measures, unless another system of units has been specified in writing by the Engineer. A ton shall consist of 2,000 pounds avoirdupois}.

Unless shipped by rail, material paid for by mass shall be weighed on scales furnished by and at the expense of the Contractor or on other sealed scales regularly inspected by the Division of Measurement Standards or its designated representative.

Weighing, measuring and metering devices used to measure the quantity of materials used in the work shall be suitable for the purpose intended and shall conform to the tolerances and Specifications as outlined in Title 4, Chapter 9 of the California Code of Regulations, the provisions of the California Business and Professions Code, Division 5, and these Specifications. Devices not Type-approved by the Division of Measurement Standards shall be Type-approved in conformance with the requirements in California Test 109.

Elements of the material plant controller which affect the accuracy or delivery of data shall be made available for the application of security seals. These devices will be inspected and adjusting elements sealed prior to the first production of materials for the Contract. The security seals will be furnished by the Engineer. Material production shall cease when alteration, disconnection or otherwise manipulation of the security seals occur, and production shall not resume until the device is inspected and resealed by the Engineer.

Weighing, measuring or metering devices used to determine the quantity of materials to be paid for will be considered to be "commercial devices" and shall be sealed by the Division of Measurement Standards or its authorized representative as often as the Engineer may deem necessary. The installation of all portable vehicle scales must be accepted by the Engineer prior to sealing.

Vehicle scales shall be of sufficient size to permit the entire vehicle or combination of vehicles to rest on the scale deck while being weighed. Combination vehicles may be weighed as separate units provided they are disconnected while being weighed. The maximum concentrated load shall not exceed the manufacturer's designed sectional capacity of the scale.

Weighing, measuring or metering devices required by these Specifications for the purpose of proportioning a material or product will be considered to be "non-commercial devices" and shall be tested and accepted in conformance with the requirements in California Test 109. This testing shall be done by one of the following, in the presence of the Engineer, as often as the Engineer deems necessary:

1. A County Sealer of Weights and Measures;

2. A Scale Service Agency; or
3. A Division of Measurement Standards Official.

The Contractor shall notify the Engineer at least 24 hours in advance of testing the device.

Undersupports for scale bearing points shall be constructed of Portland cement concrete produced from commercial quality aggregates and cement, which contains not less than 275 kg of cement per cubic meter {463 pounds of cement per cubic yard}. Undersupports shall be constructed in a manner to prevent any shifting or tilting of the support and shall have a minimum height of 350 mm {14 inches} above ground line. The footings shall have a minimum depth of 150 mm {6 inches} below the ground line. The bearing surface of the footings shall have a minimum width of 760 mm {30 inches} and shall be of sufficient area so the pressure does not exceed 200 kPa {4,000 pounds per square foot}. Adequate drainage shall be provided to prevent saturation of the ground under the scale. Scale bulkheads shall be of adequate material and strength to resist displacement. If timber bulkheads are used, the minimum cross section shall be 200 mm x 200 mm {8 inches x 8 inches}. Wedges shall not be used to shim the supports. If shimming is necessary, the shimming shall be done by securely attached metal shims, or by grouting. Shimming shall not exceed 75 mm {3 inches}. The approach ramps shall be level with the scale deck for a distance of not less than one-half the length of the scale deck. The mechanical indicating elements shall be installed level and plumb and shall be rigidly mounted upon a concrete foundation.

The lever system and mechanical indicating elements of hopper scales shall be rigidly attached to non-yielding supports in such a manner as to prevent any loss in weight due to bending and distortion of the supports.

When a multiple beam type scale is used in proportioning materials, an over and under indicator shall be provided which will give positive visible evidence of the amount of any over and under weight. The indicator shall be so designed that the indicator will operate during the addition of the last 90 kg {200 pounds} of any weighing. The over-travel of the indicator shall be at least one-third of the loading travel. Indicators shall be enclosed against moisture and dust.

Over and under dials, and other indicators for weighing and measuring systems used in proportioning materials shall be grouped so that the smallest increment for each indicator can be accurately read from the point at which the proportioning operation is controlled.

The Contractor shall bear the expense of all service fees for testing and approving of "non-commercial devices." The cost of the equipment, labor and materials furnished by the Contractor to assist in the testing of weighing, measuring or metering devices will be considered as included in the Contract prices paid for the various Contract items of work requiring the weighing, measuring or metering and no separate payment will be made therefor.

Whenever pay quantities of material are determined by weighing, the scales shall be operated by a weighmaster licensed in conformance with the requirements in the California Business and Professions Code, Division 5, Chapter 7. The Contractor shall furnish a Public weighmasters certificate or certified daily summary weigh sheets. A representative of the City of Dixon may, at the discretion of the Engineer, be present to witness the weighing and to check and compile the daily record of the scale weights.

When required by the Engineer, the operator of each vehicle weighed shall obtain a weight or load slip from the weigher and deliver that slip to the Engineer at the point of delivery of the material.

If material is shipped by rail, the car mass will be accepted provided that actual mass of material only will be paid for and not minimum car mass used for assessing freight tariff, and provided further that car mass will not be acceptable for material to be passed through mixing plants.

Vehicles used to haul material being paid for by mass shall be weighed empty daily and at additional times as the Engineer may direct. Each vehicle shall bear a plainly legible identification mark. Vehicles may from time to time be required by the Engineer to have the mass of the material to be paid for verified by weighing the empty and loaded vehicle on such other scales as the Engineer may designate.

Materials which are specified for measurement by volume, i.e. cubic yard, cubic foot, etc., shall be measured completed as-constructed. Whenever earthwork is to be measured by volume, it shall be measured "in-situ", unless otherwise specified in the Contract documents. Materials "measured in the vehicle" shall be hauled in vehicles of such type and size that the actual contents may be readily and accurately determined. Unless all vehicles are of uniform capacity, each vehicle must bear a plainly legible identification mark indicating its water level capacity. Vehicles shall be loaded to at least their water level capacity, and all loads shall be leveled when the vehicles arrive at the point of delivery. Loads hauled in vehicles not meeting the above requirements or loads of a quantity less than the capacity of the vehicle, measured after being leveled off as above provided, will be subject to rejection, and no compensation will be allowed for that material.

When material is to be measured and paid for on a volume basis and it is impractical to determine the volume by the specified method of measurement, or when requested by the Contractor in writing and accepted by the Engineer in writing, the material will be weighed in accordance with the requirements specified for mass measurement and the mass will be converted to volume measurement for payment purposes. Factors for conversion from mass measurement to volume measurement will be determined by the Engineer and shall be agreed to by the Contractor before that method of measurement of pay quantities will be adopted.

Quantities of material wasted or disposed of in a manner not called for under the Contract; or rejected loads of material, including material rejected after it has been placed by reason of the failure of the Contractor to conform to the provisions of the Contract; or material not unloaded from the transporting vehicle; or material placed outside of the lines indicated on

the plans or established by the Engineer; or material remaining on hand after completion of the work will not be paid for, and those quantities will be deducted from the final total quantities. No compensation will be allowed for hauling and disposing of rejected material.

The mass of all aggregate or other roadway material which is to be paid for on a mass basis, except imported borrow, imported topsoil, straw, fiber, aggregate subbases, aggregate bases or aggregate for cement treated bases, will be determined by deducting from the mass of material, the mass of water in the material at the time of weighing in excess of 3 percent of the dry mass of the material. When imported borrow, imported topsoil or aggregate subbase is being paid for on a mass basis, the mass to be paid for will be determined by deducting from the mass of the material, the mass of water in the material at the time of weighing in excess of 6 percent of the dry mass of the material. When straw is being paid for on a mass basis, the mass to be paid for will be determined by deducting from the mass of straw, the mass of water in the straw at the time of weighing in excess of 15 percent of the dry mass of the straw. When fiber is being paid for on a mass basis, the mass of water in the fiber at the time of weighing shall not exceed 15 percent of the dry mass of the fiber. No deduction will be made for the mass of water in fiber. The percentage of water in the material shall be determined by California Test 226. The mass of aggregate base and aggregate for cement treated bases which are to be paid for on a mass basis, will be determined as provided in Section 26, "Aggregate Bases," and Section 27, "Cement Treated Bases," respectively.

The mass of water deducted as provided in this Section 9-1.01 will not be paid for.

Full compensation for all expense involved in conforming to the requirements specified in this Section 9-1.01 shall be considered as included in the unit prices paid for the materials being measured or weighed and no additional compensation will be allowed therefor.

#### **9-1.01A FINAL PAY ITEMS**

When an item of work is designated as (F) or (S-F) in the Engineer's Estimate, the estimated quantity for that item of work shall be the final pay quantity, unless the dimensions of any portion of that item are revised by the Engineer, or the item or any portion of the item is eliminated. If the dimensions of any portion of the item are revised, and the revisions result in an increase or decrease in the estimated quantity of that item of work, the final pay quantity for the item will be revised in the amount represented by the changes in the dimensions, except as otherwise provided for minor structures in Section 51-1.22, "Measurement." If a final pay item is eliminated, the estimated quantity for the item will be eliminated. If a portion of a final pay item is eliminated, the final pay quantity will be revised in the amount represented by the eliminated portion of the item of work.

The estimated quantity for each item of work designated as (F) or (S-F) in the Engineer's Estimate shall be considered as approximate only, and no guarantee is made that the quantity which can be determined by computations, based on the details and dimensions shown on the plans, will equal the estimated quantity. No allowance will be made in the event that the quantity based on computations does not equal the estimated quantity.



In case of discrepancy between the quantity shown in the Engineer's Estimate for a final pay item and the quantity or summation of quantities for the same item shown on the plans, payment will be based on the quantity shown in the Engineer's Estimate.

Under no circumstances will Contractor be entitled to payment for any final pay quantity that is greater than the unit quantity price for the final pay quantity item set forth in the proposal form.

### **9-1.02 SCOPE OF PAYMENT**

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 required under the Contract; also for 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 the acceptance by the Director 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 the Contract; and for completing the work according to the Contract Documents.

No compensation will be made in any case for loss of anticipated profits.

### **9-1.03 FORCE ACCOUNT PAYMENT**

When extra work is to be paid for on a force account basis, the labor, materials and equipment used in the performance of that work shall be subject to the review and acceptance of the Engineer and compensation will be determined as follows:

#### **9-1.03A WORK PERFORMED BY CONTRACTOR**

The Contractor will be paid the direct costs for labor, materials and equipment used in performing the work determined as hereinafter provided in Sections 9-1.03A(1), "Labor," 9-1.03A(2), "Materials," and 9-1.03A(3), "Equipment Rental," except where agreement has been reached to pay in conformance with the provisions in Section 9-1.03B, "Work Performed by Special Forces or Other Special Services."

To the total of the direct costs computed as provided in Sections 9-1.03A(1), "Labor," 9-1.03A(2), "Materials," and 9-1.03A(3), "Equipment Rental," there will be added a markup of 33 percent to the cost of labor, 15 percent to the cost of materials and 15 percent to the equipment rental.

The above markups shall constitute full compensation for all overhead costs which shall be deemed to include all items of expense not specifically designated as cost or equipment rental in Sections 9-1.03A(1), "Labor," 9-1.03A(2), "Materials," and 9-1.03A(3), "Equipment Rental." The total payment made as provided above shall be deemed to be the actual cost of the work and shall constitute full compensation therefor.

When extra work to be paid for on a force account basis is performed by a subcontractor, approved in conformance with the provisions in Section 8-1.01, "Subcontracting," an additional markup of 5 percent will be added to the total cost of that extra work including all markups specified in this Section 9-1.03A. The additional 5 percent markup shall reimburse the Contractor for additional administrative costs, and no other additional payment will be made by reason of performance of the extra work by a subcontractor.

#### **9-1.03A(1) LABOR**

The Contractor will be paid the cost of labor for the workers (including foremen when authorized by the Engineer), used in the actual and direct performance of the work. The cost of labor, whether the employer is the Contractor, subcontractor or other forces, will be the sum of the following:

##### **9-1.03A(1A) ACTUAL WAGES**

The actual wages paid shall include any employer payments to or on behalf of the workers for health and welfare, pension, vacation and similar purposes.

##### **9-1.03A(1B) LABOR SURCHARGE**

To the actual wages, as defined in Section 9-1.03A(1a), will be added a labor surcharge set forth in the Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the work is accomplished. The labor surcharge shall constitute full compensation for all payments imposed by State and Federal laws and for all other payments made to, or on behalf of, the workers, other than actual wages as defined in Section 9-1.03A(1a) and subsistence and travel allowance as specified in Section

##### **9-1.03A(1c) SUBSISTENCE AND TRAVEL ALLOWANCE**

The actual subsistence and travel allowance paid to the workers.

#### **9-1.03A(2) MATERIALS**

The City of Dixon reserves the right to furnish any materials it deems advisable, and the Contractor shall have no claims for costs and markup on those materials.

Only materials furnished by the Contractor and necessarily used in the performance of the work will be paid for. The cost of those materials will be the cost to the purchaser, whether Contractor, subcontractor or other forces, from the supplier thereof, except as the following are applicable:

### **9-1.03A(2A)**

If a cash or trade discount by the actual supplier is offered or available to the purchaser, it shall be credited to the City of Dixon notwithstanding the fact that the discount may not have been taken.

### **9-1.03A(2B)**

If materials are procured by the purchaser by any method which is not a direct purchase from and a direct billing by the actual supplier to the purchaser, the cost of those materials shall be deemed to be the price paid to the actual supplier as determined by the Engineer plus the actual costs, if any, incurred in the handling of the materials.

### **9-1.03A(2c)**

If the materials are obtained from a supply or source owned wholly or in part by the purchaser, the cost of those materials shall not exceed the price paid by the purchaser for similar materials furnished from that source on Contract items or the current wholesale price for those materials delivered to the jobsite, whichever price is lower.

### **9-1.03A(2D)**

If the cost of the materials is, in the opinion of the Engineer, excessive, then the cost of the material shall be deemed to be the lowest current wholesale price at which the materials were available in the quantities concerned delivered to the jobsite, less any discounts as provided in Section 9-1.03A(2a).

### **9-1.03A(2E)**

If the Contractor does not furnish satisfactory evidence of the cost of the materials from the actual supplier thereof within 60 days after the date of delivery of the material or within 15 days after acceptance of the Contract, whichever occurs first, the City of Dixon reserves the right to establish the cost of the materials at the lowest current wholesale prices at which the materials were available in the quantities concerned delivered to the location of the work, less any discounts as provided in Section 9-1.03A(2a).

### **9-1.03A(3) EQUIPMENT**

The Contractor will be paid for the use of equipment at the rental rates listed for that equipment in the Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the work is accomplished and which is a part of the Contract, regardless of ownership and any rental or other agreement, if they may exist, for the use of that equipment entered into by the Contractor, except that for those pieces of equipment with a rental rate of \$10.00 per hour or less as listed in the Labor Surcharge And Equipment Rental Rates publication and which

are rented from a local equipment agency, other than Contractor owned, the Contractor will be paid at the hourly or daily rate shown on the rental agency invoice or agreement for the time used on force account work as provided in Section 9-1.03A(3a), "Equipment on the Work." If a minimum equipment rental amount is required by the local equipment rental agency, the actual amount charged will be paid to the Contractor.

Equipment owned by the Contractor and already on the job site shall only be paid for actual hours of usage as documented on daily extra work reports. Equipment owned by the Contractor, required to perform force account work, and not already on the job site shall only be paid for actual hours of usage as documented on daily extra work reports and the cost of mobilization to bring to the job site. The Engineer shall determine if equipment not on the job site is required to be mobilized to perform extra work.

If it is deemed necessary by the Engineer to use equipment not listed in the Labor Surcharge And Equipment Rental Rates publication, a suitable rental rate for that equipment will be established by the Engineer. The Contractor shall furnish all cost data which might assist the Engineer in the establishment of the rental rate. If the rental rate established by the Engineer is \$10.00 per hour or less, the provisions above concerning rental of equipment from a local equipment agency shall apply.

The rental rates paid as above provided 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.

Operators of rented equipment will be paid for as provided in Section 9-1.03A(1), "Labor."

All equipment shall, in the opinion of the Engineer, be in good working condition and suitable for the purpose for which the equipment is to be used.

Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

Individual pieces of equipment or tools not listed in the Labor Surcharge and Equipment Rental Rate publication and having a replacement value of \$500 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefor.

Rental time will not be allowed while equipment is inoperative due to breakdowns.

### **9-1.03A(3A) EQUIPMENT ON THE WORK**

The rental time to be paid for equipment on the work shall be the time the equipment is in operation on the extra work being performed, and in addition, shall include the time required to move the equipment to the location of the extra work and return the equipment to the original location or to another location requiring no more time than that required to

return the equipment to its original location, except that moving time will not be paid for if the equipment is used at the site of the extra work on other than the extra work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no payment will be made if the equipment is used at the site of the extra work on other than the extra work.

The following shall be used in computing the rental time of equipment on the work:

1. When hourly rates are listed, less than 30 minutes of operation shall be considered to be 0.5-hour of operation.
2. When daily rates are listed, less than 4 hours of operation shall be considered to be 0.5-day of operation.

### **9-1.03A(3B) EQUIPMENT NOT ON THE WORK**

When extra work, other than work specifically designated as extra work in the plans and specifications, is to be paid for on a Force Account basis and the Engineer determines that such extra work requires the Contractor to move on to the work equipment which could not reasonably have been expected to be needed in the performance of the contract, the Engineer may authorize payment for the use of such equipment at equipment rental rates in excess of those listed as applicable for the use of such equipment subject to the following additional conditions:

- A. The Engineer shall specifically approve the necessity for the use of particular equipment on such work.
- B. The Contractor shall establish to the satisfaction of the Engineer that such equipment cannot be obtained from his/her normal equipment source or sources and those of his/her subcontractors.
- C. The Contractor shall establish to the satisfaction of the Engineer that the proposed equipment rental rate for such equipment from his/her proposed source is reasonable and appropriate for the expected period of use.
- D. The Engineer shall approve the equipment source and the equipment rental rate to be paid by the City of Dixon before the Contractor begins work involving the use of said equipment.

For the use of equipment moved in on the work and used exclusively for extra work paid for on a force account basis, the Contractor will be paid the rental rates listed in the Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the work is accomplished and which is a part of the Contract, or determined as provided in Section 9-1.03A(3) and for the cost of transporting the equipment to the location of the work and its return to its original location, all in accordance with the following provisions:

1. The original location of the equipment to be hauled to the location of the work shall be agreed to by the Engineer in advance.
2. The City of Dixon will pay the costs of loading and unloading the equipment.
3. The cost of transporting equipment in low bed trailers shall not exceed the hourly rates charged by established haulers.
4. The rental period shall begin at the time the equipment is unloaded at the site of the extra work, shall include each hour that the equipment is actually used at the site of the extra work, excluding Saturdays, Sundays and legal holidays unless the equipment is used to perform the extra work on those days, and shall terminate at the end of the day on which the Engineer directs the Contractor to discontinue the use of the equipment. The rental time to be paid for equipment not on the work shall be the time the equipment is actually in operation on the extra work being performed and in accordance with the following:

The hours to be paid for equipment which is operated less than 8 hours due to breakdowns, shall not exceed 8 hours less the number of hours the equipment is inoperative due to breakdowns.

When hourly rates are listed, less than 30 minutes of operation shall be considered to be 0.5-hour of operation.

When daily rates are listed, less than 4 hours of operation shall be considered to be 4 hours of operation. No payment will be made if the equipment is not used. If the equipment is used more than 4 hours of operation, payment will be made for one day.

5. Should the Contractor desire the return of the equipment to a location other than its original location, the City of Dixon will pay the cost of transportation in accordance with the above provisions, provided the payment shall not exceed the cost of moving the equipment to the work.
6. Payment for transporting, and loading and unloading equipment, as above provided, will not be made if the equipment is used on the work in any other way than upon extra work paid for on a force account basis.

When extra work, other than work specifically designated as extra work in the Contract Documents, is to be paid for on a force account basis and the Engineer determines that the extra work requires the Contractor to move on to the work equipment which could not reasonably have been expected to be needed in the performance of the Contract, the Engineer may authorize payment for the use of the equipment at equipment rental rates in excess of those listed as applicable for the use of that equipment subject to the following additional conditions:

1. The Engineer shall specifically approve the necessity for the use of particular equipment on that work.
2. The Contractor shall establish to the satisfaction of the Engineer that the equipment cannot be obtained from the Contractor's normal equipment source or sources and those of the Contractor's subcontractors.
3. The Contractor shall establish to the satisfaction of the Engineer that the proposed equipment rental rate for the equipment from the proposed source is reasonable and appropriate for the expected period of use.
4. The Engineer shall approve the equipment source and the equipment rental rate to be paid by the City of Dixon before the Contractor begins work involving the use of that equipment.

### **9-1.03A(3C) OWNER-OPERATED EQUIPMENT**

When owner-operated equipment is used to perform extra work to be paid for on a force account basis, the Contractor will be paid for the equipment and operator, as follows:

Payment for the equipment will be made in conformance with the provisions in Section 9-1.03A(3), "Equipment Rental."

Payment for the cost of labor and subsistence or travel allowance will be made at the rates paid by the Contractor to other workers operating similar equipment already on the project or, in the absence of other workers operating similar equipment, at the rates for that labor established by collective bargaining agreements for the type of workers and location of the work, whether or not the owner-operator is actually covered by an agreement. A labor surcharge will be added to the cost of labor described herein, in conformance with the provisions in Section 9-1.03A(lb), "Labor Surcharge."

To the direct cost of equipment rental and labor, computed as provided herein, will be added the markups for equipment rental and labor as provided in Section 9-1.03A, "Work Performed by Contractor."

### **9-1.03A(3D) DUMP TRUCK RENTAL**

Dump truck rental shall conform to the provisions in Sections 9-1.03A(3), "Equipment Rental," 9-1.03A(3a), "Equipment on the Work," and 9-1.03A(3b), "Equipment not on the Work," except as follows:

1. Fully maintained and operated rental dump trucks used in the performance of extra work paid for on a force account basis will be paid for at the same hourly rate paid by the Contractor for use of fully maintained and operated rental dump trucks in performing Contract item work.
2. In the absence of Contract item work requiring dump truck rental, the Engineer will

establish an hourly rental rate to be paid. The Contractor shall provide the Engineer with complete information on the hourly rental rates available for rental of fully maintained and operated dump trucks.

3. The provisions in Section 9-1.03A(1), "Labor," shall not apply to operators of rented dump trucks.

4. The rental rates listed for dump trucks in the Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates shall not apply.

5. To the total of the rental costs for fully maintained and operated dump trucks, including labor, there will be added a markup of 15 percent. An additional markup of 5 percent will be added by reason of performance of the work by a subcontractor. No separate markup will be made for labor.

The provisions in Section 9-1.03A(3c), "Owner-Operated Equipment," shall not apply to dump truck rentals.

### **9-1.03B WORK PERFORMED BY SPECIAL FORCES OR OTHER SPECIAL SERVICES**

When the Engineer and the Contractor, by agreement, determine that a special service or an item of extra work cannot be performed by the forces of the Contractor or those of any of the Contractor's subcontractors, that service or extra work item may be performed by a specialist.

### **9-1.03C RECORDS**

The Contractor and all subcontractors shall maintain records in such a manner as to provide a clear distinction between the direct costs of extra work paid and the costs of other operations.

From the above records, the Contractor shall furnish the Engineer completed daily extra work reports, on forms approved by the Engineer, for each day's extra work to be paid for on a force account basis. The daily extra work reports shall itemize the materials used, and shall state the direct cost of labor and the charges for equipment rental, whether furnished by the Contractor, subcontractor or other forces, except for charges described in Section 9-1.03B, "Work Performed by Special Forces or Other Special Services." The daily extra work reports shall provide names, identifications, and classifications of all workers, the hourly rate of pay and hours worked, and also the size, type and identification number of equipment, and hours operated.

Material charges shall be substantiated by valid copies of vendor's invoices. The invoices shall be submitted with the daily extra work reports, or if not available, the invoices shall be submitted within 30 days after the submittal of the daily extra work report or 30 days after the date of delivery of the material, whichever occurs first. Contractor waives payment for material charges not substantiated by valid copies of vendor's invoices submitted within the times provided.



Daily extra work reports shall be signed by the Contractor or the Contractor's authorized representative, and shall be submitted to the City on the day the work is performed, or within 24 hours if authorized by the Engineer. Daily extra work reports shall be signed by the designated representative of the City to acknowledge the labor hours, materials, and equipment used to perform the work. Signature by the City's representative does not constitute approval for payment. All daily extra work reports are subject to review and approval by the Engineer for conformance to the Contract Documents prior to payment. The City reserves the right to make adjustments to the amount to be paid for extra work based upon daily extra work reports at any time prior to project acceptance, even if payment has been made under a progress payment. Contractor waives payment for that portion of Force Account work in which a daily extra work report has not been signed by the City's designated representative and/or submitted to the City within the time specified above.

The Engineer will compare the Engineer's records with the completed daily extra work reports furnished by the Contractor and make any necessary adjustments. When these daily extra work reports are agreed upon and signed by both parties, the reports shall become the basis of payment for the work performed, but shall not preclude subsequent adjustment based on a later audit by the City of Dixon.

The Contractor's and all subcontractors' records pertaining to the Project shall be open to inspection or audit by representatives of the City of Dixon, during the life of the Contract and for a period of not less than 3 years after the date of acceptance thereof, and the Contractor and all subcontractors shall retain those records for that period. Where payment for materials or labor is based on the cost thereof to forces other than the Contractor, the Contractor shall make every reasonable effort to ensure that the cost records of those other forces will be open to inspection and audit by representatives of the City of Dixon on the same terms and conditions as the cost records of the Contractor. If an audit is to be commenced more than 60 days after the acceptance date of the Contract, the Contractor will be given a reasonable notice of the time when the audit is to begin.

#### **9-1.03D PAYMENT**

Payment as provided in Sections 9-1.03A, "Work Performed by Contractor," and 9-1.03B, "Work Performed by Special Forces or Other Special Services," shall constitute full compensation to the Contractor for performance of work paid for on a force account basis and no additional compensation will be allowed therefor. The payment will be made in conformance with the provisions in Section 9-1.06, "Partial Payments."

The Engineer's receipt of a proposed progress schedule and monthly updated progress schedules, all in strict compliance with these Contract Documents shall be conditions precedent to the Engineers acceptance of the Contractor's periodic pay requests and/or the City of Dixon's obligation to pay Contractor.

#### **9-1.04 (BLANK)**

#### **9-1.05 STOP NOTICES**

The City of Dixon, may at its option and at any time retain out of any amounts due the Contractor, sums sufficient to cover claims filed pursuant to Section 3179 et seq. of the Civil Code.

#### **9-1.06 PARTIAL PAYMENTS**

The City of Dixon, once in each month, shall cause an estimate in writing to be made by the Engineer. The estimate shall include the total amount of work done and acceptable materials furnished, provided the acceptable materials are listed as eligible for partial payment as materials in the special provisions and are furnished and delivered by the Contractor on the ground and not used or are furnished and stored for use on the Contract, if the storage is within the City of Dixon and the Contractor furnishes evidence satisfactory to the Engineer that the materials are stored subject to or under the control of the City of Dixon, to the time of the estimate, and the value thereof. The estimate shall also include any amounts payable for mobilization. Daily extra work reports furnished by the Contractor less than 5 calendar days, not including Saturdays, Sundays and legal holidays, prior to the preparation of the monthly progress estimate shall not be eligible for payment until the following month's estimate.

The amount of any material to be considered in making an estimate will in no case exceed the amount thereof which has been reported by the Contractor to the Engineer on City of Dixon approved forms, properly filled out and executed, including accompanying documentation as therein required, less the amount of the material incorporated in the work to the time of the estimate. Only materials to be incorporated in the work will be considered. The estimated value of the material established by the Engineer will in no case exceed the Contract price for the item of work for which the material is furnished.

Unless otherwise approved by the Engineer in writing, Contractor shall submit to Engineer on or before the tenth (10th) day of the month, an itemized application for payment for the cost of the work in permanent place, which has been completed in strict accordance with the Contract Documents as of the last day of the preceding month, less amounts previously paid. The application for payment shall be prepared in a form acceptable to Engineer, and shall contain itemized amounts in accordance with the Contract Documents. The applications for payment shall not include requests for payment on account of changes which have not been authorized by Change Orders, or for amounts Contractor does not intend to pay a subcontractor because of a dispute or other reason.

If requested by the City of Dixon, an application for payment shall be accompanied by a summary showing payment that will be made to subcontractors covered by such application, and unconditional waivers and releases of claims and stop notices, from each subcontractor listed in the preceding application for payment covering sums disbursed pursuant to that preceding application for payment.

Contractor warrants that upon submittal of an application for payment, all work has been performed in strict compliance with the Contract Documents, and all work for which certificates of payment have been previously issued and payment has been received from City of Dixon, shall be free and clear of all claims, stop notices, security interests, and encumbrances in favor of Contractor, subcontractors or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment related to the work.

Payment of all, or any part, of an application for payment may be withheld, a certificate of payment may be withheld, all or part of a previous certificate for payment may be nullified and that amount withheld from a current certificate for payment, or the City of Dixon may withhold from payment, on account of any of the following:

1. Defective work not remedied;
2. Third-party claims against Contractor or City of Dixon arising from the acts or omissions of Contractor or subcontractors;
3. Stop notices;
4. Failure of Contractor to make timely payments due to subcontractors for material or labor;
5. A reasonable doubt that the work can be completed for the balance of the Contract price then unpaid;
6. Damage to the City of Dixon or others for which Contractor is responsible;
7. Reasonable evidence that the work cannot be completed within the Contract time, and the unpaid balance of the Contract price would not be adequate to complete the work and cover City of Dixon's damages for the anticipated delay;
8. Failure of Contractor to maintain, update, and submit record documents;
9. Failure of Contractor to submit schedules or their updates as required by the Contract Documents;
10. Performance of the work by Contractor without properly processed shop drawings;
11. Liquidated damages assessed;
12. Any other failure of Contractor to perform its obligations under the Contract Documents.

By resolution of the City of Dixon's City Council, a fund has been established, money appropriated in the current budget, and assigned to the account(s) which is/are the sole source(s) of funds available for payment of the Contract price. Contractor understands and

agrees that Contractor will be paid only from this special fund and if for any reason this fund is not sufficient to pay Contractor, Contractor will not be entitled to payment. The availability of money in this fund, and City of Dixon's ability to draw from this fund, are conditions precedent to City of Dixon's obligation to make payments to Contractor.

Within thirty (30) days of receipt of an approved certificate for payment, properly executed by the Contractor, City of Dixon's Engineer and Director, City of Dixon agrees to pay Contractor, subject to all of the terms and conditions of these Contract Documents, an amount equal to ninety percent (90%) of the sum of the following (less any amounts withheld as permitted by the Contract Documents):

1. Cost of the work in permanent place as of the end of the preceding month as set forth and approved on the certificate for payment; and
2. Less amounts previously paid.

#### **9-1.06A PAYMENT OF WITHHELD FUNDS**

Upon the Contractor's request, the City of Dixon will make payment of funds withheld from progress payments to ensure performance of the Contract if the Contractor deposits in escrow with the City of Dixon, or with a bank acceptable to the City of Dixon, securities equivalent to the amount withheld. The Contractor shall be beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor.

Alternatively, upon the Contractor's request, the City of Dixon will make payment of retentions earned directly to the escrow agent. The Contractor may direct the investment of the payments into securities, and the Contractor shall receive the interest earned on the investments upon the same terms provided for securities deposited by the Contractor. Upon satisfactory completion of the Contract, the Contractor shall receive from the escrow agent all securities, interest and payments received by the escrow agent from the City of Dixon.

Alternatively, and subject to the acceptance by the City of Dixon, the payment of retentions earned may be deposited directly with a person licensed under Division 6 (commencing with Section 17000) of the Financial Code as the escrow agent. Upon written request of an escrow agent that has not been approved by the City of Dixon under subdivision (c) of Section 10263 of the Public Contract Code, the City of Dixon will provide written notice to that escrow agent within 10 business days of receipt of the request indicating the reason or reasons for not approving that escrow agent. The payments will be deposited in a trust account with a Federally chartered bank or savings association within 24 hours of receipt by the escrow agent. The Contractor shall not place any retentions with the escrow agent in excess of the coverage provided to that escrow agent pursuant to subdivision (b) of Section 17314 of the Financial Code. In all respects not inconsistent with subdivision (c) of Section 10263 of the Public Contract Code, the remaining provisions of Section 10263 of the Public Contract Code shall apply to escrow agents acting pursuant to subdivision (c) of Section 10263 of the Public Contract Code.

Securities eligible for investment shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit or any other security mutually agreed to by the Contractor and the City of Dixon.

The escrow agreement used pursuant to this Section 9-1.065 shall be substantially similar to the "Escrow Agreement for Security Deposits In Lieu of Retention" in Section 10263 of the Public Contract Code, deemed as incorporated herein by reference.

The Contractor shall obtain the written consent of the surety to the agreement.

#### **9-1.07 PAYMENT AFTER ACCEPTANCE**

After the work has been accepted in writing by the Director, as provided in Section 7-1.17, "Acceptance of Contract," payments will be made to the Contractor subject to the provisions in this Section 9-1.07.

#### **9-1.07A PAYMENT PRIOR TO PROPOSED FINAL ESTIMATE**

After acceptance of the work by the Director, the Engineer will make an estimate of the total amount of work done under the Contract and the City of Dixon will make a final monthly payment pending issuance of the Proposed Final Estimate. The City of Dixon will pay the balance thereon found to be due after deduction of all previous payments, all amounts to be kept or retained under the provisions of the Contract and those further amounts that the Engineer determines to be necessary pending issuance of the Proposed Final Estimate and payment thereon.

#### **9-1.07B FINAL PAYMENT**

After written acceptance of the Work as complete by the Director, or the Director's designated representative, the Engineer will prepare and issue to the Contractor a Proposed Final Estimate in writing of the total amount payable to the Contractor, including therein an itemization of the total amount, segregated as to Contract item quantities, extra work and any other basis for payment, and shall also show therein all deductions made or to be made for prior payments and amounts to be kept or retained under the provisions of the Contract. All prior estimates and payments shall be subject to correction in the Proposed Final Estimate.

The Contractor shall submit written approval of the Proposed Final Estimate or a written statement of all claims arising under or by virtue of the Contract so that the Engineer receives the written approval or statement of claims no later than close of business of the thirtieth day after receiving the Proposed Final Estimate. If the thirtieth day falls on a Saturday, Sunday or legal holiday, then receipt of the written approval or statement of claims by the Engineer shall not be later than close of business of the next business day. No claim will be considered that was not included in the written statement of claims, nor will any claim be allowed as to which a notice or protest is required unless the Contractor has

strictly complied with the notice or protest requirements of the Contract Documents.

On the Contractor's approval, or if the Contractor files no claim within the specified period of 30 days, the Engineer will issue a Final Estimate in writing in accordance with the Proposed Final Estimate submitted to the Contractor. The City of Dixon will pay any remaining moneys unpaid and found to be due in the Proposed Final Estimate 35 days after the recordation of the Notice of Completion in the records of the Solano County Recorder's Office as per Section 7-1.17, "Acceptance of Contract". That Final Estimate and payment thereon shall be conclusive and binding against Contractor on all questions relating to the amount of work done and the compensation payable therefor.

If the Contractor within the specified period of 30 days files claims, the Engineer will, issue a Semifinal Estimate in accordance with the Proposed Final Estimate submitted to the Contractor and within 30 days thereafter the City of Dixon will pay the sum so found to be due. The Semifinal Estimate and payment thereon shall be conclusive and binding against the Contractor on all questions relating to the amount of work done and the compensation payable therefor, except insofar as affected by the claims filed within the time and in the manner required hereunder.

#### **9-1.07C CLAIMS**

A. General. A "Claim" means a written demand or written assertion by Contractor to adjust, alter, modify, or otherwise change the Contract price or the Contract time, or both. All claims filed hereunder shall strictly comply with all requirements of the Contract Documents.

In order to qualify as a "Claim", the written demand must state that it is a claim submitted under Section 9-1.07C of the Contract Documents. A letter, voucher, invoice, payment application, or other routine or authorized form of request for payment is not a Claim under the Contract Documents. If such a request is disputed as to liability or amount, then the disputed portion of the submission may be converted to a Claim under the Contract Documents by submitting a separate claim in compliance with claim submission requirements.

A Claim must be stated with specificity, including identification of the event or occurrence giving rise to the Claim, the date of the event, and the asserted affect on the Contract price and the Contract time, if any. The Claim shall include adequate supporting data. Adequate supporting data for a Claim for an adjustment of the Contract time shall include scheduling data demonstrating the impact of the event on the controlling operation and completion of the Project. Adequate supporting data for a Claim for an adjustment in the Contract price shall include a detailed cost breakdown of items included within the Claim and documentation supporting each item of cost.

Notwithstanding and pending the resolution of any Claim, the Contractor shall diligently prosecute the disputed work to final completion of the work. Contractor shall impose the Claim notice and documentation requirements in this Contract on Contractor's subcontractors of all tiers, and require them to submit to the Contractor all Claims against

Contractor and/or City within the times and containing the documentation required by these provisions. The Claim notice and documentation procedure described in these provisions applies to all claims and disputes arising under the Contract Documents, whether or not specifically referred to in any specific portion of the Contract.

If additional information or details are required by the Engineer to determine the basis and amount of any Claims, the Contractor shall furnish additional information or details so that the additional information or details are received by the Engineer no later than the fifteenth day after receipt of the written request from the Engineer. If the fifteenth day falls on a Saturday, Sunday or legal holiday, then receipt of the information or details by the Engineer shall not be later than close of business of the next business day. Contractor understands and agrees that failure to submit the information and details to the Engineer within the time specified shall result in Contractor waiving that Claim.

The Contractor and all subcontractors shall keep full and complete records of the costs and additional time incurred for any work for which a Claim for additional compensation is made. The Engineer or any designated claim investigator or auditor shall have access to those records and any other records as may be required by the Engineer to determine the facts or contentions involved in the claims. Contractor agrees that failure to permit access to those records waives any Claim to which those records apply.

The City of Dixon, or its authorized representatives, shall have access, upon reasonable notice, during normal business hours, to Contractor and subcontractors' books, documents and accounting records, including but not limited to, bid worksheets, bids, subcontractor bids and proposals, estimates, cost accounting data, accounting records, payroll records, time sheets, canceled checks, profit and loss statements, balance sheets, project correspondence including but not limited to all correspondence between Contractor and its sureties and subcontractors/vendors, project files, scheduling information, and other records of the Contractor and all subcontractors directly or indirectly pertinent to the work, original as well as change and claimed extra work, to verify and evaluate the accuracy of cost and pricing data submitted with any change order, prospective or completed, or any claim for which additional compensation has been requested or claim has been tendered. Such access shall include the right to examine and audit such records, and make excerpts, transcriptions, and photocopies at City of Dixon's cost.

The parties agree that in the event Contractor or any subcontractor fails to comply with this section, it would be difficult for the City of Dixon to determine its actual damages; therefore, Contractor agrees to pay City of Dixon, as liquidated damages, the sum of Two hundred fifty dollars (\$250.00), which Contractor agrees is reasonable under the circumstances, for each and every calendar day which Contractor or a subcontractor fails or refuses to provide the City of Dixon, access to the materials specified in this section.

## B. Disputes.

1. **Contract Interpretation Disputes:** Should it appear to the Contractor that the work to be performed or any of the matters relative to the Contract Documents are not satisfactorily detailed or explained therein, or should any questions arise as to the

meaning or intent of the Contract Documents, the Contractor shall give written notice to the City of Dixon. The Contractor shall bear all costs incurred in the giving of such notice.

All issues regarding the interpretation of the plans or specifications shall be referred to the City for interpretation. The City shall have the right but not the obligation to affirm or disaffirm any interpretation of the plans or specifications, which affirmation or disaffirmance shall be final. If the Contractor should disagree with the City's decision, the Contractor's sole and exclusive remedy is to file a Claim in accordance with these provisions.

2. Work Disputes: Should any dispute arise under the Contract Documents respecting the true value of any work performed, the implementation of the Work required by the Contract Documents, any Work omitted, any extra work which the Contractor may be required to perform or time extensions, respecting the size of any payment to the Contractor during the performance of the Contract Documents, or of compliance with Contract Documents procedures, the dispute shall be decided by the City of Dixon and its decision shall be final and conclusive. If the Contractor disagrees with the City's decision, the Contractor's sole and exclusive remedy is to file a claim in accordance with these provisions.

C. Delays. As used herein, the following terms shall have the following meanings:

"Excusable Delay" means any delay of the completion of the Project beyond the expiration of the Contract time caused by conditions beyond the control and without the fault or negligence of the Contractor such as strikes, embargoes, fire, unavoidable casualties, unusual delays in transportation, national emergency, and stormy and inclement weather conditions in which the work cannot continue. The financial inability of the Contractor or any subcontractor and default of any subcontractor, without limitation, shall not be deemed conditions beyond the Contractor's control. An Excusable Delay may entitle the Contractor to an adjustment in the Contract time.

"Compensable Delay" means any delay of the completion of the work beyond the expiration date of the Contract time caused by the gross negligence or willful acts of the City of Dixon, and which delay is unreasonable under the circumstances involved, and not within the contemplation of the parties. A Compensable Delay may entitle the Contractor to an extension of the Contract time and/or Contract price. Except as provided herein, the Contractor shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption.

"Unexcusable Delay" means any delay of the completion of the Project beyond the expiration of the Contract time resulting from causes other than those listed above. An Unexcusable Delay shall not entitle the Contractor to an extension of the Contract time or an adjustment of the Contract price.



The Contractor may make a Claim for an extension of the Contract time, for an Excusable Delay or a Compensable Delay, subject to the following:

1. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract time shall be the number of days from the commencement of the first delay to the cessation of the delay which ends last.
2. If an Unexcusable Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract time shall be the number of days, if any, by which the Excusable Delay or the Compensable Delay exceeds the Unexcusable Delay.
3. If an Unexcusable Delay occurs concurrently with both an Excusable Delay and a Compensable Delay, the maximum extension in the Contract time shall be the number of days, if any, by which the number of days determined pursuant to Subparagraph (a) exceeds the number of days of the Unexcusable Delay.
4. For a Compensable Delay, the Contractor shall only be entitled to an adjustment in the Contract price in an amount equal to the actual additional labor costs, material costs, and unavoidable equipment costs incurred by the Contractor as a result of the Compensable Delay, plus the actual additional wages or salaries and fringe benefits and payroll taxes of supervisory and administrative personnel necessary and directly employed at the Project site for the supervision of the work during the period of Compensable Delay. Except as provided herein, the Contractor shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption. There shall be no Compensable Delay unless the event or occurrence giving rise to the Compensable Delay extends the actual completion of the Project past the Contract time.

The parties agree that the City of Dixon's exercise of its right to order changes in the work, regardless of the extent and number of changes, or to suspend the work, is within the contemplation of the parties and shall not be the basis for any Claim for Compensable Delay. The rights of the Contractor to adjustments of the Contract time and the Contract sum, based on changes ordered in the work or suspension of the work, shall be governed by this provision.

Notwithstanding the making of any Claim or the existence of any dispute regarding any Claim, Contractor shall not cause any delay, cessation, or termination in or of Contractor's performance of the work, but shall diligently proceed with performance of the work in accordance with the Contract Documents.

Contractor agrees that the daily Contractor Delay Damages as set forth in the Proposal Form shall be full compensation to Contractor, all subcontractors and anyone for whom they may be legally responsible, for each day of delay that may be caused by City of Dixon or anyone for whom City of Dixon is legally responsible, including but not limited to, extended field costs, extended home overhead costs, impact, inefficiency, unabsorbed

home office overhead, underabsorbed home office overhead, hindrance, disruption or any other damage arising from delay, no matter how characterized and regardless of the cause, extent or duration of the delay. Inclusion of Contractor Delay Damages within the Proposal Form is solely for the purpose of determining the low bidder and establishing the City of Dixon's maximum daily liability as a result of City of Dixon delays to Contractor, if any, and City of Dixon has no obligation to pay any daily Contractor Delay Damages except as provided for in these Contract Documents for Compensable Delays. In the event that City of Dixon becomes liable to Contractor for compensable delays, City of Dixon agrees to pay Contractor the daily Contractor Delay Damages set forth in the Proposal Form or Contractor's actual daily delay damages, whichever is less, for each day of Compensable Delay as provided for by these Contract Documents.

D. Claim Procedures. Should any clarification, determination, action or inaction by the City, Work, or any event, in the opinion of the Contractor, exceed the requirements of or not comply with the Contract Documents, or otherwise result in the Contractor seeking additional compensation in time or money for any reason (collectively "Disputed Work"), then the Contractor and the City shall make good faith attempts to resolve informally any and all such issues and/or disputes. The Contractor must file a written Notice of Potential Claim with the City on the form provided in the Contract Documents before commencing the Disputed Work, or within seven (7) calendar days after Contractor's first knowledge of the Disputed Work, whichever is earlier, stating clearly and in detail its objection and reasons for contending the Work or interpretation is outside the requirements of the Contract Documents. If a written Notice of Potential Claim is not filed within this time period, or if the Contractor proceeds with the Disputed Work without first having filed the notice required by these provisions, the Contractor shall waive any rights to further claim on the specific issue.

The City will review the Contractor's timely Notice of Potential Claim and provide a decision. The City may require supplemental information from the Contractor to clarify that contained in the Notice of Potential Claim. If, after receiving the City's decision, the Contractor disagrees with the decision, the Contractor shall so notify the City, in writing, within seven (7) calendar days after receiving the decision, that a formal Claim will be filed. The Contractor shall submit the Claim in the form specified herein and all arguments, justification, costs or estimates, schedule analyses, and detailed documentation supporting the Contractor's position within thirty (30) calendar days after receiving the City's decision on the Notice of Potential Claim. The Contractor's failure to furnish notification within seven (7) calendar days and all justifying documentation within thirty (30) calendar days will result in the Contractor waiving all rights to the subject Claim.

If Disputed Work persists longer than thirty (30) calendar days after receiving the City's decision on the Notice of Potential Claim, then the Contractor shall, every thirty (30) calendar days until the Disputed Work ceases, submit to the City a document titled "Claim Update" which shall update and quantify all elements of the Claim as completely as possible. The Contractor's failure to submit a Claim Update or to quantify all costs and impacts every thirty (30) days shall result waiver of that portion of the Claim for that thirty (30) day period. Claims or Claim Updates stating that damages will be determined at a

later date shall not comply with the requirements of these provisions and shall result in the Contractor waiving such Claim(s) and/or Claim Updates.

All Claims must be submitted to Engineer before the issuance of the Final Estimate. Contractor hereby expressly waives all Claims not submitted, in complete and proper form, on or before the date of issuance of the Final Estimate.

Upon receipt of the Contractor's formal Claim including all arguments, justifications, costs or estimates, schedule analyses, and documentation supporting the Contractor's position as previously stipulated, the City or its designate will review the Claim and render a final determination. If the Contractor's Claims at project completion total less than \$375,000, then claims resolution shall proceed in the manner prescribed by Article 1.5, Chapter 1, Part 3 of Division 2 of the California Public Contract Code.

Claims shall be calculated in the same manner as extra work using the procedures set forth in Section 9-1.03 "Force Account Payment". This method applies in all cases of Claims, regardless of type, whether in negotiation, arbitration, litigation, and even applies in the event of fault, negligence, strict liability, or tort claims of all kinds, including strict liability or negligence. No other costs arising out of or connected to with the performance of Claims, of any nature, may be recovered by the Contractor. Except where provided by law, or elsewhere in these Contract Documents (if applicable), the City shall not be liable for special or consequential damages, and Claims shall not include special or consequential damages. Contractor shall be limited in its recovery on Claims to the calculations set forth in Section 9-1.03 of these provisions.

E. Claim Format. The Contractor shall submit the Claim justification in the following format:

1. Cover letter and certification of the accuracy of the contents of the Claim;
2. Summary of Claim including underlying facts, entitlement, quantum calculations and Contract Document provisions supporting relief;
3. List of documents relating to Claim including plans, specifications, clarifications/requests for information, schedules and others;
4. Chronology of events and correspondence;
5. Analysis of Claim merit;
6. Analysis of Claim costs;
7. Attached supporting documents referenced in Item 3 above.

F. Exclusive Remedy. The Contractors performance of its duties and obligations specified in these provisions and submission of a Claim as provided in these provisions is the

Contractor's sole and exclusive remedy for the payment of money, extension of time, adjustment or interpretation of Contract Documents terms or other contractual or tort relief arising from the Contract Documents. This exclusive remedy and the limitation of liability (expressed herein and elsewhere throughout the Contract Documents) apply notwithstanding the completion, termination, suspension, cancellation, breach or rescission of the Work or the Contract Documents, negligence or strict liability by the City of Dixon, its representatives, consultants or agents, or the transfer of the Work or the Project to the City for any reason whatsoever. The Contractor waives all claims of waiver, estoppel, release, bar, or any other type of excuse for non-compliance with the Claim submission requirements. Compliance with the notice and Claim submission procedures described in these provisions is a condition precedent to the right to commence litigation, file a Government Code Claim, or commence any other legal action. No Claim or issues not raised in a timely protest and timely Claim submitted under these provisions may be asserted in any Government Code Claim, subsequent litigation, or legal action. The City of Dixon shall not have deemed to waive any provision under this Section, if at the City's sole discretion; a Claim is accepted in a manner not in accord with this Section.

G. Mediation. All Claims not subject to the Claim resolution procedures set forth in these provisions shall, as a condition precedent to litigation thereon, first be mediated. Mediation shall be non-binding and utilize the services of a mediator mutually acceptable to the parties, and, if the parties cannot agree, a mediator selected by the American Arbitrator Association from its panel of approved mediators trained in construction industry mediation. All statutes of limitation shall be tolled from the date of the demand for mediation until a date two weeks following the mediation's conclusion. All unresolved claims shall be submitted to the same mediator. The cost of mediation shall be equally shared.

#### **9-1.07C FALSE CLAIMS**

California Penal Code section 72 provides that any person who presents for payment with intent to defraud any district board or officer, any false or fraudulent claim, bill, account, voucher, or writing, is punishable by fines not exceeding ten thousand dollars (\$10,000.00) and/or imprisonment in the state prison.

Government Code sections 12650, et seq., pertains to civil penalties that may be recovered from persons (including corporations, etc.) for presenting a false claim for payment or approval, presents a false record or statement to get a false claim paid or approved, or other acts, to any officer or employee of any political subdivision of the State of California. Any person or corporation violating the provisions of Government Code sections 12650, et seq., shall be liable for three times the amount of the damages of the political subdivision, plus a civil penalty, plus costs.

All Claims by Contractor, shall include the following certification, properly completed and executed by Contractor or an officer of Contractor:

I, \_\_\_\_\_, BEING THE \_\_\_\_\_ (MUST BE AN OFFICER) OF \_\_\_\_\_ (CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY

UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND DO PERSONALLY CERTIFY AND ATTEST THAT: I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND SAID CLAIM IS TRUTHFUL AND ACCURATE; THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE OWNER IS LIABLE; AND, FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE SECTION 12650, ET SEQ, PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT AND/OR OTHER SEVERE LEGAL CONSEQUENCES.

Contractor agrees that submission of a Claim, in strict conformance with all of the requirements of this Contract, and rejection of all or part of said Claim by City of Dixon, is a condition precedent to any action by Contractor against City of Dixon, including but not limited to, the submission of a claim pursuant to Government Code section 900, et seq., and the filing of a lawsuit.

Any claim for overhead type expenses or costs, in addition to being certified as stated above, shall be supported by an audit report of an independent Certified Public Accountant provided by Contractor with the claim.

Contractor agrees that any costs or expenses incurred by the City of Dixon in reviewing or auditing any claims that are not supported by the Contractor's cost accounting or other records, or the Contract, shall be deemed to be damages incurred by the City of Dixon within the meaning of the California False Claims Act.

Upon final determination of the claims, the Engineer will then make and issue the Engineer's Final Estimate in writing and within 30 days thereafter the City of Dixon will pay the entire sum, if any, found due thereon. That Final Estimate shall be conclusive and binding against Contractor on all questions relating to the amount of work done and the compensation payable therefor.

**9-1.08 BLANK**

**9-1.09 CLERICAL ERRORS**

Notwithstanding the provisions in Section 9-1.07, "Payment After Acceptance," for a period of 3 years after acceptance of the work, all estimates and payments made pursuant to Section 9-1.07, including the Final Estimate and payment, shall be subject to correction and adjustment for clerical errors in the calculations involved in the determination of quantities and payments. The Contractor and the City of Dixon agree to pay to the other any sum due under the provisions of this Section 9-1.09, provided, however, if the total sum to be paid is less than \$200, no payment shall be made.

**9-1.10 BLANK**

### **9-1.11 CONTRACTOR NOT AN AGENT FOR THE CITY**

The right of general supervision shall not make the Contractor an agent of the City of Dixon, and the liability of the Contractor for all damages to persons or to public or private property arising from the performance of the work shall not be lessened because of such general supervision.

### **9-1.12 THIRD PARTY CLAIMS**

The Contractor shall be responsible for all third-party claims, and for costs or injuries incurred by a third party which result from the operations of the Contractor, or its performance under the Contract.

### **9-1.13 GUARANTEE**

Should any failure of the work occur within a period of one year after recordation of the notice of completion of the project or portions thereof, which can be attributed to faulty materials, poor workmanship, or defective equipment, the Contractor shall promptly make the needed repairs at Contractor's expense.

The City of Dixon is hereby authorized to make such repairs if the Contractor fails to make or undertake with due diligence the aforesaid repairs within ten (10) days after Contractor is given written notice of such failure and without notice to the surety provided, however, that in case of emergency where, in the opinion of the City of Dixon, delay would cause serious loss or damages, or a serious hazard to the public, the repairs may be made or lights, signs, and barricades erected, without prior notice to the Contractor or surety, and the Contractor shall pay the entire costs thereof.

### **9-1.14 MISCELLANEOUS PROVISIONS**

This Contract shall bind and inure to the heirs, devisees, assignees, and successors in interest of Contractor, and to the successors in interest of City of Dixon, in the same manner as if such parties had been expressly named herein.

This Contract shall be governed by the laws of the State of California.

If any one or more of the provisions contained in the Contract should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

This Contract constitutes the full and complete understanding of the parties, and supersedes any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may only be modified by a written instrument signed by both parties.

Contractor hereby assigns to City of Dixon all its first-tier subcontracts now or hereafter entered into by Contractor for performance of any part of the work. The assignment will be

effective upon acceptance by City of Dixon in writing, and only as to those subcontracts which City of Dixon designates in writing. Such assignment is part of the consideration to City of Dixon for entering into the Contract with Contractor, and may not be withdrawn.

The provisions of the Contract Documents shall be included in all subcontracts.

#### **9-1.15 PUBLIC CONTRACT CODE SECTION 20104, ET SEQ.**

Public Contract Code section 20104, et seq., requires that the following language be set forth in the specifications:

##### **§ 20104. Application of article; provisions included in plans and specifications**

(i)(1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(ii)(1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by the local agency.

(iii) The provisions of this article or a summary thereof shall be set forth in the plans or specification for any work which may give rise to a claim under this article.

(iv) This article applies only to contracts entered into on or after January 1, 1991.

##### **§ 20104.2. Claims; requirements; tort claims excluded**

For any claim subject to this article, the following requirements apply:

(v) 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 subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(vi)(1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation

supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(vii)(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 local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(viii) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency'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 local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(ix) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant 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 claimant submits his or her written claim pursuant to subdivision (a) 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.

(x) This article does not apply to tort claims and nothing in this article 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.

§ 20104.4. Civil action procedures; mediation and arbitration; trial de novo; witnesses



The following procedures are established for all civil actions filed to resolve claims subject to this article:

(i) Within 60 days, but no earlier than 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 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 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 15-day period, any party may petition the court to appoint the mediator.

(ii)(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 subdivision 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.

(3) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

**§ 20104.6. Payment on undisputed portion of claim; interest on arbitration awards or judgments**

(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

