



LIVERMORE AREA RECREATION AND PARK DISTRICT
Capital Improvement Division

BID DOCUMENTS FOR:

ROBERTSON PARK ARENA INFRASTRUCTURE IMPROVEMENTS – PROJECT NO. 4918-729A

To include Plans titled:

ROBERTSON PARK ARENA INFRASTRUCTURE IMPROVEMENTS – PROJECT NO. 4918-729A

LARPD Board of Directors

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Book 1 of 3

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SPECIAL PROVISIONS

SECTION A. NOTICE TO BIDDERS

NOTICE IS HEREBY GIVEN that sealed bids will be received at The Livermore Area Recreation and Park District, henceforth known as LARPD, 4444 East Avenue, Livermore, California 94550 until **1:00 P.M. local time on August 10th, 2022**, for furnishing all labor, material, tax, transportation, equipment, and services necessary for the work entitled:

ROBERTSON PARK ARENA INFRASTRUCTURE IMPROVEMENTS – PROJECT NO. 4918-729A

Bid forms for this work are included in the Bid Book entitled:

ROBERTSON PARK ARENA INFRASTRUCTURE IMPROVEMENTS – PROJECT NO. 4918-729A

Bids shall be submitted in sealed envelopes on the forms provided in the Bid Book. Envelopes shall be addressed to LARPD, 4444 East Avenue, Livermore, California 94550 and delivered to the Capital Improvement Projects Division by **1:00 P.M. local time on August 10th, 2022**, at which time the Bids will be publicly open and read.

A-1. Description of Work

The proposed work shall be performed in accordance with the plans, specifications and other contract documents and shall consist of the following General work description:

ROBERTSON PARK ARENA INFRASTRUCTURE IMPROVEMENTS – PROJECT NO. 4918-729A

– Project generally includes but is not limited to seismic upgrade and repair of arena structure roof, new concrete flatwork & new guardrails and handrails. Please refer to the enclosed Bid Books, Improvement Plans, Structural Engineering Calculation Packet and Geotechnical Report.

A-2. Obtaining Contract Documents

Plans, specifications and other contract documents may be examined and/or obtained at the following websites:

CIPList.com

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<https://www.larpd.org/request-for-proposals>

bayareabx.com

gsplanservice.com

californiabids.com

calbx.com

freepublicworks.com

A-3. Pre-bid Meeting / Walk Through

A NON-MANDATORY Pre-Bid Meeting followed by a walk through at the Robertson Park Arena will be held at the LARPD Capital Improvement Projects Division, 4444 East Avenue, Livermore, California 94550 on the following date and time: **1:00 P.M. local time on June 28th, 2022**. Prospective bidders are urged to attend the Pre-Bid Conference. Prospective bidders may visit the Project Site without making arrangements through the District.

A-4. Submission of Proposals

All proposals must be submitted not later than the time prescribed. The bidder is wholly responsible to see that the bid is submitted at the time and place designated for the opening of bids. Any bid received after the time and date specified shall not be considered and shall be returned unopened. Any bid may be withdrawn prior to the scheduled time for opening bids.

Each bid must conform and be responsive to this notice and shall be made on the official forms furnished in the Bid Book. Hand delivered bids on the day of the bid opening shall be delivered to the address set forth above. Mailed bids must be received by LARPD, Capital Improvement Projects Division prior to the hour and date of the bid opening.

A-5. Bidder's Bond

Each bid must be sealed and accompanied by cash, a cashier's check, certified check or bid bond, executed on the prescribed form, in an amount not less than ten percent (10%) of the total bid price payable to LARPD.

The cash, cashier's check, certified check or bid bond shall be given as a guarantee that the successful bidder will enter into a written contract within ten (10) calendar days after being requested to do so and will be considered as the stipulated amount of liquidated damages in the event the bidder is unable to or refuses to execute a contract for the work. All Bidder's bonds will be held until the Contract has been finally executed, after which all Bid bonds, other than any bond or securities which have been forfeited, will be returned to the respective bidders.

The bidder's bond shall conform to the bond form in the Bid book for the project and shall be properly filled out, executed and **must be notarized by both the contractor and surety.**

Bidders are hereby notified that in accordance with the provisions of the California Public Contracts Code section 22300, securities may be substituted for any monies, which LARPD may withhold pursuant to the terms of this Contract to ensure performance. If the bidder elects to provide a bid bond, the bond shall be furnished by a company that is authorized and licensed by the California Insurance Commissioner as an "admitted surety insurer."

A-6. Contractor's License

The successful bidder must possess a current Class A, or Class C27 & C29 Contractor's License issued by the State of California and must be licensed from contract award through Contract completion. Re. Bid Item 9 (Arena Roof: Structural Upgrades): Contractors and/or their sub-contractors are required to be licensed in the State of California, and have AISC (American Institute of Steel Construction) and AWS (American Welding Society) certifications. They should possess at least 5 years of experience in the proposed construction. All field welding is to be performed by certified welders and inspected by a Special Inspector as detailed out in the Contract Documents. The contractor will also be responsible for coordinating and submitting the completed Special Inspections Packet to the City of Livermore as needed.

A-7. Contract Bonds

The successful bidder shall furnish a payment bond and a performance bond. Each bond is to be executed in a sum equal to one hundred percent (100%) of the contract price. District Staff will certify that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended, or in the event that is has, that

renewed authority has been granted within ten (10) calendar days of the insurer's receipt of the certificate shall be required.

The bidder's bond shall conform to the bond form in the Bid book for the project and shall be properly filled out, executed and **must be notarized by both the contractor and surety.**

A-8. Rejection of Bids

LARPD reserves the right to reject any and all bids or to waive any irregularities in any bid. Any bid not conforming to the intent and purpose of the Contract documents may be rejected. LARPD reserves the right to make all awards in the best interest of LARPD.

A-9. Prevailing Wages

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county in which the work is to be done have been determined by the Director of the California Department of Industrial Relations. These wages are set forth in the General Prevailing Wage Rates for this project, available at the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov/DLSR/PWD>. Copies of the prevailing wage rates are on file with and available upon request from the District. Future effective general prevailing wage rates, which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates. It shall be mandatory for the Contractor and any subcontractor under him to pay not less than the specified rates to laborers and workmen employed by them in the execution of the Contract.

A-10. Substitution of Materials

Materials, other than those specified, must be approved by Addenda issued by the District prior to bid opening, otherwise if the bidder submits non-approved materials with the bid, the bidder assumes the risk the bid may be nonresponsive because the District may not approve the desired substitution. See Article B-29 of Section B – Proposal Requirements and Conditions and Section 012500 Substitution Procedures of the technical Specifications Section F for detailed requirements regarding post-Bid substitution requests.

By order of the Livermore Area Recreation and Park District, Board of Directors, State of California

LARPD GENERAL MANAGER _____
Mathew Fuzie

DATED _____

SECTION B. PROPOSAL REQUIREMENTS AND CONDITIONS

B-1. Proposal Forms

All proposals must be made upon the forms contained in the Bid Book. In case of disagreement between the unit prices and the total amounts, the unit prices, the corrected totals and the resulting total of the corrected prices will be considered as representing the bidder's intentions. All proposals must be completely filled out.

Bids shall be submitted only on the forms attached hereto and shall be enclosed in a sealed envelope bearing on the outside the name of the bidder, bidder address, and the name of the project for which the bid is submitted.

Bids shall be addressed and delivered to:
Attn.: Michelle Newbould
LARPD, CIP Division
4444 East Avenue, Livermore CA 94550
Phone: 925.371.4680
Email: mnewbould@larpd.org

Bids shall be valid for 90 calendar days after the bid opening date.

B-2. Approximate Estimate

The quantities listed in the Bid Item List are approximate only and are given for the purpose of comparing proposals. LARPD does not, expressly or by implication, agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the work, or to omit portions of the work as may be deemed necessary or advisable by the LARPD within the limitations set forth in Section D – Scope of Work – Article D-8. Changes in the Work. Payment will be based upon actual quantities installed or constructed, unless otherwise specified.

B-3. Examination of Site of Work and Contract Documents

The bidder shall examine carefully the site of the work contemplated and the plans, specifications and contract documents. 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 plans, specifications and contract documents.

B-4. Addenda and Interpretations

Any explanation desired by the bidders regarding the meaning or interpretation of any of the Contract Documents must be requested in writing, with sufficient allowance of time for receipt of reply before the time set for opening of Bids. Neither the District nor any representative of LARPD is authorized to give oral explanations or interpretations of Contract Documents, and a submission of a Bid constitutes agreement by the bidder that it has placed no reliance on any such oral explanation or interpretation. However, the District may, upon inquiry by bidder, orally direct the bidder's attention to specific provisions of the Contract Documents which cover the subject of the inquiry.

Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the plans, specifications and/or contract documents which, if issued, will be mailed, emailed or faxed to all prospective bidders (at the respective contact information furnished for such purposes), no later than three days prior to the date fixed for the opening of bids.

Failure of any bidder to receive any such addendum shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the Contract Documents.

Technical questions shall be in writing and should be directed:

Attn.: Michelle Newbould

LARPD, CIP Division

Phone: 925.371.4680

Email: mnewbould@larpd.org

with a copy to Samir Khanna, Landscape Architect (P.L.A., LEED®AP), O'Dell Engineering via email to skhanna@odellengineering.com

B-5. Rejection of Proposals

Proposals may be rejected if they show any alteration of form, additions not called for, conditional bids, incomplete bids, obviously unbalanced prices, erasures or irregularities of any kind. LARPD reserves the right to reject any and all proposals.

B-6. Bidder's Bond

The Bidder's Bond shall comply with Section A-5 and the provisions found elsewhere in these provisions.

B-7. Withdrawal of Proposals

Any bid may be withdrawn at any time prior to the time fixed in the public notice for the opening of bids only by written request for the withdrawal of the bid filed with the Project Manager. The request shall be executed by the bidder or the bidder's duly authorized representative. The withdrawal of the 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 in the public notice for opening bids, a bid will not be received after that time, nor may any bid be withdrawn after the time fixed in the public notice for the opening of bids.

B-8. Relief of Bidders

Attention is directed to the provisions of Public Contract Code Sections 5100-5110, inclusive, concerning relief of bidders and in particular to the requirement therein, that if the bidder claims a mistake was made in their bid, the bidder shall give LARPD written notice within five (5) days after the opening of the bids of the alleged mistake, specifying in the notice in detail how the mistake occurred. Attention is also directed to Public Contract Code Sections 10100-10285.5 (State Contract Act) to the extent applicable.

B-9. Disqualification of Bidders

More than one Bid 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 thereof is interested in more than one proposal for the work contemplated may cause the rejection of all proposals in which such 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.

B-10. Power of Attorney

The Attorney-in-Fact who executes the Performance Bond and Payment Bond on behalf of the surety company must attach a copy of his Power of Attorney as evidence of the bidder's authority. A notary shall acknowledge the power as of the date of the execution of the surety bond which it covers.

B-11. Bid Protest

Any protest of the proposed Project award must be submitted in writing to LARPD no later than 5:00 PM on the third business day following the date of the bid opening. Bid protests are to be delivered to the following address: LARPD, 4444 EAST AVENUE, LIVERMORE, CA, 94550.

The protest must contain a complete statement of the basis for the protest.

- a. The protest must state the facts and refer to the specific portion of the document or the specific statute that forms the basis for the protest. The protest must include the name, address, and telephone number of the person representing the protesting party.
- b. The party filing the protest must concurrently transmit a copy of the protest to the proposed awardee and provide evidence to LARPD of that transmittal.
- c. The party filing the protest must have actually submitted a bid for the Project. A subcontractor of a party filing a bid for the Project may not submit a bid protest. A party may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest.
- d. The procedure and time limits set forth in these Instructions to Bidders are mandatory and are the bidders' sole and exclusive remedy in the event of a bid protest. Any bidder's failure to fully comply with these procedures shall constitute a waiver of any right to further pursue a bid protest, including filing of a challenge of the award pursuant to the California Public Contract Code, filing of a claim pursuant to the California Government Code, or filing of any other legal proceedings.
- e. LARPD shall review all timely protests prior to award of the Project. LARPD shall not be required to hold an administrative hearing to consider any protests, but may do so at its option. At the time of the LARPD Board's consideration of the Project award, the LARPD Board shall also consider the merits of any timely protests. The LARPD Board may either reject the protest and award to the lowest responsible bidder or accept the protest and award the bid to the next lowest responsible bidder. Nothing in this section shall be construed as a waiver of the LARPD Board's right to reject all bids or to waive any irregularities in any bid.

B-12. Award of Contract

LARPD reserves the right to waive any irregularities or informalities in the bidding or to reject any and all proposals, including, without limitation, the right to reject any non-conforming, non-responsive, unbalanced, or conditional bids. All bids will be compared on the basis of the District's estimate of the quantities of work to be done.

(if applicable) The low Bidder for purposes of award will be the conforming responsible Bidder offering the lowest total amount for the Total Base Bid shown in the Bid Form. Once the low bidder is determined as herein described, the District reserves the right to award any combination of Additive Bid Items, or not award any Additive Bid Items, as it deems to be in the best interest of the District, regardless of whether the total bid of the particular combination selected is higher or lower than any other bidder for that same combination. Such award, if made, will be made **within ninety (90) days** after the opening of proposals. If the lowest responsible bidder refuses or fails to execute the contract, LARPD may award the contract to the second lowest responsible bidder. Such award, if made, will be made **within one hundred (100) days** after the opening of bids.

If the second lowest responsible bidder refuses or fails to execute the contract, LARPD may award the contract to the third lowest responsible bidder. Such award, if made, will be made **within one hundred twenty (120) days** after the opening of bids. The periods of time specified above within which the award of contract may be made shall be subject to extension for such further period as may be agreed upon in writing between LARPD and the bidder concerned.

B-13. Contract Bonds

The successful bidder shall comply with the provisions of Subsection 3-1.05 of the State Standard Specifications, and section 9550 and 9558 of the California Civil Code. The successful bidder shall furnish a Payment bond and a Performance bond. Each bond is to be executed in a sum equal to one hundred percent (100%) of the contract price. All bonds must be executed by a corporate surety licensed to conduct business in the State of California. Personal securities will not be accepted.

The bidder's bond shall conform to the bond form in the Bid book for the project and shall be properly filled out, executed and **must be notarized by both the contractor and surety.**

B-14. Execution of Contract

The successful bidder will be notified in writing by LARPD of the award of the Contract. Accompanying LARPD's Notice of Award will be the Contract, in duplicate, which the successful bidder will be required to execute and return, together with the Performance and Payment Bonds, and the required certificates and policies of insurance together with the required endorsements thereto (or equivalent) for the Contractor, the workers' compensation certificate, and all other requested documents to LARPD **within ten (10) calendar days** following receipt of such Notice of Award. Failure to do so shall be just cause for annulment of the award and for forfeiture of the Bid Bond which shall be retained as liquidated damages, and it is agreed that the bond sum is a fair estimate of the amount of damages that LARPD will sustain by reason of such failure.

LARPD will promptly determine whether such Contract, Bonds and insurance are as required by the Contract Documents, and upon such determination will forward a fully executed copy of the Contract and a Notice to Proceed with the work to the successful bidder. Signature by both parties constitutes execution of the Contract. In the event of failure of the lowest responsible bidder to sign and return the Contract with acceptable Bonds and insurance as prescribed herein, LARPD may award the Contract to the next lowest responsible bidder, and, in the event that bidder fails to sign and return the Contract with acceptable Bonds and insurance, LARPD may award the Contract to the then next lowest responsible bidder, etc.

B-15. Time of Completion and Liquidated Damages

Attention is directed to the provisions in Section 8 "Prosecution and Progress" of the State Standard Specifications and these special provisions.

The Contractor shall begin work after the contract has been approved by LARPD attorney and only after written notice to proceed with work has been issued by LARPD. The Contractor shall then have **ten (10) working days** after receipt of written notice to proceed to begin work. The counting of contract days will begin **ten (10) working days** from the time the Contractor receives the Notice to Proceed or when Contractor starts work, whichever comes first.

This work shall be diligently prosecuted to completion before the expiration of the following for the project (working days shall run concurrently):

- 1. Robertson Park Arena Hardscape Renovation – Project No. 4918-729A – 40 CALENDAR DAYS**

The Contractor shall pay to LARPD the sum of **\$1000** per day, for each and every calendar days delay in finishing the work in excess of the number of working days prescribed above.

B-16. Public Liability, Automobile Liability, and Workman's Compensation Insurance.

Insurance Requirements

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 agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

Contractor shall indemnify and hold harmless The District and its officers, official, employees, and volunteers from and against all claims, damages, losses and expenses including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of LARPD.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01 11 88).
2. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employer's Liability Insurance.
4. Course of Construction insurance covering for all risks of loss.

Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. General Liability: One million (\$1,000,000) 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.
2. Automobile Liability: One million (\$1,000,000) combined single limit per accident for bodily injury and property damage.
3. Employer's Liability: One million (\$1,000,000) per accident for bodily injury and property damage.
4. Course of Construction: Completed value of the project.

Deductibles and Self-Insured Retentions

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

Other Insurance Provisions

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

1. LARPD, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance, or as a separate owner's policy.
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects LARPD, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by LARPD, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to LARPD.

Course of construction policies shall contain the following provisions:

1. LARPD shall be named as loss payee.
2. The insurer shall waive all rights of subrogation against LARPD.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Bests rating of no less than A:VII.

Verification of Coverage

Contractor shall furnish LARPD with original certificates and amendatory endorsements affecting coverage required by this clause. The endorsements should be on forms provided by LARPD or on other than LARPD's forms, provided those endorsements or policies conform to the requirements. All certificates are to be received and approved by LARPD before work commences. LARPD reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

Subcontractors

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

B-17. Subcontracting

No subcontract releases the Contractor from the contract or relieves the Contractor of their responsibility for a subcontractor's work.

If the Contractor violates Pub Cont Code § 4100 et seq., LARPD may exercise the remedies provided under Pub Cont Code § 4110 et seq. LARPD may refer the violation to the Contractors State License Board as provided under Pub Cont Code § 4111.

The Contractor shall perform work equaling at least **thirty percent (30%)** of the value of the original total bid with the Contractor's own employees and equipment, owned or rented, with or without operators.

Each subcontract must comply with the contract.

Each subcontractor must have an active and valid State contractor's license with a classification appropriate for the work to be performed (Bus & Prof Code, § 7000 et seq.).

Submit copies of subcontracts upon request by the Project Manager.

Before subcontracted work starts, submit a Subcontracting Request form.

B-18. Employment of Apprentices

The contractor and any subcontractor under him shall comply with the requirements of Sections 1777.5 and 1777.6 of the Labor Code in the employment of apprentices. The responsibility for compliance with the provisions of said Section 1777.5 for all apprenticeable occupations shall rest with the contractor. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California, or from its branch offices.

B-19. Registration to Train Apprentices

Pursuant to Labor Code Section 1777.5, all contractors shall file with the appropriate Joint Apprenticeship Training Committee, a DAS-140 form registering to train apprentices. This requirement to register to train apprentices is mandated by Section 1777.5 whether or not you are signatory to or a party of any approved training program. Only those programs approved by the California Apprenticeship Board are applicable to accept DAS-140 registration forms.

If the contractor is approved to train apprentices, then apprentices must be called in a ratio not less than one apprentice hour for each five (5) journeyman hours. However, if the entire contract may be completed within twenty (20) working days or the entire contract (nor subcontracts) is less than thirty thousand (\$30,000), then the contractor is exempt from requesting apprentices under Labor Code Section 177.5.

In addition, all contractors are required to make appropriate training contributions as set forth in the prevailing wage determination to each appropriate JATC, or in the alternative, to the California Apprenticeship Board. Payments shall be made not less than monthly, calculated and paid by the fifteenth of each month, for work performed that prior month. The address for the applicable Joint Apprenticeship Training Committee and for the California Apprenticeship LARPD Board can be obtained by calling the Division of Apprenticeship Standards.

B-20. Workers Compensation

The contractor and all applicable subcontractors shall provide appropriate workers compensation coverage as provided under Labor Code Section 1861. LARPD may request proof of insurance from any contractor or subcontractor at any time during the project.

LARPD maintains the right to withhold any and all funds due a contractor in the event that workers' compensation insurance is not properly provided.

B-21. Certified Payrolls

All contractors shall keep weekly payroll records, which shall be certified under penalty of perjury to record the proper payment of prevailing wages for each public works project. LARPD will accept computer printouts (which are then certified) in lieu of the standard form so long as the computer printout provides all of the same information as required on the certified payroll form.

Failure to provide the certified payrolls within 10 days of a written deficiency notice from LARPD will result in a penalty of one-hundred dollars (\$100.00) per day per worker for each day of violation (Labor Code Section 1776).

LARPD maintains the right to withhold any and all funds due a contractor and/or the contractor's subcontractors in the event that certified payrolls are not maintained and provided to LARPD upon request.

B-22. Penalties

Failure to pay the appropriate prevailing wage can result in penalties being assessed as follows:

- a. Up to two-hundred dollars (\$200.00) per day per worker for each and every violation; and,
- b. Debarment from future public works for a period not to exceed three years.
- c. Twenty-five dollars (\$25.00) per day per worker for each failure to comply with the payment of overtime for all hours worked in excess of eight (8) in one day or forty (40) in one week.

Failure to register to train apprentices or failure to pay the appropriate training contribution can result in penalties being assessed as follows:

- a. One-hundred Dollars (\$100.00) per day for each day of violation; and,
- b. Debarment from future public works for a period not to exceed three (3) years.

B-23. Prohibition Against Employment Discrimination

All contractors shall employ workers without regard to race, gender, marital status, ethnicity, religion, age or medical condition as set forth in the California Labor Code Section 1777.6; the Government Code, Title VII of the Civil Rights Act and the Civil Rights Act of 1991.

B-24. Prohibition of Kickback

No contractor shall require, solicit or accept any portion of an employee's wages paid under pursuant to Labor Code Section 1770 et seq. Any contractor or subcontractor who takes, receives or conspires with another to take or receive, for his own use or the use of any other person any portion of the wages of any workman or working subcontractor, in connection with services rendered upon any public work is guilty of a felony.

Any person acting on behalf of the State or any political subdivision, or any contractor or subcontractor or agent or representative thereof, doing any public work who places an order for the employment of a workman on public work where the filing of the order for employment involves the charging of a fee, or the receiving of a valuable consideration from any applicant for employment is guilty of a misdemeanor.

B-25. Employment of Licensed Contractors

The contractor represents that it is properly licensed as a construction contractor in good standing with the California State Licensing Board in all classifications and categories necessary to perform the contracted work. The contractor will only subcontract work to other licensed individuals. Failure to comply with this requirement will subject the contractor to penalties as set forth pursuant to Labor Code Section 1021.5 and Business and Professions Code Section 7000 et seq.

B-26. Affirmative Action

The contractor shall comply with all requirements of the Public Contracts Code as it relates to the affirmative recruitment, hiring, training and promotion of women and minorities in the workforce.

To the extent that the contractor is subject to affirmative action requirements pursuant to 29CFR part 60, and/or the Americans with Disabilities Act, LARPD expects the contractor to be in full compliance with all appropriate laws.

B-27. Documentation of Workers

The contractor shall only hire workers who are lawfully entitled to work in the United States. Proof of either citizenship or eligibility to work in the United States shall be required by all contractors and subcontractors. A Federal I-9 form is acceptable documentation.

B-28. Substitution of Materials

When a specific manufacturer, trade name or material is specified or indicated, it is to establish a standard of quality and shall not be constructed as limiting competition. Materials, products, processes, or articles indicated are specified by the name brand of the manufacturer or by patent or proprietary names, shall be deemed to be followed by the words "or equal". If the contractor desires to use material or product other than that specified he shall request approval of such substitution, in writing to the LARPD. Requests for substitutions shall be in the hands of the LARPD no later than **seven (7)** calendar days prior to the date in which addenda will be issued for pre-bid requests per Section A – Notice to Bidders. Materials found acceptable will be approved by a duly authorized Addendum. Also per Section A – Notice to Bidders, if a bidder submits non-approved material substitutions, they assume the risk that said substitution may not be approved. Approval of non-approved material substitutions will be made post-bid through the due diligence process. For post-bid substitutions requests, data substantiating the request may be submitted up to **thirty (30)** days following the Notice of Award. Materials found acceptable will be approved by duly authorized Change Order. It is the intent of this article to comply with Public Contracts Code Section 3400.

If the Contractor desires to use material other than that specified, he shall request approval of such substitution prior to bidding, in writing, to the LARPD. Such application constitutes a certification that the Contractor:

- A. Has investigated proposed product and determined that it meets or exceeds, in all respects, specified product.
- B. Will provide the same warranty for equal as for specified product.
- C. Will coordinate installation and make other changes which may be required for work to be complete in all respects.
- D. Waives claims for additional costs which may subsequently become apparent.

Substitutions

Unless otherwise provided in the technical specifications, the Contractor may make proposals for substitutions to materials and/or processes shown or specified only under one or more of the following conditions:

- A. Unavailability: If the specified product or an equal is no longer available in the marketplace.
- B. Delay: If obtaining the specified product or an equal will delay completion of the Work through no fault of the Contractor.
- C. Better material system or process: If a better material system or process is available at no additional cost to the LARPD.

A proposal for substitution shall include all information required by the District to evaluate the substitute material or process. All substitutions shall be submitted for approval. Such proposal constitutes a certification that the Contractor:

- A. Has investigated the proposed product and determined that it meets or exceeds the performance requirements of the specified product.
- B. Will provide the same or better warranty for substitution as for specified product.
- C. Will coordinate installation and make other changes, including work of other Contractors, which may be required for the work to be complete in all respects at no additional cost to the LARPD.

Substitution Review

The District then will determine whether or not the proposed material is equal in quality and utility to the material specified, and its decision shall be final.

Requests for equal materials will only be considered when offered by the Contractor as required by this article.

Post-Bid requests for substitutions shall be in the hands of the LARPD no later than **seven (7)** calendar days prior to the date on which a decision is needed. Data substantiating the request may be submitted up to **fifteen (15)** days following the Notice of Award. Materials found acceptable will be approved by a duly authorized Addendum or Change Order.

Submittals for approval of substitute materials shall contain sufficient information, descriptive brochures, drawings, samples or other data as is necessary to provide direct comparison to the specified materials. Each submittal shall be well marked and identified as to types and kind of the items being submitted for approval. It is the sole responsibility of the Contractor to submit complete descriptive and technical information so the District can make proper appraisal. Lack of proper information will be sufficient cause for rejection. Reference to catalogs that the District may or may not have will not be acceptable.

The District's review for approval is for quality of materials and visual appearance. It is the Contractor's responsibility to confirm and correlate all quantities and dimensions and coordinate with all trades whose work may be affected by the requested substitution.

Effect of Approval of Substitution

If the substitution is approved, the Contractor shall be solely and directly responsible for setting approved substituted materials and/or equipment into the available space, and for the proper operation of the substituted equipment with all other equipment with which it may be associated, all in a manner acceptable to the LARPD.

No time extensions shall be granted on account of a substitution. The Contract Sum shall be adjusted by the price difference between the approved substitution and the originally specified item.

Time for Proposing Substitution; Decision

Failure to timely submit a substitution request shall constitute a waiver by the Contractor and an acceptance of the specified materials. Late submittals may be considered only when the LARPD consents in writing, and the District's best interests so require.

The LARPD and the Landscape Architect shall evaluate a timely substitution request, and shall approve, deny, approve with conditions, or initiate the procedure for a change order in response to the Contractor's request. This decision shall be final. If the proposed substitution is rejected, the Contractor shall provide the material originally specified. No time extensions will be granted in connection with substitution requests.

Failure by the Contractor to identify all deviations from the Contract Documents in its request for substitution shall render any LARPD action taken thereon null and void. The Contractor shall bear all costs resulting from any error in the request for substitution. Only one request for substitution will be considered for each product. When substitution is not accepted, specified product shall be provided.

Samples and Testing of Proposed Substitutions; Costs of Adapting to Work

When the LARPD or Landscape Architect determines that samples and testing are required to evaluate a request for a substitution, the LARPD shall so advise the Contractor, and specify the materials or work to be sampled. The Contractor shall, at no cost to the LARPD, provide samples and testing.

The Contractor shall bear all costs of sampling and testing required to decide a request for substitution, and if a substitution is accepted, the Contractor shall bear all costs associated therewith, including the cost of the LARPD and/or the Landscape Architect's services required to adapt the substitution to the design to the complete satisfaction of the LARPD, and all costs of mechanical, electrical, structural, or other changes needed to adapt the substitution to the Work.

SECTION C. DEFINITIONS AND TERMS

C-1. Interpretations and Addenda

No oral interpretation of the meaning of the drawings, specifications, or other bid documents will be binding on LARPD.

All questions and requests for interpretations shall comply with Section B-4 found elsewhere in these provisions.

C-2. Definitions

The intent and meaning of the following, wherever they appear in the Contract Documents, shall be interpreted as follows:

Acceptance - The formal written acceptance by LARPD of the entire Contract which has been completed in all respects in accordance with the Specifications and any approved modifications.

Addenda - Any written change, clarification or supplement to documents issued for bidding, issued by LARPD or its Project Manager prior to bid.

As Approved - The words "as approved," unless otherwise qualified, shall be understood to be followed by the words "by the Project Manager."

As Shown, and As Indicated - The words "as shown" and "as indicated" shall be understood to be followed by the words "on the Plans."

Award - The decision of the Contracting Officer to accept the proposal of the lowest responsible bidder for the Work, subject to the execution and approval of a satisfactory contract therefor and bond to secure the performance thereof, and to such other conditions as may be specified or required by law.

Bid - The offer of the bidder for the Work when made out and submitted on the prescribed bid form, properly signed and guaranteed. A Bid is also known as a Proposal.

Bid Bond - The cash, cashier's check, certified check, or bidder's bond accompanying the bid submitted by the bidder, as a guarantee that the bidder will enter into a Contract with LARPD for the performance of Work herein described.

Bid Security - The cash, cashier's check, certified check, or bidder's bond accompanying the bid submitted by the bidder, as a guarantee that the bidder will enter into a Contract with LARPD for the performance of Work herein described.

Bidder - Any individual, firm, partnership or corporation submitting a bid for the Work contemplated, and acting directly or through a duly authorized representative.

Board - LARPD Board of Directors.

Bureau - United States Bureau of Reclamation.

Calendar Day - Each day shown on the calendar.

Change Order - Written order issued by the Contracting Officer to the Contractor covering changes in the Contract and establishing the bases of compensation and time adjustments for work affected by the changes.

Claim - A separate demand by the contractor for (i) a time extension, (ii) 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 (iii) an amount the payment of which is disputed by LARPD.

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 all Contract Documents and supplemental agreements amending or extending the work contemplated which may be required to complete the Work in a substantial and acceptable manner. Supplemental agreements are written agreements.

Contract Documents - The Contract Documents are the collective term for all of the documents included and referenced under these Bid Documents.

Contracting Officer - LARPD Manager of LARPD or LARPD Manager's representative authorized to enter into a contract on behalf of LARPD.

Contractor - The person or persons, firm, partnership or corporation or other entity who has entered into the Contract with LARPD to perform the Work.

County - County of Alameda, California.

Date of Execution of the Contract - The date on which the Contract is signed by LARPD's authorized representative.

Datum - The Figures given in the Specifications or upon the drawings after the word "Elevation" or an abbreviation of it, shall mean U.S.G.S. datum, unless otherwise noted.

Days - Unless otherwise designated, days as used in the Contract Documents shall mean calendar days.

District - LARPD, also referred to as the Owner.

Elevation - The figures given on the Plans or in the other Contract Documents after the word "elevation" or abbreviation of it shall mean the distance in feet above the standard datum used by LARPD.

Project Manager - LARPD Project Manager, or the person designated by LARPD as its representative during the course of construction, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties delegated to them.

Extra Work - Work other than that required either expressly or implied by the Contract in its executed form.

His - "His" shall include "her" and "its."

Or Equal - The term "or equal" shall be understood to indicate that the "equal" product be the equivalent or better than the product named in function, performance, reliability, quality, and general configuration. Determination of equality in reference to the project design requirements will be made by the Project Manager.

Plans or Specification Drawings - The term "Plans" or "Specification Drawings" refers to the official plans, profiles, cross sections, elevations, details, and other working drawings and supplementary drawings, or reproductions thereof, signed by the District, which show the location, character, dimensions, and details of the work to be performed. Plans may either be bound in the same book as the balance of the Contract Documents or bound in separate sets. Regardless of the method of binding, Plans shall be part of the Contract Documents.

Plant - All physical, resources, facilities, machinery, equipment, staging, tools, work and storage space other than provided by the Contract, together with subsidiary essentials and necessary maintenance for proper construction and acceptable completion of the project.

Project - The entire Work to be completed under the Contract.

Project Manager - The person designated by LARPD as its project management representative during the course of construction, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties delegated to them.

Shop Drawings - Drawings prepared by the fabricator or supplier showing the layout and details of components fabricated in a shop for inclusion in the permanent facility (e.g., structural steel, reinforcing steel, railings).

Site - The area upon or in which the Contractor's operations are carried on and such other areas adjacent thereto as may be designated by the District.

Specifications - The term "specifications" refers to the terms, provisions, and requirements contained herein. Where the specifications, such as those of "ASTM," "AASHTO," etc. have been referred to, the applicable portions of such standard specifications shall become a part of these Contract Documents.

State - State of California.

State Standard Specifications - Standard Specifications issued by the State of California Business and Transportation Agency, Department of Transportation, dated 2010, and as amended.

Subcontractor - The term "Subcontractor," as employed herein, includes only those having a direct contract with the Contractor and it includes one who furnishes material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked and would be considered a supplier only.

Supplemental Conditions - Additions, revisions, special directions, and requirements peculiar to a project and not otherwise thoroughly set forth in General and/or Specifications.

Time Limits - All time limits stated in the Contract Documents are of the essence of the Contract.

Work - All the work specified, indicated, shown or contemplated in the Contract to construct the improvements, including all alterations, amendments or extensions thereto made by Contract Change Order or other written orders of the Project Manager.

Written Notice - "Written Notice" shall be deemed to have been duly served when delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by U.S. mail to the last business address known to him who gives the notice.

Whenever in the Specifications or upon the drawings the words DIRECTED, REQUIRED, PERMITTED, ORDERED, DESIGNATED, PRESCRIBED, or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation or prescription of the Project Manager is intended, and similarly the words APPROVED, ACCEPTABLE, SATISFACTORY, or words of like import, shall mean approved or acceptable to, or satisfactory to the Project Manager, unless otherwise expressly stated.

SECTION D. SCOPE OF WORK

D-1. Intent of Contract Documents

The intent of the Contract Documents 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. Unless otherwise indicated on the Plans, these special provisions shall govern all work performed under contract with LARPD. In any case for which a provision is not provided, the appropriate provision or provisions of the State or County Standard Specifications shall apply.

Where the Specifications and Plans describe portions of the Work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be used. Unless otherwise specified, the Contractor shall furnish all labor, materials, tools, equipment and incidentals and do all the work involved in performing the Contract in a satisfactory and workmanlike manner.

The technical specifications are presented in sections for convenience. However, this presentation does not necessarily delineate trades or limits of responsibility. All sections of the Specifications and Plans are interdependent and applicable to the Project as a whole.

The Contract Documents are complementary, and what is called for in any one shall be as binding as if called for in all. Anything shown on the Drawings and not mentioned in the Specifications or mentioned in the Specifications and not shown on the Drawings shall have the same effect as if shown or mentioned respectively in both. Any work shown on one Drawing shall be construed to be shown in all Drawings and the Contractor will coordinate the Work and the Drawings.

D-2. Schedule

Estimated Schedule

Within **seven (7)** days after the issuance of the Notice to Proceed, Contractor shall prepare a Project schedule and shall submit this to the LARPD for Approval. The receipt or Approval of any schedules by the LARPD or the LARPD shall not in any way relieve the Contractor of its obligations under the Contract Documents. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project. Contractor's failure to incorporate all elements of Work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all Work required for a completed Project within the specified Contract time period. If the required schedule is not received by the time the first payment under the Contract is due, Contractor shall not be paid until the schedule is received, reviewed and accepted by the LARPD.

Schedule Contents

The schedule shall allow enough time for inclement weather. The schedule shall indicate the beginning and completion dates of all phases of construction; critical path for all critical, sequential time related activities; and "float time" for all "slack" or "gaps" in the non-critical activities. The schedule shall clearly identify all staffing and other resources which in the Contractor's judgment are needed to complete the Project within the time specified for completion. Schedule duration shall match the Contract time. Schedules indicating early completion will be rejected.

Schedule Updates

Contractor shall continuously update its construction schedule. Contractor shall submit an updated and accurate construction schedule to the LARPD whenever requested to do so by LARPD and with each progress payment request.

The LARPD may withhold progress payments or other amounts due under the Contract Documents if Contractor fails to submit an updated and accurate construction schedule.

D-3. Specifications and Plans

The work embraced herein shall be done in accordance with Standard Specifications and the Standard Plans, of the Department of Transportation insofar as the same may apply and these special provisions.

In case of conflict between the Standard Specifications and these special provisions, these special provisions shall take precedence over and be used in lieu of the conflicting portions.

Whenever in the Standard Specifications, Standard Plans, Special Provisions, Notice to Bidders, Proposal, Contract, or other contract documents the following terms are used, the intent and meaning shall be interpreted as follows:

District Director	LARPD, Capital Improvement Division
District	LARPD District or Landscape Project Manager / Architect acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties entrusted to them.
Contract	Agreement
Plans	All plans, maps and other drawings (including standard plans or drawings), together with all printed or written explanatory matter thereof, as listed in Part B of these special provisions.
Specifications	Technical Specifications, reference specifications, special provisions and any specifications in change orders or supplemental agreements between the contractor and LARPD.

D-4. Precedence of Plans, Specifications, and Contract Documents

If there are conflicting requirements in the plans, specifications, and contract documents, the requirement first in precedence shall control. The precedence shall be determined as follows:

- First: Permits from other agencies as may be required by law.
- Second: LARPD and contractor contract / Addendums
- Third: Change orders
- Fourth: Project technical provisions/specifications
- Fifth: Project plans
- Sixth: City standard plans
- Seventh: City of Livermore standard specifications
- Eighth: Other referenced specifications

D-5. Contractor's Understanding

It is understood and agreed that the Contractor has, by careful examination, satisfied himself as to the nature and location of the Work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the Work, the general and local conditions, and all other matters which can in any way affect the Work under this Contract. No verbal agreement or conversation with any officer, agent or employee of LARPD, either before or after the execution of this Contract, shall affect or modify any of the terms or obligations contained herein.

D-6. Submittals

Contractor shall furnish to the LARPD and District for approval, prior to purchasing or commencing any Work, a log of all samples, material lists and certifications, mix designs, schedules, and other submittals, as required in the specifications. The log shall indicate whether samples will be provided in accordance with other provisions of this Contract.

Contractor will provide samples and submittals, together with catalogs and supporting data required by the LARPD and District, to the LARPD and District within a reasonable time period to provide for adequate review and avoid delays in the Work.

These requirements shall not authorize any extension of time for performance of this Contract. The LARPD and District will check and approve such samples, but only for conformance with design concept of work and for compliance with information given in the Contract Documents. Work shall be in accordance with approved samples and submittals.

D-7. Prompt Progress Payment to Subcontractors

A prime contractor or subcontractor shall pay any subcontractor not later than **seven (7) days** of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The **seven (7) days** is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over **thirty (30) days** may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

D-8. Changes in the Work

LARPD may, at any time, by written order, make changes in the Work as deemed necessary by the Project Manager. Such changes include, but are not limited to, changes:

In the Specifications or Plans;

In the sequence, method or manner of performance of the Work;

In the owner-furnished facilities, equipment, materials, services or site; or

Directing acceleration of the Work.

If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of the Contract, an equitable adjustment will be made and the Contract modified in writing accordingly.

Change Orders

A change pursuant to this Section will be in the form of a Contract Change Order which will set forth the work to be done or the method by which the change and cost adjustment, if any, will be determined, and the time of completion of the work.

Upon receipt of a Contract Change Order, the Contractor shall proceed with the ordered work. If ordered in writing by the Project Manager, the Contractor shall proceed with the work so ordered prior to actual receipt of a Contract Change Order. A Contract Change Order executed by the Contractor and approved by the Project Manager is an executed Contract Change Order as that term is used throughout this Section.

Change Order Protests

A Contract Change Order may be issued to the Contractor at any time. Should the Contractor disagree with any terms or conditions set forth in a Contract Change Order which he has not executed, he shall submit a written protest to the Project Manager within **fifteen (15) days** after the receipt of such Contract Change Order. The protest shall state the points of disagreement and, if possible, the quantities and cost involved. If a written protest is not submitted, payment will be made as set forth in the Contract Change Order. Such payment shall constitute full compensation for all work included therein or required thereby. Such unprotested Contract Change Orders shall be considered as executed Contract Change Orders.

Where the protest concerning a Contract Change Order relates to compensation, the compensation payable for all work specified or required by said Contract Change Order to which such protest relates will be determined in the same manner as provided in the procedures outlined below. The Contractor shall keep full and complete records of the cost of such work and shall permit the Project Manager to have such access thereto as may be necessary to assist in the determination of the compensation payable for such work. Where the protest concerning a Contract Change Order relates to the adjustment of time and the completion of the Work, the time to be allowed therefore will be determined as provided in this Section.

The consent of the Contractor's sureties shall not be required as to any change or Extra Work, and the liability of the Contractor's Bonds shall be increased or decreased accordingly without notice to the sureties.

D-9. Procedures and Allowable Costs on Changes and Additions to Work

Forms of Payment

If the change in, or addition to, the Work will result in an increase in the contract sum, LARPD shall have the right to require the performance thereof. The compensation to be paid for any such work shall, in LARPD's sole discretion, be determined in one or more of the following ways:

- A. By agreed unit prices, if unit prices are required by LARPD's bid form and provided with contractor's bid;
- B. By proposal and acceptance of an agreed upon lump sum; or
- C. On a time and materials basis.

Until one of the above methods is agreed on, or if the Work is to be paid for on a time and materials basis, the Contractor shall keep full and complete records of the cost of such work in the form and manner prescribed by the Project Manager and shall permit the Project Manager to have access to such records as may be necessary to assist in the determination of the compensation payable for such work.

Lump Sum Payment

LARPD, in its sole and absolute discretion, may request a lump sum proposal by Contractor to perform the change in, or addition to, the Work performed. Such lump sum proposal shall be submitted by the Contractor within **ten (10) days** of LARPD's request therefor. Request for a lump sum proposal by The District shall not be deemed an election by The District to have the Work performed on a lump sum basis. Costs of preparing the proposal shall not be compensable.

Contents of Lump Sum Proposal

The Contractor's proposal shall be itemized and segregated by labor and materials for the various components of the change (no aggregate labor total will be acceptable). The proposal shall be accompanied by signed proposals of any Subcontractors which will perform any portion of the change, and of any persons who will furnish materials or equipment for incorporation therein. The proposal shall also include the Contractor's estimate of the time required to perform said changes or additional work.

Computation of Labor Costs

The portion of the proposal relating to labor, whether by the Contractor's forces or the forces of any of its Subcontractors, may include the projected wages of the reasonably anticipated Site labor, including foremen, who will be directly involved in the change in the Work. These projected wages shall not include charges for assistant superintendents, superintendents, office personnel, timekeepers and maintenance mechanics.

Labor costs may also include Contractor's overhead and profit which shall be computed by adding to the labor costs either up to **fifteen percent (15%)** of the projected wages, but not payroll costs, or the labor surcharge set forth in the California 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. The method of computing the overhead and profit shall be solely within the discretion of LARPD.

The labor surcharge, if used, 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 workmen, other than actual wages as defined above or travel and subsistence payments as provided by Labor Code section 1773.1. No time or charges will be allowed except when the workers are actually engaged in the proper, efficient and diligent performance or completion of the extra work as authorized. Overtime shall not be worked without prior approval of the Project Manager.

Computation of Equipment and Materials Costs

The portion of the proposal relating to materials may include the reasonably anticipated direct costs to the Contractor or to any of its Subcontractors of materials to be purchased for incorporation in the change in the Work. This portion of the proposal may also include transportation and applicable sales or use taxes. Up to **fifteen percent (15%)** of these direct costs may be included as overhead and profit for the Contractor or any such Subcontractor (such overhead and profit to include all small tools).

This portion of the proposal may further include the Contractor's and any of its Subcontractors' reasonably anticipated costs for the rental and operation of prime construction and automotive equipment furnished and used in connection with the change in the Work. The equipment rental and operation rates used shall be the latest edition of the Department of Transportation, Division of Construction, Equipment Rental Rates. These costs shall not include charges for listed equipment or major tools with a new cost of five hundred dollars (\$500.00) or less. No time charges shall be allowed except for equipment actually used for the proper and efficient performance or completion of the authorized change in the Work.

Subcontractors

The lump sum proposal may include up to **five percent (5%)** of the amount which the Contractor will pay to any of its Subcontractors for the change in the Work as allowable overhead and profit to the Contractor.

Failure to Submit Lump Sum Proposal

In the event that the Contractor fails to submit its proposal within the designated period, the Project Manager may direct the Contractor to proceed with the change or addition to the Work and the Contractor shall so proceed. The Project Manager shall unilaterally determine the reasonable costs and time to perform the work in question, which determination shall be final and binding upon the Contractor.

Failure to Agree on Lump Sum Amount

In the event that the parties are unable to agree as to the reasonable costs and time to perform the change in or addition to the Work based upon the Contractor's proposal and the Project Manager and The District do not elect to have the change in the Work performed on a time and material basis, the Project Manager and The District shall make a unilateral determination of the reasonable cost and time to perform the change in the Work, based upon their own estimates, the Contractor's submission or combination thereof. In such instances, a Change Order shall be issued for the amount of costs and time determined by the Project Manager and LARPD and shall become binding upon the Contractor unless the Contractor submits its protest in writing to LARPD within thirty (30) days of the issuance of the Change Order. LARPD has the right to direct the Contractor in writing to perform the change in the Work which is the subject of the Change Order. Failure of the parties to reach agreement regarding the costs and time of performing the change in the Work and/or any pending protest shall not relieve the Contractor from performing the change in the Work promptly and expeditiously.

Payment by Unit Prices

If any of the items included in the lump sum proposal are covered by unit prices contained in the contract document, LARPD may, if it requires the change in the Work to be performed on a lump sum basis, elect to use these unit prices in lieu of the similar items included in the lump sum proposal in which event an appropriate deduction will be made in the lump sum amount prior to the application of any allowed overhead and profit percentages. No overhead and profit shall be applied to any unit prices.

Payment on a Time and Material Basis

If LARPD elects to have the change or addition to the Work performed on a time and material basis, the Work shall be performed, whether by the Contractor's forces or the forces of any of its Subcontractors or Sub-subcontractors, at actual costs to the entity or entities performing the change in the Work. Actual costs shall not include any charge for administration, clerical expense, supervision or superintendence of any nature whatsoever, including foremen, or the costs, use or rental of tools or plant.

Contractor may add **fifteen percent (15%)** thereof as the total overhead and profit to the entity or entities actually performing the change. This **fifteen percent (15%)**, however, shall not be applied against any payroll costs as defined in Section D-8 with respect to lump sum proposals. If the entity or entities actually performing the work are Subcontractors or Sub-subcontractors, the Contractor shall be allowed **five percent (5%)** of the total charge of the performing entity or entities (including mark-up) as Contractor's mark-up. No other mark-ups shall be allowed hereunder.

The Contractor shall submit to LARPD daily work and material tickets, to include the identification number assigned to the change in the Work, the location and description of the change in the Work, the classification of labor employed (and names and social security numbers), the material used, the equipment rented (not tools) and such other evidence of cost as LARPD may require. LARPD may require authentication of all time and material tickets and invoices by persons designated by LARPD for such purpose. The failure of the Contractor to secure any required authentication shall, if LARPD elects to treat it as such, constitute a waiver by the Contractor of any claim for the cost of that portion of the Change in the Work covered by a non-authenticated ticket or invoice; provided, however, that the authentication of any such ticket or invoice by LARPD shall not constitute an acknowledgment by LARPD that the items thereon were reasonably required for the Change in the Work.

Limitations on Changes

The Contractor shall not be entitled to any amount for indirect costs, damages or expenses of any nature, including, but not limited to, so-called "impact" costs, labor inefficiency, wage, material or other escalations beyond the prices upon which the proposal is based and to which the parties have agreed pursuant to the provisions of this Section, and which the Contractor, its Subcontractors and Sub-subcontractors or any other person may incur as a result of delays, interferences, suspensions, changes in sequence or the like, for whatever cause, whether reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable, arising from the performance of any and all changes in the work performed pursuant to this Section.

It is understood and agreed that the Contractor's sole and exclusive remedy in such event shall be recovery of its direct costs as compensable hereunder and an extension of the time of the Contract, but only in accordance with the provisions of the Contract Documents.

It is expressly agreed that Contractor shall not be entitled to claim damages for anticipated profits on any portion of the Work that may be deleted. The amount of any adjustment for work deleted shall be estimated at the time deletion of work is ordered and the estimated adjustment will be deducted for the subsequent monthly pay estimates. LARPD reserves the right to contract with any person or firm other than the Contractor for any or all Extra Work.

D-10. Unilateral Change in or Addition to the Work

Notwithstanding the above, LARPD, directly or through the Project Manager, may direct the Contractor in writing to perform changes in or additions to the scope of the Contract. The Contractor shall perform such work and the parties shall proceed pursuant to these special provisions.

D-11. Changes in Character of Work

If an ordered change in the Plans or Specifications materially changes the character of the Work of a Contract item from that upon which the Contractor based his bid price, and if the change increases or decreases the actual unit costs of such changed item as compared to the actual or estimated unit cost of performing the Work of said item in accordance with the Specifications and Plans originally applicable thereto, in the absence of an executed Contract Change Order specifying the compensation payable, an adjustment in compensation therefor will be made in accordance with the following:

The basis of such adjustment in compensation will be the difference between the Contract unit-price to perform the work of said item or portion thereof involved in the change as originally planned and the actual unit cost of performing the work of said item or portion thereof involved in the change, as changed. Actual unit costs will be as agreed upon by the Contractor and the Project Manager. If they cannot agree or if there is no unit-price for the subject work, then the costs of the work will be determined by the Project Manager in the same manner as if the work were to be paid for on the time and material basis as provided in Section D-9. Any such adjustment will apply only to the portion of the work of said item actually changed in character.

Failure of the Project Manager to recognize the change in character of the work at the time the Contract Change Order is issued shall in no way be construed as relieving the Contractor of his duties and responsibility of filing a written protest within the **ten (10) day** limit as herein above provided.

D-12. Claims for Extra Costs

Notice of Potential Claims

It is hereby mutually agreed that the Contractor shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by the Project Manager, or the happening of any event, thing or occurrence, unless the Contractor provides the Project Manager with written notice of the potential claims as hereinafter specified. Compliance with this section, however, shall not be a prerequisite as to matters within the scope of the protest provisions in Section D-8.

The written notice of potential claims shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the costs involved, and, insofar as possible, the amount of the potential claim. The notice as above required shall be given to the Project Manager prior to the time that the Contractor commences performance of the Work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the Project Manager, or in all other cases within **ten (10) days** after the happening of the event, thing or occurrence giving rise to the potential claim.

Construction Claims

The Contractor may submit a claim to the Project Manager concerning any matter for which a protest under Section D-7, or a notice of potential claim, is filed. Such claims, or potential claims, shall be submitted to the Project Manager within **thirty (30) calendar days** following the submission of said protest or notice, unless, due to the nature of the claim or the uncompleted state of the Work, it is impracticable to determine the amount or the extent of the claim within such period. In such cases, claims shall be submitted at the earliest practicable time in which such a determination can be made. In any event, all claims shall be filed on or before the date of the final release by the Contractor.

All claims shall be in writing and shall set forth clearly and in detail, for each item of additional compensation claimed, the reasons for the claim, reference to applicable provisions of the Specifications, the nature and the amount of the cost involved, the computations used in determining such costs, all pertinent factual data and all the documents necessary to substantiate the claim. The Contractor shall maintain complete and accurate records of the cost or any portion of the Work for which additional compensation is claimed, and shall provide the Project Manager with copies thereof, as required.

Resolution of Construction Claims \$50,000.00 or Less

LARPD will respond in writing to all written claims for less than or equal to fifty thousand dollars (\$50,000.00) within **forty-five (45) days** of receipt of the claim, or may request, in writing, within **thirty (30) days** of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims LARPD may have against the claimant.

If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of LARPD and the claimant.

LARPD's written response to the claim, as further documented, shall be submitted to the claimant within **fifteen (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.

Resolution of Claims Greater than \$50,000.00 and Less than or Equal to \$375,000.00

LARPD will respond in writing to all written claims for over fifty thousand dollars (\$50,000.00) and less than or equal to three hundred seventy-five thousand dollars (\$375,000.00) within **forty-five (45) days** of receipt of the claim, or may request, in writing, within **thirty (30) days** of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims LARPD may have against the claimant.

If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of LARPD and the claimant.

LARPD's written response to the claim as further documented, shall be submitted to the claimant within **thirty (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.

Resolution of Claims Greater than \$375,000.00

The Project Manager shall, within a reasonable time after the presentation of any claim in excess of three hundred and seventy-five thousand dollars (\$375,000.00), make a decision in writing on such claim.

All decisions of the Project Manager shall be final unless the Contractor, within **ten (10) days** after receipt of the Project Manager's decision, files a written protest with the Project Manager stating clearly and in detail the basis of the protest. Such protest shall be forwarded promptly by the Project Manager to the LARPD Board, who will issue a decision on such protest. It is hereby agreed that the Contractor's failure to protest the Project Manager's determination or instruction within **ten (10) days** after such determination or instruction is transmitted to the Contractor shall constitute a waiver by the Contractor of all rights to further protest, judicial or otherwise.

Meet and Confer Conference

If the claimant disputes LARPD's written response, or LARPD fails to respond within the time prescribed, the claimant may so notify LARPD, in writing, either within **fifteen (15 days)** of receipt of LARPD's response or within **fifteen (15 days)** of LARPD'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 such a demand, LARPD will schedule a meet and confer conference within **thirty (30) days** for settlement of the dispute.

If, following the meet and confer conference, the claim or any portion thereof remains in dispute, the claimant may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. 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 the claim is denied, including any period of time utilized by the meet and confer conference.

Contractor's Duty During Claim Resolution

The Contractor shall proceed with the Work in accordance with the plans and specifications and determinations and instructions of the Project Manager during the resolution of any claims disputes.

D-13. Materials

Except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract within specified time.

Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality.

Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of The Work and shall be stored properly and protected as required by the Contract Documents. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work.

No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the work and agrees upon completion of all work to deliver the Project, to the LARPD free from any claims, liens, or charges.

Materials shall be stored on the Project site in such manner so as not to interfere with any operations of the LARPD or any independent contractor.

D-14. Contractor's Supervision

Contractor shall keep at the Project site, a competent and experienced Project superintendent approved by the LARPD who shall be in attendance at the Project site during performance of the Work. Superintendent must be able to proficiently speak, read and write in English. Contractor shall continuously provide efficient supervision of the Project.

D-15. Permits and Licenses

Permits and licenses necessary for prosecution of The Work shall be secured and paid for by Contractor, unless otherwise specified in the Contract Documents.

Contractor shall obtain and pay for all other permits and licenses required for The Work, including excavation permit and for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under jurisdiction of public agencies other than the LARPD.

The Contractor shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the specifications, drawings, or by governing authorities, except for such off-site inspections delineated as the LARPD's responsibility pursuant to the Contract Documents.

Before Acceptance of the Project, the Contractor shall submit all licenses, permits, certificates of inspection and required approvals to the LARPD.

D-16. Utility Usage

All temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by Contractor. Contractor shall provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on The Work where the utility is needed. Upon completion of The Work, Contractor shall remove all temporary distribution systems.

Contractor shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Project.

All permanent meters installed shall be listed in the Contractor's name until Project Acceptance.

D-17. Sanitary Facilities

Contractor shall provide sanitary temporary toilet buildings for the use of all workers. All toilets shall comply with local codes and ordinances. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by CAL-OSHA regulation. The toilets shall be maintained in a sanitary condition at all times. Use of toilet facilities in The Work under construction shall not be permitted. Any other Sanitary Facilities required by CAL-OSHA shall be the responsibility of the Contractor.

D-18. Air Pollution Control

Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.

D-19. Compliance with State Storm Water Permit

Contractor shall be required to comply with all conditions of the State Water Resources Control Board ("State Water Board") National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity ("Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan ("SWPPP") prior to initiating Work. In bidding on this Contract, it shall be Contractor's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP, if required. Contractor shall comply with all requirements of the State Water Resources Control Board. Contractor shall include all costs of compliance with specified requirements in the Contract amount.

Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. Contractor shall provide copies of all reports and monitoring information to the LARPD and District.

Contractor shall comply with the lawful requirements of any applicable municipality, the City of Livermore, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

Storm, surface, nuisance, or other waters may be encountered at various times during construction of The Work. Therefore, the Contractor, by submitting a Bid, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.

Failure to comply with the Permit is in violation of federal and state law. Contractor hereby agrees to indemnify and hold harmless the LARPD, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the LARPD, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the LARPD, its officials, officers, agents, employees or authorized volunteers. LARPD may seek damages from Contractor for delay in completing the Contract in accordance with the Contract Documents, caused by Contractor's failure to comply with the Permit.

D-20. Cleaning Up

Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment. Contractor shall not store debris under, in, or about the premises. Upon completion of Work, Contractor shall clean the improvement including any areas where debris has collected so surfaces are free from foreign material or discoloration. Contractor shall clean and polish all equipment and Contractor shall also remove temporary fencing, barricades, planking and construction toilet and similar temporary facilities from site. Contractor shall also clean all asphalt and concrete areas to the degree necessary to remove oil, grease, fuel, or other stains caused by Contractor operations or equipment.

Contractor shall fully clean up the site at the completion of The Work. If the Contractor fails to immediately clean up at the completion of The Work, the LARPD may do so and the cost of such clean up shall be charged back to the Contractor.

D-21. Layout and Field Districting

All field engineering required for laying out The Work and establishing grades for earthwork operations shall be furnished by the Contractor at its expense. Layout shall be done by a registered Civil District engineer or surveyor, approved by the LARPD. Any required "as-built" drawings of the Work shall be prepared by the Contractor and submitted to LARPD at completion of work.

D-22. Excessive Noise

The Contractor shall use only such equipment on the work and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by CAL-OSHA

The Contractor shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer.

Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the Contractor.

D-23. Protection of Work and Property

The Contractor shall be responsible for all damages to persons or property that occur as a result of The Work. Contractor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final Acceptance by the LARPD. All Work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Contractor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Project site where Work is being performed. Contractor shall erect and properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction.

In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from the LARPD, is hereby permitted to act to prevent such threatened loss or injury; and Contractor shall so act, without appeal, if so authorized or instructed by the LARPD. Any compensation claimed by Contractor on account of emergency work shall be determined by and agreed upon by the LARPD and the Contractor.

Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.

Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures, and to avoid damage thereto, and Contractor shall repair any damage thereto caused by The Work operations. Contractor shall:

- A. Enclose working area as necessary with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to the public.
- B. Provide substantial barricades around any shrubs or trees indicated to be preserved.
- C. Deliver materials to the Project site over a route designated by the LARPD.
- D. Provide any and all dust control required and follow the Applicable air quality regulations as appropriate. If the Contractor does not comply, the LARPD shall have the immediate authority to provide dust control and deduct the cost from payments to the Contractor.
- E. Confine Contractor's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or directions of the LARPD. Contractor shall not unreasonably encumber the Project site with its materials.
- F. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved civil District or land surveyor, at no cost to the LARPD.

D-24. Authorized Representatives

The LARPD shall designate representatives, who shall have the right to be present at the Project site at all times. The LARPD may designate an inspector who shall have the right to observe all of the Contractor’s Work. The inspector is not authorized to make changes in the Contract Documents. The inspector shall not be responsible for the Contractor’s failure to carry out The Work in accordance with the Contract Documents. Contractor shall provide safe and proper facilities for such access.

D-25. Hours of Work

Eight (8) hours of work shall constitute a legal day’s work. The Contractor and each subcontractor shall forfeit, as penalty to the LARPD, twenty-five dollars (\$25) for each worker employed in the execution of Work by the Contractor or any subcontractor for each day during which such worker is required or permitted to work more than eight (8) hours in any one day and forty (40) hours in any week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, except as provided in Labor Code Section 1815.

Work shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:30 a.m. and 4:30 p.m.

It shall be unlawful for any person to operate, permit, use, or cause to operate any of the following at the Project site, other than between the hours of 7:30 a.m. to 4:30 p.m., Monday through Friday, with no Work allowed on LARPD-observed holidays, unless otherwise Approved by the LARPD:

- A. Powered Vehicles
- B. Construction Equipment
- C. Loading and Unloading Vehicles
- D. Domestic Power Tool.

D-26. Guarantee

Should any of the materials installed pursuant to the plans, specifications and contract documents, except existing materials or materials furnished by LARPD, prove defective or should any of the work prove defective due to faulty workmanship, materials furnished, or methods of construction within one year from the date of acceptance of the work by LARPD Board, the contractor shall reimburse LARPD, upon demand, for its expenses incurred in restoring the work to the condition contemplated in said plans, specifications and contract documents, including the cost of any materials replaced or, upon demand by LARPD, shall replace any such materials and repair the work completely without cost to LARPD.

LARPD shall have the unqualified option to make any needed repairs or replacements done by the contractor. In the event LARPD elects to have said work performed by the contractor, the contractor shall furnish all necessary materials and make the required repairs and installations within a reasonable time after receipt of notice from LARPD. LARPD will give notice of observed defects with reasonable promptness.

The faithful performance bond shall remain in full force and effect during the period covered by this guarantee, except that, instead of the faithful performance bond remaining in effect during the guaranty period, the contractor may provide for this guarantee to be secured by a Surety bond in the amount of **ten percent (10%)** of the contract price or five thousand dollars (\$5,000.00), whichever is greater.

Said surety bond, if furnished, shall be on a form satisfactory to LARPD, shall be executed by a surety company or companies satisfactory to LARPD, and shall remain in full force and effect during the period covered by this guarantee. Said bond, if furnished, shall be delivered to LARPD prior to the date of final acceptance of the work.

D-27. Safety Orders

The contractor shall comply with the provisions of Subsections 7-1.02K(6) "Occupational Safety and Health Standards" of the State Standard Specifications.

The contractor shall comply with all applicable provisions of the California Occupational Safety and Health Act of 1973, including any amendments thereto, and the rules, standards, orders and regulations prescribed by the Occupational Safety and Health Standards Board and the Division of Industrial Safety in the California Department of Industrial Relations. The contractor shall further comply with all other applicable safety laws, ordinances and regulations.

D-28. Abandonment of Work

Should the contractor abandon the work called for under the plans, specifications and contract documents, or assign the contractor's contract, or if the contractor unnecessarily and unreasonably delays the work, or if the contractor willfully violates any of the conditions of the plans and specifications or contract documents, or performs the work in bad faith, LARPD shall have the power to notify the contractor to discontinue all work or any part thereof under this contract. The contractor shall cease to continue said work or such part thereof as LARPD may designate. LARPD shall thereupon have the power to employ such persons as it may consider desirable, and to obtain by contract, purchase, hire, or otherwise, such implements, tools, or materials as deemed advisable to work at and be used to complete the work herein described, or such part thereof as shall not have been completed. LARPD shall use such material as it may find upon the site of said work, and to charge the expense of such labor and materials, implements, and tools to the contractor. The expense so charged shall be due, or may at any time thereafter become due to the contractor hereunder and by virtue of the contract.

In the case such expense is less than the sum which would have been payable under the contract, if the same had been completed by the contractor, the contractor shall be entitled to receive the difference, and in case such expense shall exceed the last said amount, then the contractor or the contractor's bondsman shall pay the amount of such excess to the LARPD on notice to either from the LARPD of the excess so due.

D-29. Removal of Asbestos and Hazardous Substances

When the presence of asbestos or hazardous substances are not shown on the plans or indicated in the specifications and the Contractor encounters materials which the Contractor reasonably believes to be asbestos or a hazardous substance as defined in Section 25914.1 of the Health and Safety Code, and the asbestos or hazardous substance has not been rendered harmless, the Contractor may continue work in unaffected areas reasonably believed to be safe. The Contractor shall immediately cease work in the affected area and report the condition to the LARPD in writing.

In conformance with Section 25914.2 of the Health and Safety Code, removal of asbestos or hazardous substances including exploratory work to identify and determine the extent of the asbestos or hazardous substance will be performed by separate contract when it has not been disclosed in the bid or contract documents.

If delay of work in the area delays the current controlling operation, the delay will be considered a right of way delay and the Contractor will be compensated for the delay in conformance with the provisions in Section 8-1.07, "Delays," of the State Standard Specifications.

D-30. Tests and Inspections

If the Contract Documents, the LARPD, or any instructions, laws, ordinances, or public authority require any part of The Work to be tested or Approved, Contractor shall provide the LARPD at least two (2) working days notice of its readiness for observation or inspection. If inspection is by a public authority other than the LARPD, Contractor shall promptly inform the LARPD of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Contractor. Costs for testing and inspection shall be paid by the LARPD. Costs of tests for Work found not to be in compliance shall be paid by the Contractor.

If any Work is done or covered up without the required testing or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor's cost in compliance with the Contract Documents.

Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by the LARPD, and not by Contractor. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.

In advance of manufacture of materials to be supplied by Contractor which must be tested or inspected, Contractor shall notify the LARPD so that the LARPD may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into the Work.

If the manufacture of materials to be inspected or tested will occur in a plant or location outside the geographic limits of City, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.

Reexamination of Work may be ordered by the LARPD. If so ordered, Work must be uncovered or deconstructed by Contractor. If Work is found to be in accordance with the Contract Documents, the LARPD shall pay the costs of reexamination and reconstruction. If such work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.

D-31. Existence of Utilities at the Work Site

The LARPD has endeavored to determine the existence of utilities at the Project site from the records of the known utilities in the vicinity of the Project. The positions of these utilities as derived from such records are shown on the Plans.

No excavations were made to verify the locations shown for underground utilities. The service connections to these utilities are not shown on the plans. It shall be the responsibility of the Contractor to determine the exact location of all service connections. The Contractor shall make its own investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing Work which could result in damage to such utilities. The Contractor shall immediately notify the LARPD in writing of any utility discovered in a different position than shown on the Plans or which is not shown on the Plans.

All water meters, water valves, fire hydrants, electrical utility vaults, telephone vaults, gas utility valves, and other subsurface structures shall be relocated or adjusted to final grade by the Contractor. Locations of existing utilities shown on the Plans are approximate and may not be complete. The Contractor shall be responsible for coordinating its Work with all utility companies during the construction of The Work.

Notwithstanding the above, pursuant to Section 4215 of the Government Code, the LARPD has the responsibility to identify, with reasonable accuracy, main or trunkline facilities on the plans and specifications.

In the event that main or trunkline utility facilities are not identified with reasonable accuracy in the plans and specifications made a part of the invitation for bids, LARPD shall assume the responsibility for their timely removal, relocation, or protection.

Contractor, except in an emergency, shall contact the appropriate regional notification center, Northern California Underground Service Alert at 1-800-227-2600 or 811 at least two working days prior to commencing any excavation if the excavation will be performed in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the LARPD, and obtain an inquiry identification number from that notification center. No excavation shall be commenced or carried out by the Contractor unless such an inquiry identification number has been assigned to the Contractor or any subcontractor of the Contractor and the LARPD has been given the identification number by the Contractor.

D-32. Occupancy

The City of Livermore reserves the right to occupy or utilize any portion of The Work at any time before completion, and such occupancy or use shall not constitute Acceptance of any part of Work covered by this Contract. This use shall not relieve the Contractor of its responsibilities under the Contract.

D-33. Indemnification

Contractor shall defend (with counsel of LARPD's choosing), indemnify and hold the LARPD, its officials, officers, agents, employees, and representatives free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, to the extent arising out of or incident to any acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, with counsel of LARPD's choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against LARPD, its officials, officers, agents, employees and representatives. To the extent of its liability, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against LARPD, its officials, officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse LARPD, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code Section 2782.

D-34. Record Drawings

Contractor shall prepare and maintain a complete set of record drawings and shall require each trade to prepare its own record drawings. The record drawings must show the entire site for each major trade, including but not limited to water, electrical, and plumbing. Contractor shall mark the record drawings to show the actual installation where the installation varies from the Work as originally shown. Contractor shall mark whichever drawings are most capable of showing conditions fully and where shop drawings are used, Contractor must record a cross-reference at the corresponding location on the contract drawings. Contractor shall give particular attention to concealed elements that would be difficult to measure and record at a later date. Contractor shall use colors to distinguish variations in separate categories of The Work.

Contractor shall note related change order numbers where applicable. Contractor shall organize record drawings into manageable sets, bound with durable paper cover sheets and shall print suitable title, dates and other identification on the cover of each set. Contractor shall also provide an electronic version of the record drawings. The suitability of the record drawings will be determined by the LARPD.

D-35. Compliance with DTSC Guidelines-Imported Soils

If the Project requires the use of imported soils, the Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California Law and the California Health and Safety Code. The City reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify the LARPD of the source of material and comply with the California Regional Water Quality Control Board and when applicable, with the guidelines of the Department of Toxic Substances Control (DTSC).

D-36. Laws and Regulations

Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified. If the contractor observes that drawings and specifications are at variance therewith, the contractor shall promptly notify the LARPD and District, in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the LARPD and District, the contractor shall bear all costs arising therefrom.

Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42U.S.C. § 12101 et seq.). The Work will be performed in compliance with all ADA regulations.

SECTION E. MEASUREMENT AND PAYMENT

E-1. Measurement of Quantities

Where the Contract provides for payment on a lump sum price basis, no measurement of quantity will be made. Where the Contract provides for payment on a unit price basis, the quantities of work performed will be computed by the District on the basis of measurements taken by the District, and these measurements shall be final and conclusive.

All quantities of work computed under the Contract shall be based upon measurements by the District according to United States Measurements and Weights.

Methods of measurement are specified herein and in the Technical Specifications.

Mobilization shall be measured and payment issued according to the State Standard Specifications and these special provisions.

E-2. 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 contemplated and embraced 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 LARPD 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 Specifications and Plans. Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or material.

No compensation will be made in any case for loss of anticipated profits. Increased or decreased work involving supplemental agreements will be paid for as provided in such agreements.

The Work includes the preparatory work and operations needed for mobilization and demobilization of the Project. The Work, however, does not include establishing the District's field facility(s) of utility work and connections needed for these facilities.

E-3. Progress Estimate

For each calendar month of Contract work, the District will prepare a progress estimate of all work performed under the Contract. Within the first **ten (10) days** of each succeeding calendar month, the District will prepare in writing an estimate which in the District's opinion is a fair approximation of the value of all work done under the Contract, including any amounts due the Contractor for Extra Work and Change Orders. In arriving at the value of the Work done, the District will give consideration to the value of labor and materials which have been incorporated into the permanent work by the Contractor during the preceding month. Consideration will not be given to preparatory work done or for materials or equipment on hand. In lieu of the District preparation of a progress estimate, the Contractor may choose to submit a progress estimate for the District's review.

In order to assist the District, the Contractor shall furnish the District with copies of invoices for all such items delivered to the job site.

E-4. Progress Payments

LARPD will pay the Contractor **ninety-five (95%) percent** of the amount of each progress estimate within **thirty (30) days** after receipt of an undisputed and properly submitted progress estimate from the Contractor. **Five percent (5%)** of the amount of each estimate shall be retained by LARPD until final completion and acceptance of all work under the Contract. The final estimate may be limited to five hundred dollars (\$500.00) or **five percent (5%)** of the total contract amount, whichever is greater.

The Contractor may, in accordance with the provisions of Public Contracts Code section 22300, substitute securities for any monies which LARPD may withhold to insure performance under the Contract.

No progress estimate or payment shall be considered to be an approval or acceptance of any work, materials or equipment. Estimated amounts and values of work done and materials and equipment furnished will be conformed with actual amounts and values as they become available in subsequent progress estimates, progress payments and the final estimate and payment. All estimates and payments will be subject to correction in subsequent progress estimates and payments and the final estimate and payment.

It is mutually agreed between the parties to the Contract that no payments made under the Contract, including progress payments and the final payment shall be evidence of the performance of the Contract, either wholly or in part, and no payment shall construed to be an acceptance of any defective or incomplete work or improper materials.

E-5. Final Acceptance and Date of Completion

Whenever the Contractor shall deem all Work under this Contract to have been completed in accordance therewith, he shall so notify the District in writing, and the District shall promptly ascertain whether the Work has been satisfactorily completed and, if not, shall advise the Contractor in detail and in writing of any additional work required. When all the provisions of the Contract have been fully complied with, to the satisfaction of the District, the District shall proceed with all reasonable diligence to determine accurately the total value of all Work performed by the Contractor at the prices set forth in the Contract or fixed by Change Orders, and the total value of all extra work, all in accordance with the Contract. The District will then certify to said final estimate and to the completion of the Work, and will file copies thereof with LARPD and the Contractor. The date of completion shall be the date upon which the LARPD Board of Directors accepts the Work.

E-6. Right to Withhold Payments

In addition to all other rights and remedies of LARPD hereunder and by virtue of the law, LARPD may withhold or nullify the whole or any part of any partial or final payment to such extent as may reasonably be necessary to protect LARPD from loss on account of:

1. Defective work not remedied, irrespective of when any such work be found to be defective;
2. Claims or liens filed or reasonable evidence indicating probable filing of claims or liens including, but not limited to claims under Sections 1775, 1776, or 1777.7 of the Labor Code;
3. Failure of the Contractor to make payments properly for labor, materials, equipment, or other facilities, or to subcontractors and/or suppliers;
4. A reasonable doubt that the Work can be completed for the balance then unearned;
5. A reasonable doubt that the Contractor will complete the Work within the agreed time limits;

6. Costs to LARPD resulting from failure of the Contractor to complete the Work within the proper time;
or
7. Damage to work or property.

Whenever LARPD shall, in accordance herewith, withhold any monies otherwise due the Contractor, written notice of the amount withheld and the reasons therefor will be given the Contractor. After the Contractor has corrected the enumerated deficiencies, LARPD will promptly pay to the Contractor the amount so withheld. When monies are withheld to protect LARPD against claims or liens of mechanics, materialmen, Subcontractors, etc., LARPD may at its discretion permit the Contractor to deliver a surety bond in terms and amount satisfactory to LARPD, indemnifying LARPD and its agents, against any loss or expense, and upon acceptance thereof by LARPD, LARPD shall release to the Contractor monies so withheld.

E-7. Final Payment

Final payment to the Contractor in accordance with the final estimate is contingent upon the Contractor executing the Balancing Contract Change Order (BCCO) prepared and furnished by the District. The BCCO is considered the final estimate unless a notice of disputed claim has been filed with LARPD

After acceptance of the project by LARPD Board, LARPD will file in the Office of the County Recorder, a Notice of Completion of the Work herein agreed to be done by the Contractor. On the expiration of **thirty-five (35) days** after the recordation of such Notice of Completion, the difference between said final estimate and all payments theretofore made to the Contractor shall be due and payable to the Contractor, subject to any requirements concerning the furnishings of a maintenance bond, and excepting only such sum or sums as may be withheld or deducted in accordance with the provisions of this Contract. All prior certifications, upon which partial Payments may have been made, being merely estimates, shall be subject to correction in the final certificate.