

**ADVOCATES FOR MENTALLY ILL HOUSING, Inc dba AMI HOUSING**

CONTRACT

FOR

## Carriage Court Project

October 1<sup>st</sup>, 2026

(Standard Public Works Contract)

## **AMI HOUSING CONTRACT**

THIS CONTRACT, made this 1<sup>st</sup> day of October 2026, by and between AMI Housing Inc, hereinafter referred to as "AMIH," and XXXXXXXX., hereinafter referred to as Contractor.

WITNESSETH: That the AMIH and Contractor, for consideration hereinafter mentioned, agree as follows:

### **ARTICLE I: DEFINITIONS**

Wherever used in these general conditions or in the other contract documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

#### Act of God

"Act of God" means an earthquake or flood, or other cataclysmic phenomenon of nature. A rain, windstorm, high water or other natural phenomenon of unusual intensity for the specific locality of the work, which might reasonably have been anticipated from historical records of the general locality of the work, shall not be construed as an Act of God.

#### Addenda

Written or graphic instruments issued prior to the opening of bids which clarify, correct or change the bidding documents.

#### Application for Payment

The form accepted by AMIH which is to be used by Contractor in requesting progress or final payments and which is to include such supporting documentation as is required by the contract documents.

#### Calendar Days

Consecutive days of the month, including Saturdays, Sundays and holidays. A calendar day shall be the 24 hours running from midnight to the next midnight.

#### Change Order

A document which is signed by Contractor and AMIH and authorizes an addition, deletion or revision in the work, or an adjustment in the contract price or the contract time, issued on or after the effective date of the contract.

#### Contract Documents

The written agreement covering the performance of the work and the furnishing of labor, materials and equipment in construction of the work. The agreement shall be construed to include the:

1. Invitation to Bid
2. Instruction to Bidders
3. Contractor's Bid (including documentation accompanying the Bid and any post-bid documentation submitted prior to the Notice of Award
4. Contract
5. Addenda which pertain to the Contract
6. The Bonds
7. Any supplementary conditions or any and all written agreements amending or extending the work, time or price contemplated
8. The Plans and Specifications and Drawings as identified in the Contract
9. Certificates of Insurance
10. Other: State Prevailing Wage Labor Compliance Manual & Contract Language

#### Contract Price

Either the total lump sum bid of the Contractor or the total of the unit price bids of the Contractor extended based upon the estimated quantities set forth in the bid, or combinations thereof, plus or minus any adjustments made in accordance with the contract.

#### Contractor

The person or persons, co-partnership, joint venturers or corporation who have entered into a contract with AMIH as party or parties of the second part and/or their legal representatives.

#### Contractor's Plant and Equipment

Everything, except labor, brought onto the site by the Contractor in order to carry out the work, but not to be incorporated in the work.

#### AMIH

The AMIH and any person or persons to whom the power belonging to AMIH shall be duly designated, including but not limited to an engineer or architect. Only those persons designated in writing by the AMIH Executive Officer or Director of the department overseeing the project shall have authority to act on behalf of AMIH.

#### Day

A calendar day of 24 hours, except when preceded by "working", as defined below.

#### Defective

An adjective which when modifying the word "work" refers to work that is unsatisfactory, faulty or deficient, or does not conform to the contract documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the contract documents, or has been damaged (unless responsibility for the protection thereof has been assumed by AMIH).

#### Directed

"Directed", "designated", "permitted", "required", "accepted", and words of like import, wherever and in whatever manner used means as directed, designated, permitted, required, and accepted by AMIH.

#### Director

"Director" shall mean the Director of the department overseeing the project.

#### Drawings

The drawings which show the character and scope of the work to be performed and which have been prepared or approved by AMIH and are referred to in the contract documents.

#### Effective Date of the Contract

The date indicated in the Contract on which it becomes effective, but if no such date is indicated it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.

#### Engineer

The person specifically designated in writing by AMIH to function as staff adviser and/or consultant to AMIH on engineering matters relating to this contract. Only those persons designated by AMIH, in writing, shall have authority to act for AMIH in the administration of this contract. Said written designation shall be signed by the AMIH Executive Officer or Director of the department overseeing the project.

#### Equal

A device, material, equipment, technique or method that conforms to the intent of that specified or indicated on the Drawing.

#### Field Order

A written order issued by AMIH which orders minor changes in the work but which does not involve a change in the contract price or the contract time.

#### Final Acceptance, Date of

The date when all final punch list items are corrected, the final inspection has been completed and when the governing body and/or funding agency formally accepts the project as complete. This date will be used to establish the start date of the one-year warranty period for the contract.

Laboratory

The designated testing laboratory authorized by AMIH to test materials and work involved in the contract.

Lien

Any claim by a person entitled to file a stop notice pursuant to the provisions of California Civil Code Sections 3179, et seq.

Notice of Award

The written notice by AMIH to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, AMIH will sign and deliver the Contract.

Notice to Proceed

A written notice given by AMIH to Contractor fixing the date on which the contract time will commence to run and on which Contractor shall start to perform Contractor's obligations under the Contract Documents.

Partial Completion

Placing a portion of the work in service for the purpose for which it is intended (or a related purpose) before reaching completion of all the work.

Person

Includes firms, companies and corporations.

Project

The total construction which is required by the Contract Documents which may be all of the work or a part as indicated in the Contract Documents.

Schedule of Values

A list of divisions of the total scope of work under the contract made by the Contractor and approved by the AMIH for purposes of progress payments.

Shall

"Shall" or "will", whenever used, is mandatory.

Shop Drawings

All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for Contractor to illustrate some portion of the work and all product data illustrations, brochures, standard schedules, performance charts, instructions, diagrams, samples, and other information prepared by a supplier and submitted by Contractor to illustrate material or equipment for some portion of the work.

Specifications

Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the work and certain administrative details applicable thereto.

Standard Specifications

Specifications which are authored and authorized by a particular industry or agency which may be incorporated by reference. Where so incorporated, they are incorporated for use of technical data and specifications only. If there is a conflict between the standard specifications and express terms of this contract, the provisions set forth in the contract shall prevail.

Subcontractor

An individual, firm or corporation having a direct contract with Contractor or with any other subcontractor for the performance of a part of the work at the site.

Substitute

A device, material, equipment, technique or method of construction that differs from that intended or indicated on the Drawings.

#### Sufficient

"Sufficient", "necessary", "proper", "acceptable", "satisfactory", "desirable", and words of like import, wherever and in whatever manner used, with or without reference to the AMIH, means sufficient, necessary, proper, acceptable, satisfactory and desirable in the judgment of the AMIH.

#### Supplementary Conditions

An addition to the Contract Documents which supplements the main Contract.

#### Underground Facilities

All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

#### Unit Price Work

Work to be paid for on the basis of unit prices.

#### Work

The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

#### Working Day

A working day is any day except Saturdays, Sundays, or legal holidays and days on which the Contractor is specifically required by special provisions, by any labor contract, or by law, to suspend construction operations. Also excepted is any day on which the Contractor is prevented by inclement weather conditions resulting therefrom, or other phenomena of nature from proceeding with at least seventy-five percent (75%) of the normal labor and equipment force for at least five (5) hours toward completion of the current controlling item on the accepted project schedule. Should the conditions prevent the work from beginning at the usual starting time, or prevent the Contractor from proceeding with seventy-five percent (75%) of the normal labor and equipment force for a period of at least five (5) hours, and the crew is dismissed as a result thereof, Contractor will not be charged for a working day whether or not conditions change so that the major portion of the day could be considered to be suitable for work on the controlling item.

### **ARTICLE II: SCOPE OF WORK**

Contractor, at Contractor's own proper costs and expense, shall do all the work and furnish all the materials necessary to construct and/or reconstruct and complete in good workmanlike and substantial manner and to the satisfaction of the AMIH, the following: Carriage Court Project which shall be constructed in accordance with this Contract, the Invitation to Bid, the Instruction to Bidders, the Plans and Specifications and Drawings, and all other contract documents attached hereto and which are incorporated herein by reference and made a part of this Contract as if set forth in full.

### **ARTICLE III: CONTRACT TIME**

Contractor will start work to be performed under this Contract within 10 days after the Contractor is instructed in writing by AMIH to proceed with the work. Said work shall be diligently prosecuted to completion. All the work shall be completed and ready for acceptance within 150 calendar days from the date of the mailing of the Notice to Proceed. When any period of time is referred to in the contract documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

#### **ARTICLE IV: CHANGE OF CONTRACT TIME**

##### **Change by Change Order**

The contract time may only be changed by change order. A request for an extension or shortening of the contract time shall be based on written notice delivered by the party making the request to AMIH promptly after the occurrence of the event giving rise to the request and stating the general nature of the request. Notice of the extent of the request with supporting data shall be delivered to AMIH and shall be accompanied by the written statement that the adjustment requested is the entire adjustment to which the requesting party has reason to believe it is entitled as a result of the occurrence of said event. No request for an adjustment in the contract time will be valid if not submitted in accordance with the requirements of this paragraph.

##### **Contract Time May Be Extended**

The contract time will be extended in an amount equal to time lost due to delays beyond the control of Contractor if the request is made therefor as provided in this Article. Such delays shall include, but not be limited to, acts of neglect by AMIH or others performing additional work, or to fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

##### **Delay and Price Change**

All time limits stated in the contract documents are of the essence. There shall be no adjustment of contract price due to delays which are not caused by the AMIH, including but not limited to delays for fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God and the acts of any other person or entity. The provisions of this Article shall not exclude recovery for damages for delay which is caused by the AMIH.

##### **Delays in Completion of the Work**

1. Notice of Delays: Whenever the Contractor foresees any delay in the prosecution of the work, and in any event immediately upon the occurrence of any delay which the Contractor regards as unavoidable, Contractor shall notify AMIH in writing of the probability of the occurrence of such delay and its cause in order that AMIH may take immediate steps to prevent, if possible, the occurrence or continuance of the delay or, if this cannot be done, may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and completion of the work are to be delayed thereby. It will be assumed that any and all delays which have occurred in the prosecution and completion of the work have been avoidable delays, except such delays as shall have been called to the attention of AMIH at the time of their occurrence and found by AMIH to have been unavoidable. The Contractor shall make no requests for extensions of time as to delay not called to the attention of AMIH at the time of its occurrence.
2. Avoidable Delays: Avoidable delays in the prosecution or completion of the work shall include all delays which in the opinion of AMIH would have been avoided by the exercise of care, prudence, foresight and diligence on the part of the Contractor or Contractor's subcontractors.
3. Unavoidable Delays: Unavoidable delays in the prosecution or completion of the work shall include all delays which, in the opinion of AMIH, result from causes beyond the control of the Contractor and which could not have been avoided by the exercise of care, prudence, foresight and diligence on the part of the Contractor or the subcontractors and/or any suppliers. Delay in completion due to contract modifications ordered by AMIH and unforeseeable delays in the completion of work or interference by other contractors employed by AMIH will be considered unavoidable delays insofar as they interfere with the Contractor's completion of the work.

##### **Extension of Time**

1. Avoidable Delays: In case the work is not completed in the time specified, including such extensions of time as may have been granted for unavoidable delays, the Contractor will be assessed damages for delay in accordance with the liquidated damages provision. The AMIH, however, shall have the right to grant an extension of time for avoidable delay if it is deemed in

AMIH's best interest to do so. During such extension of time, the Contractor will be charged for engineering and inspection services and other costs but will not be assessed damages for the delay.

2. Unavoidable Delays: For delays which AMIH considers to be unavoidable, the Contractor shall, pursuant to Contractor's application, be allowed an extension of time beyond the time herein set forth, proportional to such delay or delays, in which to complete the contract. During such extension of time, neither extra compensation for engineering and inspection provided nor damages for delay will be charged to the Contractor.

#### Liquidated Damages

AMIH and Contractor recognize that time is of the essence and that AMIH will suffer financial loss if the work is not completed within the time specified above, plus any extensions thereof allowed in accordance with this contract. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by AMIH if the work is not completed on time. Accordingly, instead of requiring any such proof, and due to impracticality and difficulty of ascertaining exact damages caused by delay, AMIH and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay AMIH \$500.00 for each day that expires after the time specified above for completion. Such damages shall only be payable by Contractor to AMIH if the delay is a result of the failure of Contractor to timely perform on its part and not occasioned by the AMIH or any State or Federal agency. In case of joint responsibility for delay in the final completion of the work, where two or more separate contracts are in force at the same time and cover work at the same site, liquidated damages assessed against any one Contractor will be based upon the individual responsibility of that Contractor for the delay as determined by, and in the judgment of, AMIH. AMIH shall have the right to deduct the liquidated damages from any money in its hands, otherwise due, or to become due, to Contractor, or to sue for and recover compensation for damages for nonperformance of this contract within the time stipulated. It is acknowledged that the subject contract is a public project which is subject to the provisions of the Public Contracts Code. Accordingly, AMIH has determined and the Contractor acknowledges that the liquidated damages as established herein are governed by the provisions of Government Code Section 53069.85 and are predicated upon the reasonable damages accruing to AMIH stemming from any delay in the completion of this project.

#### **ARTICLE V: CONTRACT PRICE**

AMIH shall pay Contractor for performance of the work in accordance with the Contract Documents in current funds as follows: Five Hundred Thirty-Nine Thousand, Eight Hundred Forty Dollars (\$539,840.00)

#### **ARTICLE VI: CHANGE OF CONTRACT PRICE**

##### Contract Price

The contract price constitutes the total compensation (subject to authorized adjustments) payable to Contractor for performing the work. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at Contractor's expense without change in the contract price.

##### Change by Change Order

The contract price may only be changed by a written change order. Any request for an increase or decrease in the contract price shall be based on written notice delivered by the party making the request to the other party prior to the commencement of any extra work. Said request shall state the exact nature of the request.

Data regarding any change shall be delivered by Contractor prior to commencing extra work and shall be accompanied by Contractor's written statement that the amount requested covers all amounts (direct, indirect and consequential) to which the Contractor is entitled as a result of the extra work to be done. If said request is granted, AMIH will issue a written change order therefor. No request for an adjustment in the contract price will be valid if not submitted in advance and in accordance with this paragraph.

#### Determination of Change in Contract Price

The value of any work covered by a change order or of any request for an increase or decrease in the contract price shall be determined in one of the following ways:

1. Where the work involved is covered by unit prices contained in the contract documents, by application of unit prices to the quantities of the items involved (subject to the provisions regarding unit price work set forth below).
2. By mutual agreement, and if there is no mutual agreement, no. 3 directly below shall apply.
3. On the basis of the cost of the work determined as provided below plus a Contractor's fee for overhead and profit as provided below.

#### Cost of the Work

The term "cost of the work" means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the extra work required or permitted under a change order. Except as otherwise may be agreed to in writing by AMIH, such costs shall be in amounts no higher than those prevailing in the locality of the project and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the work under schedules of job classifications agreed upon by AMIH and Contractor. Payroll costs for employees not employed full time on the work shall be apportioned on the basis of their time spent on the work. Payroll costs shall include salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by AMIH in writing.
2. Cost of all materials and equipment furnished and incorporated in the work, including costs of transportation and storage thereof, and suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless AMIH deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to AMIH. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to AMIH, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to the subcontractors for work performed by subcontractors. If required by AMIH, Contractor shall obtain competitive bids from subcontractors acceptable to Contractor and shall deliver such bids to AMIH who will then determine which bids will be accepted. If a subcontract provides that the subcontractor is to be paid on the basis of cost of the work plus a fee, the subcontractor's cost of the work shall be determined in the same manner as Contractor's cost of the work. All subcontracts shall be subject to the other provisions of the contract documents insofar as applicable.
4. Costs of special consultants (including engineers, architects, testing laboratories, surveyors, and accountants) employed for services specifically, and only, related to the work.
5. Supplemental costs including the following:
  - a. The proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the work, and cost, less market value of such items used but not consumed which remain the property of Contractor.
  - c. Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by AMIH, and the

costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the work.

- d. Sales, consumer, use or similar taxes related to the work, and for which Contractor is liable, imposed by laws and regulations.
- e. Deposits lost for causes other than negligence of Contractor, any subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses), not compensated by insurance or otherwise, to the work or otherwise sustained by contractor in connection with the performance and furnishing of the work (except losses and damages within the deductible amounts of property insurance established by AMIH), provided they have resulted from causes other than the negligence of Contractor, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of AMIH. No such losses, damages and expenses shall be included in the cost of the work for the purpose of determining Contractor's fee. If, however, any such loss or damage requires reconstruction and Contractor is placed in charge thereof, Contractor shall be paid for services a fee proportionate to that stated below under Contractor's fee.
- g. The cost of utilities, fuel and sanitary facilities at the site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the work.
- i. Cost of premiums for additional bonds and insurance required because of changes in the work and premiums for property insurance coverage within the limits of the deductible amounts established by AMIH in this contract.

Not Included in Cost of the Work

The term "cost of the work" shall not include any of the following:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the site or in Contractor's principal or a branch office for general administration of the work and not specifically included in the agreed upon schedule of job classifications referred to in this contract or specifically covered above under costs of special consultants, all of which are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the work and charges against Contractor for delinquent payments.
- 4. Cost of premiums for all bonds and for all insurance whether or not Contractor is required by the contract documents to purchase and maintain the same (except for the cost of premiums specifically covered above).
- 5. Costs due to the negligence of Contractor, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective work, disposal of materials or equipment wrongly supplied and making good any damage to property.
- 6. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included herein.

#### Contractor's Fee

The Contractor's fee allowed to Contractor for overhead and profit shall be determined by a fee based on the following percentages of the various portions of the cost of the work:

1. For all allowable costs of the work incurred under the paragraphs dealing with payrolled employees and costs of materials and equipment, the Contractor's fee shall be fifteen percent;
2. For all allowable costs of the work incurred under the paragraph dealing with work done by subcontractors, the Contractor's fee shall be five percent; and if a subcontract is on the basis of cost of the work plus a fee, the maximum allowable to Contractor on account of overhead and profit of all subcontractors shall be fifteen percent, for a total add-on of twenty percent.
3. No fee shall be payable on the basis of costs itemized under paragraphs dealing with special consultants, supplemental costs and/or costs not included in cost of the work.
4. The amount of credit to be allowed by Contractor to AMIH for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in Contractor's fee by an amount equal to ten percent of the net decrease; and
5. When both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change.

#### Cost Breakdown

Whenever the cost of any work is to be determined as set forth herein, Contractor will submit, in form acceptable to AMIH, an itemized cost breakdown together with supporting data.

#### Cash Allowances

It is understood that Contractor has included in the contract price all allowances so named in the contract documents and shall cause the work so covered to be done by such subcontractors or suppliers and for such sums within the limit of the allowances as may be acceptable to AMIH. Contractor agrees that:

1. The allowances include the cost to the Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and
2. Contractor's cost for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the contract price and not in the allowances. No demand for additional payment on account of any thereof will be valid.

Prior to final payment, an appropriate change order will be issued to reflect actual amounts due Contractor on account of work covered by allowances, and the contract price shall be correspondingly adjusted.

#### Unit Price Work

Where the contract documents provide that all or part of the work is to be unit price work, initially the contract price will be deemed to include for all unit price work an amount equal to the sum of the established unit prices for each separately identified item of unit price work times the estimated quantity of each item as indicated in the contract documents. The estimated quantities of items of unit price work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial contract price. Determinations of the actual quantities and classifications of unit price work performed by Contractor will be made by AMIH. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item. Except for items shown on the bid sheet or in the specifications as "contingency" items where no additional amounts will be allowable, where the quantity of any item of unit price work performed by Contractor differs more than 25 percent from the estimated quantity of such item indicated in the contract documents and there is no corresponding adjustment with respect to any other item of work, and if either party believes that it has incurred additional expense or reduced cost as a result thereof, either party may

make a claim for an increase or decrease in the contract price if the parties are unable to agree as to the amount of any such increase or decrease.

#### Final Pay Quantities

When the estimated quantities for a specific portion of the work are designated on the plans as final pay quantities, said estimated quantities shall be the final quantities for which payment for such specific portion of the work will be made, unless the dimensions of said portions of the work shown on the plans are revised by the Engineer. If such dimensions are revised, and such revisions result in an increase or decrease in the quantities of such work, the final quantities for payment will be revised in the amount represented by the changes in the dimensions. The estimated quantities for such specific portion of the work shall be considered as approximate only and no guarantee is made that the quantities which can be determined by computations, based on the details and dimensions shown on the plans, will equal the estimated quantities. No allowance will be made in the event that the quantities based on computations do not equal the estimated quantities.

When portions of an item have been designated on the plans as final pay quantities, portions not so designated will be measured and paid for in accordance with the applicable provisions of these specifications and the special provisions.

In case of a discrepancy between the quantities shown on the plans as final pay quantities and the quantity of the same item shown in the Engineer's Estimate, payment will be based on the final pay quantities shown on the plans.

### **ARTICLE VII: PAYMENTS TO CONTRACTOR**

#### Source of Funds

The source of funding by the AMIH for this work shall be: Placer County Contract/ State Funds

#### Schedule of Values

The schedule of values established for the work will serve as the basis for progress payments and will be incorporated into a form of application for payment acceptable to AMIH. Progress payments on account of unit price work will be based on the number of units completed.

#### Invoices

Invoices or applications for payment to the AMIH shall be detailed and shall contain full documentation of all work performed and all reimbursable expenses incurred. Where the scope of work on the contract is divided into various tasks, invoices shall detail the related expenditures accordingly. Labor expenditures need documentation to support time, subsistence, travel and field expenses. No expense will be reimbursed without adequate documentation. This documentation will include, but not be limited to, receipts for material purchases, rental equipment and subcontractor work.

#### Progress Payment

Once each month AMIH shall cause an estimate to be made covering the work completed as of the date of the estimate. No materials shall be paid for until incorporated into the work. If, however, AMIH reaches an agreement with Contractor to pay for materials and equipment not yet incorporated into the work due to some special circumstances, then Contractor must show that the materials or equipment were delivered and are suitably stored at the site or at another location agreed to in writing. In that event, the payment shall be based on a bill of sale, invoice or other documentation submitted by Contractor and warranting that AMIH has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances (which are hereinafter referred to as "liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect AMIH's interest therein, all of which will be satisfactory to AMIH. The amount of retention with respect to progress payments will be five percent (5%).

#### Amounts of Progress Payments

Prior to completion, progress payments will be in an amount equal to:

1. Ninety-five percent (95%) of the work completed, and

2. Where applicable pursuant to the above, ninety percent (90%) of materials and equipment not incorporated in the work but delivered and suitably stored, less in each case the aggregate of payments previously made.
3. Thirty-five days after recording of the Notice of Completion but not later than 60 days after completion of the work as defined in Public Contract Code section 7107, and upon Contractor providing all required documentation, AMIH will pay an amount sufficient to increase total payments to Contractor to one hundred percent (100%) of the contract price, less such amounts as AMIH shall determine in accordance with this contract. AMIH reserves the right to retain such funds as it shall determine in accordance with the contract documents to complete the work.
4. The Contractor may elect to receive 100% of payments due under this contract from time to time, without retention of any portion of the payment by the public agency, by depositing securities of equivalent value with AMIH in accordance with the provisions of Section 22300 of the California Public Contract Code; except that no such substitution shall be allowed where federal money is funding the project and federal regulations or policies would prohibit such substitution of securities for the retention. Securities eligible for investment shall include those listed in Section 16430 of the California Government Code, or bank or savings and loan certificates of deposits. Such securities, if deposited by the bidder, shall be valued by AMIH whose decision on the valuation of the securities shall be final. The bidder shall be the beneficial owner of any securities substituted for money withheld and shall receive any interest thereon.

#### Contractor's Warranty of Title

Contractor warrants and guarantees that title to all work, materials and equipment covered by any application for payment, whether incorporated in the project or not, will pass to AMIH no later than the time of payment free and clear of all liens.

#### Payment of Progress Payment

AMIH will submit each progress pay estimate to Contractor. Upon receipt back from Contractor of a signed copy of the pay estimate, AMIH shall process the pay estimate for payment. The amount approved by AMIH will become due thirty (30) days after receipt of the signed progress pay estimate. Said payment shall be made by AMIH to Contractor unless AMIH has knowledge of claims or liens filed in connection with the work.

Pursuant to Public Contract Code Section 20104.50, if the AMIH fails to make any progress payment within thirty (30) days after receipt of an undisputed and properly submitted payment request it shall pay interest to Contractor at the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure. "Progress payment" for purposes of this paragraph includes all payments due Contractor except that portion of the final payment designated by the contract as retention earnings.

Also, pursuant to Public Contract Code Section 20104.50, each payment request shall be reviewed by AMIH as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request. Any payment request determined not to be a proper payment request suitable for payment shall be returned to Contractor as soon as practicable, but not later than seven (7) days after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper. The number of days available to AMIH to make a payment without incurring interest pursuant to Public Contract Code Section 20104.50 shall be reduced by the number of days by which AMIH exceeds the seven (7) day return requirement. A payment request shall be considered properly executed if funds are available for payment of the payment request, and payment is not delayed due to an audit inquiry by the financial officer of the AMIH.

#### AMIH's Recommendation of Payment

By AMIH's recommending any payment, Contractor cannot conclude that AMIH represents that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the work in the contract documents or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by AMIH or AMIH to withhold payment to Contractor.

#### AMIH May Refuse to Make Payment

AMIH may refuse to make payment of the full amount or any part if, in AMIH's opinion, it would be incorrect to make such payment. AMIH may also refuse to make any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in AMIH's opinion to protect AMIH from loss because:

1. The work is defective, or completed work has been damaged requiring correction or replacement,
2. The contract price has been reduced by written amendment or change order,
3. Contractor has been required to correct defective work or complete work, or
4. Of AMIH's actual knowledge of the occurrence of any of the events enumerated in paragraphs relating to suspension of work and termination.

AMIH may refuse to make payment of the full amount because claims have been made against AMIH on account of Contractor's performance or furnishing of the work or liens have been filed in connection with the work or there are other items entitling AMIH to a set-off against the amount recommended, but AMIH must give Contractor immediate written notice stating the reasons for such action.

#### Completion and Final Inspection

When Contractor considers the entire work ready for its intended use, Contractor shall notify AMIH in writing that the entire work is completed. Within a reasonable time thereafter, AMIH and Contractor shall make an inspection of the work to determine the status of completion. If AMIH does not consider the work complete, AMIH will notify Contractor in writing giving the reasons therefor. If AMIH considers the work incomplete, AMIH will prepare and deliver a list of items to be completed or corrected before final payment. Contractor shall immediately take such measures as are necessary to complete or correct the listed items.

#### Acceptance and Final Application for Payment

After Contractor has completed all such measures to remedy deficiencies to the satisfaction of AMIH and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked-up record documents, property owner's releases and other documents, all as required by the contract documents, and after AMIH has indicated that the work is acceptable, Contractor may make application for final payment. The final application for payment shall be accompanied by all documentation called for in the contract documents, together with complete and legally effective receipts, releases or waivers (satisfactory to AMIH) from all subcontractors or material suppliers and an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the work for which AMIH or AMIH's property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any subcontractor or supplier fails to furnish a release or receipt in full, or if a stop notice has been filed, Contractor may furnish a bond or other collateral satisfactory to AMIH to indemnify AMIH against any lien.

#### Final Payment

If, on the basis of AMIH's review of the final application for payment and accompanying documentation, all as required by the contract documents, AMIH is satisfied that Contractor's obligations under the contract documents have been fulfilled, AMIH will, within seven (7) days after receipt of the final application for payment, process the application for payment. Otherwise, AMIH will return the application to Contractor, indicating in writing the reasons for refusing to make final payment, in which case Contractor shall make the necessary corrections and resubmit the application. Thirty-five days after presentation to AMIH of the application and accompanying documentation, in appropriate form and substance, but no later than 60 days after completion of the project as defined in Public Contract Code section 7107, or thirty-five (35) days after recording of a Notice of Completion, whichever date is later, the full retention will become due and will be paid by AMIH to Contractor.

#### Delay in Completion Through No Fault of Contractor

If, through no fault of Contractor, final completion of the work is significantly delayed and if AMIH so confirms, AMIH shall, upon receipt of Contractor's final application for payment, and without terminating the Contract, make payment of the balance due for that portion of the work fully completed and accepted. If the remaining balance to be held by AMIH for work not fully completed or corrected is less than the retainage stipulated in the contract, and if the appropriate bonds have been furnished, the written consent of the surety to the payment of the balance due for that portion of the work fully completed and accepted shall be submitted by Contractor to AMIH with the application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

#### Contractor's Continuing Obligation

Contractor's obligation to perform and complete the work in accordance with the contract documents shall be absolute. Neither the issuance of a certificate of substantial completion, nor any payment by AMIH to Contractor under the contract documents, nor any use or occupancy of the work or any part thereof by AMIH, nor any act of acceptance by AMIH nor any failure to do so, nor any review and approval of a shop drawing or sample submission, nor the issuance of a notice of acceptability, nor any correction of defective work by AMIH will constitute an acceptance of work not in accordance with the contract documents or a release of Contractor's obligation to perform the work in accordance with the contract documents.

#### Waiver of Claims

The making and acceptance of final payment will constitute:

1. A waiver of all claims by AMIH against Contractor, except claims arising from unsettled liens, or from defective work appearing after final inspection or from failure to comply with the contract documents or the terms of any special guarantees specified therein, or from any outstanding claims; however, it will not constitute a waiver by AMIH of any rights in respect of Contractor's continuing obligations under the contract documents; and
2. A waiver of all claims by Contractor against AMIH other than those previously made in writing and still unsettled.

#### Books of Account and Audit Provision

Contractor shall maintain on a current basis complete books and records relating to this contract. Such records shall include, but not be limited to, documents supporting all bids, all income and all expenditures. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work on this contract. In addition, Contractor shall maintain detailed payroll records including all subsistence, travel and field expenses, and canceled checks, receipts and invoices for all items. These documents and records shall be retained for at least five years from the completion of this contract. Contractor will permit AMIH to audit all books, accounts or records relating to this contract or all books, accounts or records of any business entities controlled by Contractor who participated in this contract in any way. Any audit may be conducted on Contractor's premises or, at AMIH's option, Contractor shall provide all books and records within a maximum of fifteen (15) days upon receipt of written notice from AMIH. Contractor shall refund any moneys erroneously charged. If AMIH ascertains that it has been billed erroneously by Contractor for an amount equaling 5% or more of the original bid, Contractor shall be liable for the costs of the audit in addition to any other penalty to be imposed.

### **ARTICLE VIII: PRELIMINARY MATTERS**

#### Delivery of Certificates of Insurance

Before any work at the site is started, Contractor shall deliver to AMIH certificates (and other evidence of insurance requested by AMIH) which Contractor is required to purchase and maintain in accordance with the insurance provisions herein.

#### Delivery of Bonds

When Contractor delivers the executed Agreements to AMIH, Contractor shall also deliver to AMIH the bonds required herein. Notwithstanding the language in bonds authorizing attorneys' fees to be awarded if suit is brought upon the bond, no attorneys' fees shall be payable for any other suit brought under this contract.

#### Pre-construction Conference

Within 5 days after receipt of the Notice to Proceed, but before contractor starts the work at the site, a conference attended by Contractor and AMIH and others as appropriate will be held to discuss schedules, procedures for handling shop drawings and other submittals and for processing applications for payment, and to establish a working understanding among the parties as to the work.

#### Delivery of Schedules

Within 7 days after receipt of written notice to proceed, Contractor shall submit to AMIH for review:

1. An estimated progress schedule indicating the starting and completion dates of the various stages of the work;
2. A preliminary schedule of shop drawing submissions;
3. A preliminary schedule of product deliveries;
4. A preliminary schedule of values for all of the work which will include quantities and prices of items aggregating the contract price and will subdivide the work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of work which will be confirmed in writing by Contractor at the time of submission.

#### Finalizing Schedules

At least ten (10) days before submission of the first application for payment a conference attended by Contractor, AMIH and others as appropriate will be held to finalize schedules. The finalized progress schedule will be acceptable to AMIH as providing an orderly progression of the work to completion within the contract time, but such acceptance will neither impose on AMIH responsibility for the progress or scheduling of the work nor relieve Contractor from full responsibility therefor. The finalized schedule of shop drawing submissions will be acceptable to AMIH as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to AMIH as to form and substance.

#### Before Starting Construction

Contractor shall provide AMIH with at least 72 hours written notice of the date on which it intends to commence work. Before undertaking each and every part of the work, Contractor shall carefully study and compare the contract documents and check and verify pertinent figures shown thereon and all applicable field measurements. Contractor shall promptly report in writing to AMIH any conflict, error or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from AMIH before proceeding with any work affected thereby; however, Contractor shall not be liable to AMIH for failure to report any conflict, error or discrepancy in the contract documents, unless Contractor had actual knowledge thereof or should reasonably have known thereof.

#### Contractor's Representations

In order to induce AMIH to enter into this agreement, Contractor makes the following representations:

1. Contractor has familiarized himself or herself with the nature and extent of the contract documents, work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the work.
2. Contractor has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the work

which were relied upon by AMIH in the preparation of the drawings and specifications and which have been identified in the contract documents.

3. Contractor has made or caused to be made examinations, investigations, and tests and studies of such reports and related data necessary for the performance of the work at the contract price, within the contract time and in accordance with the other terms and conditions of the contract documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by Contractor for such purposes.
4. Contractor has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the contract documents.
5. Contractor has given AMIH written notice of all conflicts, errors or discrepancies that have been discovered in the contract documents and the written resolution thereof by AMIH is acceptable to Contractor.

## **ARTICLE IX: CHANGES IN THE WORK**

### **AMIH May Order Changes**

Without invalidating this contract and without notice to any surety, AMIH may, at any time or from time to time, order additions, deletions or revisions in the work; these will be authorized by change order. Upon receipt of any such document, Contractor shall promptly forward any request for change in the contract price and, if instructed to do so, proceed with the work involved which will be performed under the applicable conditions of the contract documents (except as otherwise specifically provided).

### **Failure to Agree to a Price or Time Change; Claims**

If AMIH and Contractor are unable to agree as to the extent, if any, of an increase or decrease in the contract price or an extension or shortening of the contract time that should be allowed, a claim may be made therefor but the work shall proceed if AMIH so instructs.

### **No Change in Time or Price for Work Not Required**

Contractor shall not be entitled to an increase in the contract price or an extension of the contract time with respect to any work performed that is not required by the contract documents as amended, modified and supplemented except in the case of an emergency as set forth herein and except in the case of uncovering work for inspection or testing as set forth in this contract.

### **Changes in Time or Price**

AMIH and Contractor shall execute appropriate change orders (or written amendments) covering:

1. Changes in the work which are ordered by AMIH or are agreed to by the parties;
2. Changes in the contract price or contract time which are agreed to by the parties; and
3. Changes in the contract price or contract time which embody the substance of any written decision rendered by AMIH in response to a request therefor.

### **Notice to Sureties**

If notice of any change affecting the general scope of the work or the provisions of the contract documents (including, but not limited to, contract price or contract time) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be Contractor's responsibility, and the amount of each applicable bond will be adjusted accordingly. Failure to give such notice shall not release the surety from its obligations to AMIH.

## **ARTICLE X: CONTRACT DOCUMENTS**

### **Intent**

The contract documents comprise the entire agreement between AMIH and Contractor concerning the work. The contract documents are complementary; what is called for by one is as binding as if called for by all. The contract documents will be construed in accordance with California law.

#### Contract Interpretation

It is the intent of the contract documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the contract documents. Any work, materials or equipment that may reasonably be inferred from the contract documents as being required to produce the intended results will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of bids, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the contract documents) shall be effective to change the duties and responsibilities of AMIH or Contractor, or any of their consultants, agents or employees from those set forth in the contract documents, nor shall it be effective to assign to AMIH, or any of AMIH's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the work or any duty or authority to undertake responsibility contrary to the provisions of this contract. Clarifications and interpretations of the contract documents shall be issued by AMIH.

#### Conflicts, Errors and Discrepancies

If during the performance of the work, Contractor finds a conflict, error or discrepancy in the contract documents, Contractor shall so report to AMIH in writing at once and before proceeding with the work affected thereby shall obtain a written interpretation or clarification from AMIH.

#### Amending Contract Documents

The contract documents may be amended to provide for additions, deletions and revisions in the work or to modify the terms and conditions thereof by change order. Contract price and contract time may only be changed by change order.

#### Supplementary Contract Documents

In addition to the above, the requirements of the contract documents may be supplemented, and minor variations and deviations in the work may be authorized in one or more of the following ways:

1. A field order,
2. AMIH's approval of a shop drawing or sample, or
3. AMIH's written interpretation or clarification.

#### Reuse of Documents

Neither contractor nor any subcontractor or supplier or other person or organization performing or furnishing any of the work under a direct or indirect contract with AMIH shall have or acquire any title to or ownership rights in any of the drawings, specifications or other documents (or copies of any thereof) prepared by or bearing the seal of AMIH; and they shall not reuse any of them on extensions of the project or any other project without written consent of AMIH and specific written verification or adaptation by AMIH.

#### Contract Documents

The contract documents comprise the entire agreement between the parties and may be amended only by writing signed by both parties or by written change order. The contract documents shall include this contract, any general and special conditions, plans and specifications, bidding documents and addenda thereto, and all proposals submitted by Contractor. In the case of ambiguity or conflict, the documents shall be given the following priority:

1. Special provisions or conditions
2. Standard Public Works Contract
3. Project plans

4. Standard plans
5. Standard specifications
6. All other documents incorporated by reference.

## **ARTICLE XI: THE PROJECT SITE**

### **Availability of Lands**

AMIH shall furnish, as indicated in the contract documents, the lands upon which the work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of Contractor. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by AMIH, unless otherwise provided in the contract documents. If Contractor believes that any delay in AMIH's furnishing these lands, rights-of-way or easements entitles Contractor to an extension of the contract time, Contractor may make a claim therefor as provided for herein. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

### **Physical Conditions**

If the contract documents identify those reports of explorations and tests of subsurface conditions at the site that have been utilized by AMIH in preparation of the contract documents, Contractor may rely upon the accuracy of the factual data contained in such reports but not upon interpretations or opinions contained therein or for the completeness or representativeness thereof for Contractor's purposes. If construction drawings of physical conditions in or relating to existing surface and subsurface structures (except underground facilities discussed below) at or contiguous to the site have been utilized by AMIH in preparation of the contract documents, Contractor may rely upon the accuracy of the factual data contained in such drawings but not the completeness thereof for Contractor's purposes. If Contractor believes that any factual data on which Contractor is entitled to rely is inaccurate, or any physical condition uncovered or revealed at the site differs materially from that indicated, reflected or referred to in the contract documents, Contractor shall, promptly after becoming aware thereof and before performing any work in connection therewith (except in an emergency as permitted herein), notify AMIH in writing about the inaccuracy or difference. Failure to notify AMIH promptly shall relieve AMIH of any liability for any and all claims resulting from such inaccuracy or difference.

### **AMIH's Review**

AMIH will review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise Contractor in writing of AMIH's findings and conclusions.

### **Possible Document Change**

If AMIH concludes that there is a material error in the contract documents or that because of newly discovered conditions a change in the contract documents is required, a change order will be issued in writing as provided to reflect and document the consequences of the inaccuracy or difference.

### **Possible Price and Time Adjustments**

In each case of inaccuracy or difference, an increase or decrease in the contract price or an extension or shortening of the contract time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy or difference. If AMIH and Contractor are unable to agree as to the amount or length thereof, a claim may be made therefor as provided in the contract documents.

### **Physical Conditions - Underground Facilities**

The information and data shown or indicated in the contract documents with respect to existing underground facilities at or contiguous to the site is based on information and data furnished to AMIH by the owners of such underground facilities or by others. Generally service connections are not indicated on drawings. Unless it is otherwise expressly provided:

1. AMIH shall not be responsible for the accuracy or completeness of any such information or data; and,
2. Contractor shall have full responsibility for reviewing and checking all such information and data, for locating all underground facilities shown or indicated in the contract documents, for coordination of the work with the owners of such underground facilities during construction, for the safety and protection thereof, and repairing any damage thereto resulting from the work, the cost of all of which will be considered as having been included in the contract price.
3. If an underground facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the contract documents and which Contractor could not reasonably have been expected to be aware of, Contractor shall, promptly after becoming aware thereof and before performing any work affected thereby (except in an emergency as permitted by this contract), identify the owner of such underground facility and give written notice thereof to that owner and to AMIH. AMIH will review the underground facility to determine the extent to which the contract documents should be modified to reflect and document the consequences of the existence of the underground facility, and the contract documents will be amended or supplemented to the extent necessary. During such time, Contractor shall be responsible for the safety and protection of such underground facility as provided herein. Contractor shall be allowed an increase in the contract price or an extension of the contract time, or both, to the extent that they are attributable to the existence of any underground facility that was not shown or indicated in the contract documents and which Contractor could not reasonably have been expected to be aware of and will not be assessed liquidated damages pursuant to Government Code Section 4215. If the parties are unable to agree as to the amount or length thereof, Contractor may make a claim therefor as provided in these contract documents.

#### Preservation of Property

Due care shall be exercised to avoid injury to existing highway improvements or facilities, utility facilities, adjacent property, and roadside trees, shrubs, and other plants that are not to be removed. Roadside trees, shrubs, and other plants that are not to be removed, and pole lines, fences, signs, markers and monuments, buildings and structures, conduits, pipelines under or above ground, sewer and water lines, all highway facilities and any other improvements or facilities within or adjacent to the project shall be protected from injury or damage, and if ordered by AMIH, the Contractor shall provide and install suitable safeguards, approved by AMIH, to protect such objects from injury or damage. If such objects are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored at the Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor entered upon the work, or as good as required by the specifications accompanying the contract, if any such objects are a part of the work being performed under the contract. AMIH may make or cause to be made such temporary repairs as are necessary to restore to service any damaged facility. The cost of such repairs shall be borne by the Contractor and may be deducted from any moneys due or to become due to the Contractor under the contract. Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in protecting or repairing property, shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

#### Reference Points

AMIH shall establish one or more horizontal and vertical reference points for construction which in AMIH's judgment are necessary to enable Contractor to proceed with the work or as provided in the contract documents. AMIH shall set any other stakes or marks which it deems necessary to establish the lines and grades required for the completion of the work unless the special provisions require that the Contractor is responsible for laying out the work. Contractor shall notify the AMIH when Contractor requires staking, in writing a reasonable time in advance of such requirement. In no event shall Contractor give less than two working days notice of such requirement. Contractor shall protect and preserve the established reference points, stakes and marks and shall make no changes or relocations without the prior written approval of AMIH. Contractor shall report to AMIH whenever any reference point, stake or mark is lost or destroyed or

requires relocation because of necessary changes in grades or locations. Contractor will be charged for the cost of relocation or replacement if the need therefor arises due to Contractor's acts.

#### Power

The Contractor shall provide, at no additional cost to the AMIH, all construction power used at the project site and shall make all arrangements with the electrical utility and with the AMIH for power takeoff points, voltage and phasing requirements, transformers, and metering and shall pay all costs and fees arising therefrom. It shall be the Contractor's responsibility to provide all special connections required for the work.

#### Water

The Contractor shall provide the water needed for the work, including potable water, construction water, and water for testing purposes.

#### Sanitary Facilities

The Contractor shall make arrangements for use of adequate toilet facilities at or near the site of work. Such facilities shall be subject to the acceptance of the AMIH as to location and type. The Contractor shall maintain the sanitary facilities in acceptable condition from the beginning of the work until completion and shall remove the facilities and disinfect the premises.

#### Contractor's Office

The Contractor shall maintain on the project site a suitable office or other protected area in which shall be kept project copies of the contract documents, project progress records, etc., which shall be accessible to AMIH during normal working hours.

#### Field Office

Field Office not required.

### **ARTICLE XII: LABOR, MATERIAL AND PERFORMANCE BONDS**

#### Bonds to be Provided

The Contractor shall furnish two bonds each in the amount of one hundred (100%) percent of the contract price, one as security for the faithful performance of the work, and the other as security for the faithful payment and satisfaction of all persons furnishing materials and performing labor for the project. The bonds shall be issued by a corporation duly and legally licensed to transact surety business in the State of California. The labor and materials bond shall remain in force throughout the period required to complete the work and for 35 days after the recording of the Notice of Completion. The performance bond shall remain in force for a period of 365 days after final acceptance of the work to cover any defects in workmanship, materials, or equipment which develop in that time. The bonds must be executed by a duly licensed surety company and accompanied by a certified copy of the authority to act. The scope of the bonds or the forms thereof shall in no way affect or alter the liabilities of the Contractor to AMIH. Bonds shall be executed on the forms included in the contract documents.

#### Insolvency or Termination of Right to Do Business

If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in California, Contractor shall within five days thereafter substitute another bond and surety, both of which must be acceptable to AMIH. If an acceptable substitute is not furnished within five days, AMIH may terminate Contractor.

### **ARTICLE XIII: CONTRACTOR LIABILITY AND INSURANCE**

#### Liability of Contractor

The Contractor shall be liable for all damages and injury which shall be caused to AMIH or any other owners of property on or in the vicinity of the work or which shall occur to any person or persons or property whatsoever arising out of the performance of this contract. Contractor agrees to hold AMIH harmless and indemnify AMIH for any such losses.

#### Contractor's Liability Insurance

Contractor shall purchase and maintain commercial general liability and other insurance as is appropriate for the work being performed and furnished and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance and furnishing of the work and Contractor's other obligations under the contract documents, whether it is to be performed or furnished by Contractor, by any subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the work, or by anyone for whose acts any of them may be liable:

1. Claims under workers' disability benefits and other similar employee benefit acts;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
4. Claims for damages insured by personal injury liability coverage which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (b) by any other person for any other reason;
5. Claims for damages, other than to the work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom;
6. Claims arising out of operation of laws or regulations for damages because of bodily injury or death of any person or for damage to property; and
7. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

To the extent that Contractor's work, or work under Contractor's direction, may require blasting, explosive conditions, or underground operations, the comprehensive general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property.

The insurance required by this paragraph shall be "per occurrence" coverage and shall include the specific coverages and be written for not less than the limits of liability and coverages provided herein, or required by law, whichever is greater. The commercial general liability insurance shall include completed operations insurance. All such insurance shall remain in effect until final payment and at all times thereafter when Contractor may be correcting, removing or replacing defective work. In addition, Contractor shall maintain such completed operations insurance for at least one year after final payment and furnish AMIH with evidence of continuation of such insurance at final payment. If Contractor's insurance is canceled prior to completion of the project and the Contractor does not furnish a new Certificate of Insurance prior to cancellation, AMIH may obtain the required insurance and deduct the premium from contract moneys due the Contractor.

At the option of Contractor, evidence of coverage and limits may be furnished by an umbrella liability policy certificate in addition to certificates for worker's compensation and employer's liability, and comprehensive automobile and general liability policies.

#### Contractual Liability Insurance

The commercial general liability insurance required above will include contractual liability insurance applicable to Contractor's obligations hereunder.

#### Owner's Liability Insurance

Contractor shall purchase and maintain Owner's liability insurance. This insurance shall be issued in the name of AMIH and shall protect and defend AMIH and its agents against all claims arising as a result of the operations of Contractor. The coverage and limits of liability shall be co-extensive with those specified for the Contractor's liability insurance. The Owner's liability insurance may be provided by naming AMIH and its agents as an additional insured on the Contractor's liability insurance.

#### Property Insurance

Unless otherwise specifically provided, Contractor shall purchase and maintain property insurance (builder's risk) upon the work or equipment and supplies stored at the site to the full insurable value thereof (subject to such deductible amounts as may be agreed upon or required by laws and regulations.) This insurance shall include the interests of AMIH and its agents, Contractor and subcontractors in the work. AMIH shall be listed as an additional insured party. Said policy shall insure against the perils of fire, extended coverage, testing and shall include "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage, and such other perils as may be provided herein, and shall include damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers, architects, attorneys and other professionals).

#### Amount of Property Insurance

Said insurance shall be on a "per occurrence" basis for the full value of the work and supplies and equipment stored or used in connection with the project and shall include vandalism and malicious mischief endorsement. Special consent of AMIH shall be required prior to use of "claims made" coverage.

#### Schedule of Required Insurance

1. Worker's Compensation Insurance: Statutory amount and employer's liability of \$1,000,000.
2. Contractor's Commercial General Liability Insurance (bodily injury, property damage and including contractual liability insurance, completed operations and products liability insurance): \$1,000,000 per occurrence / \$2,000,000 aggregate.
3. Physical Damage to Owner Owned Property (remodeling or retrofitting project) or Builder's Risk Insurance (new construction project) including but not limited to fire, extended coverage, vandalism, malicious mischief, and optional perils coverage; full value of work to be performed under contract including supplies and equipment stored or used in connection with the project with a maximum deductible of \$500.
4. Comprehensive Business or Commercial Automobile Liability Coverage (bodily injury liability, property damage liability, uninsured motorist protection and including non-owned and hired automobile liability): \$1,000,000.

#### Notice Requirement

All the policies of insurance (or the certificates or other evidence thereof) required to be purchased and maintained by the Contractor shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least ten (10) days prior written notice has been given to AMIH by registered mail.

#### Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be fully disclosed by Contractor and approved by AMIH prior to commencement of work. At AMIH's option, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects AMIH, its officials and employees, or Contractor shall provide a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

#### Risk of Loss

Liability for loss or damage to equipment, materials, workmanship or services occurring on or off the site shall be the responsibility of the Contractor. Liability for completed work shall not be assumed by AMIH until both the work has been completed and AMIH has accepted the work as complete. AMIH will not be responsible for purchasing and maintaining any property insurance to protect the interests of Contractor, subcontractors or others in the work. The risk of loss will be borne by Contractor, subcontractor or others suffering any such loss and if any of them wishes property insurance coverage in addition to insurance required herein, each may purchase and maintain it at the purchaser's own expense.

#### Waiver of Rights

Contractor waives all rights against AMIH and its agents for all losses and damages caused by any of the perils covered by the policies of insurance provided for above and any other property insurance applicable to the work, and all other parties named as insureds in such policies for losses and damages so caused. Each subcontract between Contractor and a subcontractor will contain similar waiver provisions by the subcontractor in favor of AMIH and its agents and all other parties named as insureds. None of the above waivers shall extend to the rights that any of the insured parties may have to the proceeds of insurance held by AMIH as trustee or otherwise payable under any policy so issued.

#### No Right of Recovery

AMIH and Contractor intend that any policies provided as set forth herein shall protect all of the parties insured and provide primary coverage for all losses and damages caused by the perils covered thereby. Any insurance or self-insurance maintained by AMIH shall be in excess of Contractor's insurance and shall not contribute to it.

#### Receipt and Application of Proceeds

Any insured loss under the policies of insurance required herein will be adjusted with AMIH and made payable to AMIH as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause. AMIH shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged work shall be repaired or replaced, the moneys so received applied on account thereof and the work and the cost thereof covered by an appropriate change order or written amendment.

#### AMIH's Duties as Trustee

AMIH as trustee shall have power to adjust and settle any loss with the insurers.

#### Acceptance of Insurance

If AMIH has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by Contractor on the basis of its not complying with the contract documents, AMIH shall notify Contractor in writing thereof and Contractor shall immediately provide proof of the proper coverage. Contractor shall provide to AMIH such additional information in respect of insurance provided by it as AMIH may reasonably request. AMIH may at its option waive any type of insurance required herein which AMIH in its discretion deems to be inapplicable to the type of project being constructed. Any such waiver shall be in writing by the AMIH Executive Officer.

#### Verification of Coverage

Contractor shall furnish AMIH with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by AMIH and are to be received and approved by AMIH before work commences.

#### 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.

### **ARTICLE XIV: MATERIALS AND EQUIPMENT**

#### Material and Equipment

Unless otherwise specified, Contractor shall furnish and assume full responsibility and risk of loss for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the work.

#### Quality of Materials and Equipment

All materials and equipment shall be of good quality and new, except as otherwise provided in the contract documents. If required by AMIH, Contractor shall furnish satisfactory evidence (including reports

of required tests) as to the kind and quality of materials and equipment. Contractor may be required to show that materials and/or equipment will be available in sufficient quantity or time so as to assure top quality performance of the contract. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable supplier except as otherwise provided in the contract documents; but no provision of any such instructions will be effective to assign to AMIH, or any of AMIH's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the work or any duty or authority to undertake responsibility contrary to the provisions of this contract.

#### Storage of Materials and Equipment

Materials and equipment shall be stored where specified by AMIH and so as to insure the preservation of their quality and fitness for the work. Stored equipment and materials shall be located so as to facilitate inspection. The Contractor shall be responsible for all damages that occur to materials and equipment until the completion and final acceptance of the work by the AMIH.

#### Substitute Items

Whenever materials or equipment are specified or described in the contract documents by using the name of a proprietary item or the name of a particular supplier the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers may be accepted by AMIH if sufficient information is submitted in advance by Contractor to allow AMIH to determine that the material or equipment proposed is equivalent or equal to that named.

The procedure for review by AMIH will include the following: requirements for review of substitute items of material and equipment or modification or alteration of the design of any material or equipment or portion of the work will not be accepted by AMIH from anyone other than Contractor. If Contractor wishes to furnish or use a substitute item of material or equipment or modification or alteration of the design of any material or equipment or portion of the work, Contractor shall make written application to AMIH for acceptance thereof, certifying that the proposed substitute or modification or alteration will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice Contractor's achievement of completion on time, whether or not acceptance of the substitute or design modification or alteration for use in the work will require a change in any of the contract documents (or in the provisions of any other direct contract with AMIH for work on the project) to adapt the design to the proposed substitute or design modification or alteration and whether or not incorporation or use of the substitute in connection with the work is subject to payment of any license fee or royalty. All variations of the proposed substitute or design modification or alteration from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated, where necessary. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute or design modification or alteration, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by AMIH in evaluating the proposed substitute or design modification or alteration. AMIH may require Contractor to furnish at Contractor's expense additional data about the proposed substitute or design modification or alteration. AMIH will be allowed a reasonable time within which to evaluate each proposed substitute or design modification or alteration. AMIH will be the sole judge of acceptability, and no substitute or design modification or alteration will be ordered, installed or utilized without AMIH's prior written acceptance which will be evidenced by either a change order or an accepted shop drawing. AMIH may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute or design modification or alteration. Contractor shall pay all costs for redesign required by the implementation of the proposed substitute.

#### Operating and Maintenance Instructions and Manufacturer's Warranties

Before receiving payment for more than 60 percent of the purchase value of any equipment and prior to installation of said equipment, the Contractor shall deliver to AMIH acceptable manufacturer's operating and maintenance instructions covering each item of equipment assembly provided under this contract

and each and every warranty provided by the manufacturer. Manufacturers' standard brochures or manuals will be modified to reflect only that model or series of equipment installed on this project. All extraneous material will be crossed out or otherwise altered as acceptable to AMIH.

The operating and maintenance instructions shall include, as a minimum, the following data for each item of mechanical, electrical, and instrumentation equipment:

1. An itemized list of all data provided.
2. Name and location of the manufacturer, the manufacturer's local representative, the nearest supplier and spare parts warehouse.
3. Accepted submittal information applicable to operation and maintenance.
4. Recommended installation, adjustment, start up, calibration, and troubleshooting procedures.
5. Recommended lubrication and an estimate of yearly quantity needed.
6. Recommended step-by-step procedures for all modes of operation.
7. Complete internal and connection wiring diagrams.
8. Recommended preventive maintenance procedures and schedule.
9. Complete parts lists, by generic title and identification number, with exploded view of each assembly.
10. Recommended spare parts.
11. Disassembly, overhaul, and re-assembly instructions.
12. Complete, as applicable, operating and maintenance instructions, transmittal forms and summary sheets.
13. Nameplate data for all equipment supplied, including make, model and serial numbers, type and motor data together with designation and location of equipment.

Before final acceptance of the project, the Contractor shall bind all of the above in an appropriately labeled binder. Each completed binder shall contain only that material which can be held in a non-expanded position. A complete table of contents listing all items and their location in the set shall be included in each binder. For ready reference, the Contractor shall compile a complete list of manufacturer's local representatives for each item provided. In addition to withholding payment where Contractor fails to provide AMIH with manufacturer's warranties, Contractor shall also be deemed to have personally warranted the equipment to the same extent as the manufacturer's warranty on the equipment.

#### Patent Fees and Royalties

Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the work or the incorporation in the work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the contract documents for use in the performance of the work and if to the actual knowledge of AMIH its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by AMIH in the contract documents. Contractor shall indemnify and hold harmless AMIH and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorneys' fees and court and arbitration costs) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the work or resulting from the incorporation in the work of any invention, design, process, product or device not specified in the contract documents, and shall defend all such claims in connection with any alleged infringement of such rights.

#### Contractor's Equipment

The Contractor shall identify each piece of Contractor's equipment, other than hand tools, by means of an identifying number plainly stenciled or stamped on the equipment at a conspicuous location, and shall

furnish to AMIH a list giving the description of each piece of equipment and its identifying number. In addition, the make, model number and empty gross weight of each unit of compacting equipment shall be plainly stamped or stenciled in a conspicuous place on the unit. The gross weight shall be either the manufacturer's rated weight or the scale weight.

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

## **ARTICLE XV: PLANS AND SPECIFICATIONS**

### **Interpretation of Plans, Specifications and Drawings**

The plans, specifications and the drawings are intended to be explanatory of each other. Any work indicated on the drawings and not in the plans or specifications, or vice versa, shall be executed as if indicated in both. Where not specifically stated otherwise, all work and materials necessary for each unit of construction, including special construction for any specific brand or shape of material called for even though only briefly mentioned or indicated, shall be furnished and installed fully and completely as a part of the Contract. As the figured dimensions shown on the drawings and in the specifications of the contract may not in every case agree with scale dimensions, the figured dimensions shall be followed in preference to the scaled dimensions. Should it appear that the work to be done, or any of the matters relative thereto are not sufficiently detailed or explained in the contract documents, the Contractor shall apply to AMIH for such further explanations as may be necessary, and shall conform thereto as part of the contract so far as may be consistent with the terms thereof. In the event of any doubt or question arising respecting the true meanings of the plans, specifications or drawings, the decision of AMIH shall be final and conclusive.

Where for convenience the specifications are arranged by job classification or divided into various sections, it is to be understood this separation is for the convenience of all parties involved and is not to be considered as the limits of the work required of any separate trade. The terms and conditions of such limitations are wholly between Contractor and its subcontractors during both the bidding and construction phase; i.e., all work shown, specified, implied or necessary for the completion of each trade's work, as well as for the proper completion of the project as a whole shall be coordinated by Contractor and the subcontractors during bidding and construction and shall be provided in this contract.

### **Ownership**

All plans and specifications shall remain the property of AMIH and shall be returned to AMIH before the final certificate will be issued.

### **Handicapped Access**

Where applicable, it is the AMIH's intent for all features on the plans and specifications to conform to applicable regulations for the accommodation of physically handicapped persons in buildings and facilities used by the public.

## **ARTICLE XVI: SHOP DRAWINGS AND SAMPLES**

### **Shop Drawings**

After checking and verifying all field measurements and after complying with applicable procedures herein, Contractor shall submit to AMIH for review and acceptance in accordance with the accepted schedule of shop drawing submissions or other appropriate action if so indicated herein, the number of copies specified of all shop drawings, which will bear a stamp or specific written indication that Contractor has satisfied Contractor's responsibilities under the contract documents with respect to the review of the submission. All submissions will be identified as AMIH may require. Such drawings shall be approved by AMIH before any work involving the drawings is performed. The data shown on the shop drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable AMIH to review the information as required.

### Samples

Contractor shall also submit to AMIH for review and acceptance with such promptness as to cause no delay in work, all samples required by the contract documents or as requested by AMIH. All samples will have been checked by and accompanied by a specific written indication that Contractor has satisfied Contractor's responsibilities under the contract documents with respect to the review of the submission and will be identified clearly as to material, supplier, pertinent data such as catalog numbers and the use for which intended.

### Contractor's Review

Before submission of each shop drawing or sample, Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each shop drawing or sample with other shop drawings and samples and with the requirements of the work and the contract documents.

### Notice of Variation

At the time of each submission, Contractor shall give AMIH specific written notice of each variation that the shop drawings or samples may have from the requirements of the contract documents, and, in addition, shall cause a specific notation to be made on each shop drawing submitted to Engineer for review and acceptance of each such variation.

### AMIH's Review

AMIH will review and accept with reasonable promptness shop drawings and samples, but AMIH's review and acceptance will be only for conformance with the design concept of the project and for compliance with the information given in the contract documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the contract documents) or to safety precautions or programs incident thereto. The review and acceptance of a separate item as such will not indicate acceptance of the assembly in which the item functions. Within a reasonable time after receipt of drawings or samples, AMIH will return marked up copies indicating one of the following four actions:

1. If review and checking indicates no exceptions, copies will be returned marked "NO EXCEPTIONS TAKEN" and work may begin immediately on incorporating the material and equipment covered by the submittal into the work.
2. If review and checking indicates limited corrections are required, copies will be returned marked "MAKE CORRECTIONS NOTED" and work may begin immediately on incorporating the material and equipment covered by the submittal into the work.
3. If review and checking indicates insufficient or incorrect data has been submitted, copies will be returned marked "AMEND AND RESUBMIT". No work may begin on incorporating the material and equipment covered by this submittal into the work until the submittal is revised, resubmitted, and returned marked either "NO EXCEPTIONS TAKEN" or "MAKE CORRECTIONS NOTED".
4. If review and checking indicates the material and equipment submittal is unacceptable, copies will be returned marked "REJECTED". No work may begin on incorporating the material and equipment covered by this submittal into the work until a new submittal is made and returned marked either "NO EXCEPTIONS TAKEN" or "MAKE CORRECTIONS NOTED".

Contractor shall direct specific attention in writing to revisions other than the corrections called for by AMIH on previous submittals. The Contractor may authorize material or equipment supplier to deal directly with AMIH with regard to such submittals; however, ultimate responsibility for the accuracy and completeness of the information contained in the submittal shall remain with the Contractor. Normally, a separate transmittal form shall be used for each specific item or class of material or equipment for which a submittal is required. Submittals on various items using a single transmittal form will be permitted only when the items taken together constitute a manufacturer's "package" or are so functionally related that expediency indicates checking or review of the group or "package" as a whole.

#### Contractor's Responsibility for Variation

AMIH's review of shop drawings or samples shall not relieve Contractor from responsibility for any variation from the requirements of the contract documents unless Contractor has in writing called AMIH's attention to each such variation at the time of submission and AMIH has given written acceptance of each such variation by a specific written notation thereof incorporated in or accompanying the shop drawing or sample review nor will any review by AMIH relieve Contractor from responsibility for errors or omissions in the shop drawings or from responsibility for having complied with the provisions above.

#### Work Performed Prior to Shop Drawing or Sample Review

Where a shop drawing or sample is required by the specifications, any related work performed prior to AMIH's review of the pertinent submission will be the sole expense and responsibility of Contractor.

### **ARTICLE XVII: SUBCONTRACTORS, SUPPLIERS AND OTHERS**

#### Objectionable Parties

Contractor shall not employ any subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom AMIH may have reasonable objection. Contractor shall not be required to employ any subcontractor, supplier or other person or organization to furnish or perform any of the work against whom Contractor has reasonable objection. If the contract documents require the identity of certain subcontractors, suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) to be submitted to AMIH in advance for acceptance by AMIH and if Contractor has submitted a list thereof in accordance with the contract documents, AMIH's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the contract documents) of any such subcontractor, supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case Contractor shall submit an acceptable substitute, the contract price will be increased by the difference in the cost occasioned by such substitution and an appropriate change order will be issued. No acceptance by AMIH of any such subcontractor, supplier, or other person or organization shall constitute a waiver of any right of AMIH to reject defective work. The Contractor may not change any subcontractors listed on its bid without written approval from AMIH after a determination that the requirements of Public Contracts Code Section 4107 have been met.

#### Responsibility for Subcontractors

Contractor shall be fully responsible to AMIH for all acts and omissions of the subcontractors, suppliers and other persons and organizations performing or furnishing any of the work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the contract documents shall create any contractual relationship between AMIH and any such subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of AMIH to pay or to see to the payment of any moneys due any such subcontractor, supplier or other person or organization except as may otherwise be required by laws and regulations. AMIH may furnish to any subcontractor or other person or organization, to the extent practical, evidence of amounts paid the Contractor on account of specific work done.

#### Division of Work

The divisions and sections of the specifications and the identifications of any drawings shall not control Contractor in dividing the work among subcontractors or suppliers or delineating the work to be performed by any specific trade.

#### Subcontracts

All work performed for Contractor by a subcontractor will be pursuant to an appropriate agreement between contractor and the subcontractor which specifically binds the subcontractor to the applicable terms and conditions of the contract documents for the benefit of AMIH and contains waiver provisions as required herein. Contractor shall pay each subcontractor a just share of any insurance moneys received by Contractor on account of losses under policies issued pursuant to this Contract.

## **ARTICLE XVIII: PERFORMANCE OF THE WORK**

### **Supervision**

Contractor shall supervise and direct the work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the contract documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. Contractor shall be responsible to see that the finished work complies accurately with the contract documents.

### **Superintendence**

Contractor shall keep on the work at all times during its progress a competent resident superintendent, acceptable to AMIH, who shall not be replaced without written notice to AMIH except under extraordinary circumstances. The superintendent will be Contractor's representative at the site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to Contractor. When work is not in progress and during periods when work is suspended, arrangements acceptable to AMIH shall be made for emergencies. If the superintendent is not present, AMIH shall give direction to the next in command and said direction shall be binding.

### **Personnel**

Contractor shall provide competent, suitably qualified personnel to survey and lay out the work and perform construction as required by the contract documents. Contractor shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the work or property at the site or adjacent thereto, and except as otherwise indicated in the contract documents, all work at the site shall be performed during regular working hours, and Contractor will not permit overtime work or the performance of work on Saturday, Sunday or any legal holiday without AMIH's written consent given after prior written notice to AMIH.

### **Order of Work**

If a sequence or procedure is specified in the special provisions or plans for the project, Contractor shall be required to follow the sequence or procedure specified. The price for compliance with a specified sequence or procedure will be considered as part of the bid price and no extra amounts will be allowed therefor.

### **Safety and Protection**

Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. Contractor shall take all reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

1. All employees on the work and other persons and organizations who may be affected thereby;
2. All the work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of underground facilities and utility owners when prosecution of the work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to herein caused, directly or indirectly, in whole or in part, by Contractor, any subcontractor, supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, shall be remedied by Contractor. Contractor's duties and responsibilities for the

safety and protection of the work shall continue until such time as all the work is completed and AMIH has issued a notice to AMIH and Contractor that the work is acceptable.

The Contractor shall at all times so conduct the work as to insure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the work, and to insure the protection of persons and property. No road or street shall be closed to the public except with the permission of AMIH and other governmental authority. Fire hydrants on or adjacent to the work shall be kept accessible to fire fighting equipment at all times. Temporary provisions shall be made by the Contractor to ensure the use of sidewalks and private and public driveways, and the proper functioning of all gutters, sewer inlets, drainage ditches and culverts, irrigation ditches and natural water courses.

The Contractor shall leave a night emergency telephone number or numbers with the local law enforcement office, so that contact may be made easily at all times in case of trouble or emergencies. The names and telephone numbers of at least two medical doctors practicing in the vicinity and the telephone number of the local ambulance shall be prominently displayed adjacent to all telephones.

Any lighting fixtures shall be installed, mounted and directed in a manner precluding glare to approaching traffic.

#### Detours

Where detours are necessary, Contractor shall construct and remove detours as provided in the special provisions, or as shown on the plans, or as directed by AMIH. The failure or refusal of Contractor to construct and maintain detours at the required time shall be sufficient cause for closing down the work until remedied. The cost of the detours shall be considered a part of the contract price or as included in other items of work as noted in the special provisions and no extra amounts shall be paid therefor.

#### Safety Representative

Contractor shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to AMIH.

#### Vehicle Code

Pursuant to the authority contained in Vehicle Code Section 591, AMIH has determined that within such areas as are within the limits of the project and are open to public traffic, the following requirements of the Vehicle Code will apply. The lighting requirements in Section 25803; the brake requirements in Chapter 3, Division 12; the splash apron requirements in Section 27600; and, when operated on completed or existing treated base, surfacing, pavement or structures, except as otherwise provided in Section 7-1.02, "Weight Limitations," the weight limitation requirements contained in Division 15.

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

Any other requirements set forth in Divisions 11, 12, 13, 14 and 15 of the Vehicle Code which AMIH, pursuant to the authority contained in Vehicle Code Section 591, will require compliance with, will be set forth in the special provisions.

#### Trench Safety

Attention is directed to the provisions of Section 6705 of the Labor Code of the State of California.

Excavation for any trench 5 feet or more in depth shall not begin until the Contractor has submitted to AMIH the Contractor's detailed plan for worker protection from the hazards of caving ground during the excavation of such trench. Such plan shall be submitted at least 5 days before the Contractor intends to begin excavation for the trench and shall show the details of the design of shoring, bracing, sloping, or other provisions to be made for worker protection during such excavation. The plan shall not use shoring, sloping or a protective system less effective than that required by the Construction Safety Orders of the Division of Industrial Safety and if such plan varies from the shoring system standards established by the

Construction Safety Orders, the plan shall be prepared and signed by an engineer who is registered as a Civil or Structural Engineer in the State of California.

In addition, the Contractor shall obtain, pay for, and comply with all provisions of the permit required by Section 6500 of the California Occupational Safety and Health Act of 1973.

#### Notice Prior to Trenching

Where trenching is required, Contractor shall, pursuant to Public Contracts Code Section 7104, promptly, and before the following conditions are disturbed, notify AMIH, in writing of any:

1. Material that contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
2. Subsurface or latent physical conditions at the site differing from those indicated.
3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

Upon receipt of such notice, AMIH shall, as required by Public Contracts Code Section 7104, promptly investigate the conditions. If AMIH finds the conditions do materially so differ, or do involve hazardous waste, and would require a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, AMIH shall issue a change order under the procedures described in this Contract. In the event that a dispute arises between AMIH and Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the cost or time required for performance, Contractor will not be excused from the scheduled completion date but shall proceed with all work to be performed. Contractor shall retain its rights to file a claim as set forth herein.

#### Alcoholic Beverages

Absolutely no alcoholic beverages shall be permitted on the job site.

#### Emergencies

In emergencies affecting the safety or protection of persons or the work or property at the site or adjacent thereto, Contractor, without special instruction or authorization from AMIH, is obligated to act to prevent threatened damage, injury or loss. Contractor shall give AMIH prompt written notice as soon as possible thereafter. If AMIH determines that a change in the contract documents is required because of the action taken in response to an emergency, a change order will be issued to document the consequences of the changes or variations.

#### Warranty and Guarantee

Unless the plans and/or specifications require a longer period for any warranted item, Contractor warrants all of the work completed under this contract by Contractor for a period of one year from the date of final completion. Said warranty includes the guarantee that all work is completed in accordance with the contract documents and that the work is not defective in any way and is fit for its intended use. Work not conforming to the plans and specifications shall be considered defective. If within the warranty period any work is found to be defective, Contractor shall promptly, without cost to AMIH and in accordance with AMIH's written instruction, either correct such defective work or remove it from the site and replace it with non-defective work. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, AMIH may have the defective work corrected or removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by Contractor. Nothing in this paragraph shall serve as a waiver of the statute of limitations for breach of contract or latent defects.

#### Environmental and Toxics Warranty

Contractor warrants that no asbestos-containing materials, no PCB-containing fixtures or equipment or other toxic or hazardous materials or equipment other than what is contained in standard building materials were installed on this project without AMIH's express written consent. Contractor further

warrants that no asbestos-containing materials, PCB-containing fixtures or equipment or other toxic or hazardous materials were discovered during construction of this project which were not disclosed to AMIH in writing.

Contractor also warrants that its operations during the project were not in violation of any applicable federal, state or local environmental law or regulation dealing with hazardous materials or toxic substances, and no notice from any governmental body has been given to Contractor claiming any such violation or calling attention to the need for any work, repairs, construction, or installation or in connection with the project in order to comply with such laws with which Contractor has not complied. If there are any such notices with which Contractor has complied, Contractor shall provide AMIH with copies thereof.

This warranty shall survive completion of the project, and Contractor shall indemnify AMIH for any breach thereof.

#### Access to Work

AMIH's representatives, testing agencies and governmental agencies with jurisdictional interests will have access to the work at reasonable times for their observation, inspecting and testing. Contractor shall provide proper and safe conditions for such access.

#### AMIH May Stop the Work

If Contractor fails to conform with the contract documents, if the work is defective, if the work is being carried out in an unsafe manner, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the work in such a way that the completed work will conform to the contract documents, AMIH may order Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated; however, this right of AMIH to stop the work shall not give rise to any duty on the part of AMIH to exercise this right for the benefit of Contractor or any other party.

#### Alternative Methods of Construction

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

#### Correction or Removal of Defective Work

If required by AMIH, Contractor shall promptly, as directed, either correct all defective work, whether or not fabricated, installed or completed, or, if the work has been rejected by AMIH, remove it from the site and replace it with non-defective work. Contractor shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made thereby.

#### Acceptance of Defective Work

If, instead of requiring correction or removal and replacement of defective work, AMIH prefers to accept it, AMIH may do so. Contractor shall bear all direct, indirect and consequential costs attributable to AMIH's evaluation of and determination to accept such defective work (such costs to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to final payment, a change order will be issued incorporating the necessary revisions in the contract documents with respect to the work; and AMIH shall be entitled to an appropriate decrease in the contract price, and, if the parties are unable to agree as to the amount thereof, AMIH may make a claim therefor as provided in this Contract. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to AMIH. No acceptance of defective work shall occur without an

express written acknowledgment by AMIH that work described therein is defective and that AMIH is electing to proceed under this clause. No acceptance of defective work may be inferred from any actions by AMIH staff or its agents.

#### AMIH May Correct Defective Work

If Contractor fails within a reasonable time after written notice of AMIH to proceed to correct and to correct defective work or to remove and replace rejected work as required by AMIH in accordance with the above, or if Contractor fails to perform the work in accordance with the contract documents, or if Contractor fails to comply with any other provision of the contract documents, AMIH may, after seven days' written notice to Contractor, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph AMIH shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, AMIH may exclude Contractor from all or part of the site, take possession of all or part of the work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the site and incorporate in the work all materials and equipment stored at the site or for which AMIH has paid Contractor but which are stored elsewhere. Contractor shall allow AMIH, AMIH's representatives, agents and employees such access to the site as may be necessary to enable AMIH to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of AMIH in exercising such rights and remedies will be charged against Contractor, and a change order will be issued incorporating the necessary revisions in the contract documents with respect to the work; and AMIH shall be entitled to an appropriate decrease in the contract price, and, if the parties are unable to agree as to the amount thereof, AMIH may make a claim therefor as provided in this Contract. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's defective work. Contractor shall not be allowed an extension of the contract time because of any delay in performance of the work attributable to the exercise by AMIH of AMIH's rights and remedies hereunder.

#### Adjusting Progress Schedule

Contractor shall submit to AMIH for acceptance adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the general requirements applicable thereto.

#### Substitute Method of Construction

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the contract documents, Contractor may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to AMIH, if Contractor submits sufficient information to allow AMIH to determine that the substitute proposed is equivalent to that indicated or required by the contract documents. The procedure for review by AMIH will be similar to that provided in the paragraph regarding substitution of materials or equipment. No extension of time or extra compensation will be paid to the Contractor by virtue of AMIH's accepting a substitute method of construction.

#### Suggestions to Contractor

Any plan or method of work suggested by AMIH to the Contractor but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor; and AMIH shall assume no responsibility therefor and in no way be held liable for any defects in the work which may result from or be caused by use of such plan or method of work. Acceptance by the Contractor of any plan or method of work or change suggested by AMIH shall not relieve the Contractor from any other requirements or provisions of the contract.

#### Permits

Unless otherwise provided for herein, Contractor shall obtain and pay for all construction permits and licenses necessary or incidental to the work. AMIH shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the work, which are applicable at the time of opening of bids. AMIH shall pay all charges of utility connections to the work.

#### Laws and Regulations

Contractor shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the work. Except where otherwise expressly required by applicable laws and regulations, AMIH shall not be responsible for monitoring Contractor's compliance with any laws or regulations. If Contractor observes that the specifications or drawings are at variance with any laws or regulations, Contractor shall give AMIH prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated herein. If Contractor performs any work knowing or having reason to know that it is contrary to such laws or regulations, and without such notice to AMIH, Contractor shall bear all costs, damages, fines or penalties, arising therefrom.

#### Taxes

Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by Contractor in accordance with the laws and regulations of the place of the project which are applicable during the performance of the work.

#### Use of Premises

Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the project site and land and areas identified in and permitted by the contract documents and other land and areas permitted by laws and regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the work. Should any claim be made against AMIH by any such owner or occupant because of the performance of the work, Contractor shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration or at law. Contractor shall, to the fullest extent permitted by laws and regulations, indemnify and hold AMIH harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against AMIH to the extent based on a claim arising out of Contractor's performance of the work.

Fences which cross, abut, or are on easements shall at all times be maintained by the Contractor in a condition which provides the functional purpose of the fence. Temporary fencing of the construction area will be permitted and temporary fencing shall provide the same functional purpose as existing fencing. Unless otherwise indicated, all improvements within easements shall be restored to conditions that existed prior to the start of work.

Before final acceptance of the work the Contractor shall obtain a written statement of release from each property owner that granted an easement for the work. Release statement shall indicate the property owner's acceptance of the site conditions as restored by the Contractor. The AMIH may waive said written releases where a property owner refuses to sign same but only upon making a determination that there is no work to be completed with respect to said property.

#### Site Clean-Up

During the progress of the work, Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the work. At the completion of the work, Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by AMIH. Contractor shall restore to original condition all property not designated for alteration by the contract documents.

The Contractor is advised that the final cleanup of the project shall be done with meticulous care and that the AMIH expects all ductwork, cubicles, cabinets, motor control centers, control panels, rooms, and enclosures to be thoroughly vacuum cleaned and dust-free prior to acceptance of the work.

#### Protection of Structures

Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the work or adjacent property to stresses or pressures that will endanger it.

#### Restoration of Structures

The Contractor shall remove such existing structures or monuments as may be necessary for the performance of the work and, if required, shall rebuild the structures or monuments thus removed in as good a condition as found. Contractor shall also repair all existing structures or monuments which may be damaged as a result of the work under this contract.

All curbs, gutters, driveways, sidewalks, and similar structures that are damaged by the installation of the work shall be reconstructed by the Contractor. Reconstruction shall be of the same kind of material with the same finish and in not less than the same dimensions as the original work. All concrete shall be as set forth in the specifications, or as required by AMIH if not so specified. Repairs shall be made by removing and replacing the entire portions between joints or scores and not merely refinishing any damaged part. All work shall match the appearance of the existing improvements as nearly as possible.

All road and streets where the surface is removed, broken or damaged, or in which the ground has caved or settled due to work under this contract, shall be completely resurfaced and brought to the original grade and crown section unless otherwise indicated. Before resurfacing material is placed, edges of pavements shall be trimmed back far enough to provide clean, solid, vertical faces, and shall be free of any loose material. All cultivated areas, lawns, and other surface improvements which are damaged by actions of the Contractor shall be restored as nearly as possible to their original conditions.

#### Drainage

Existing drainage facilities shall be maintained throughout the contract time to provide the flow capacities available before commencing work. Drainage conduits shall not be broken, removed, or otherwise interfered with, without permission of the responsible agency.

Where construction requires blocking the flow, flows shall be bypassed as necessary. Stream crossings, blockages, and bypassing shall be accomplished in such a manner as to avoid degradation of downstream water quality. Particular attention shall be given to the avoidance of siltation.

#### Environmental Control

The Contractor shall not pollute the construction site or any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides or other harmful materials. The Contractor shall comply with all applicable Federal, State, AMIH and municipal laws concerning pollution of waterways. Contractor shall submit a plan for preventing such occurrences if required by AMIH. Special measures shall be taken to prevent chemicals, fuels, oils, greases, bituminous materials, waste washings, herbicides and insecticides, from spilling and entering public waters.

Where the Contractor is required to connect or otherwise work around existing lines carrying sewage or process wastes, Contractor shall perform the work to prevent the spill of sewage and insure the delivery of sewage to the treatment plants. Where the Contractor chooses to provide temporary pumping of sewage, Contractor shall first have the pumping facilities approved by AMIH and shall provide 100 percent standby equipment on 24-hour basis.

The Contractor shall provide the means for preventing or lessening all dust nuisances and damages. Such means shall consist of applying water, dust palliative, or both all in accordance with local ordinances and regulations or as directed by AMIH.

#### Record Documents

Contractor shall maintain in a safe place at the site one record copy of all drawings, plans, specifications, addenda, change orders, field orders and written interpretations and clarifications in good order and

annotated to show all changes made during construction. These record documents together with all approved samples and a counterpart of all accepted shop drawings will be available to AMIH for reference. Upon completion of the work, these record documents, samples, and shop drawings will be delivered to AMIH.

#### As-Built Drawings

The Contractor shall also maintain a neatly marked set of record drawings showing the final locations and layout of all mechanical, electrical, and instrument equipment; piping and conduit, structures, and other facilities. Drawings shall be kept current weekly, with all field instructions and change orders; mechanical, electrical, and instrumentation equipment accommodations; and construction adjustment. Drawings shall be subject to the inspection of the AMIH at all times and progress payments may be withheld if drawings are not current. At the final inspection the Contractor shall submit to AMIH all as-built drawings. Drawings shall be stamped "AS-BUILT", dated and signed by the Contractor. The work will not be formally accepted until as-built drawings are accepted by AMIH.

#### Continuing the Work

Contractor shall carry on the work and adhere to the progress schedule during all disputes or disagreements with AMIH. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted specifically herein or as Contractor and AMIH may otherwise agree in writing.

#### Indemnification

To the fullest extent permitted by laws and regulations, Contractor shall indemnify, defend and hold harmless AMIH and its consultants, agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expenses (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (including the work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of Contractor, any subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable. The Contractor's indemnification obligation shall apply whether or not the act giving rise to such claims, damages, losses and expenses is caused in part by a party indemnified hereunder or arises by or is imposed by law and regulations regardless of the negligence of any such party.

#### Statutory Limitations

In any and all claims against AMIH or any of its consultants, agents or employees by any employee of Contractor, any subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, the indemnification obligation above shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any such subcontractor or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### Related Work at Site

AMIH may perform other work related to the project at the site by AMIH's own forces, have other work performed by utility companies or let other direct contracts therefor which shall contain conditions similar to these. If the fact that such other work is to be performed was not noted in the contract documents, written notice thereof will be given to Contractor prior to starting any such other work; and, if Contractor believes that such performance will involve additional expense to Contractor or requires additional time and the parties are unable to agree as to the extent thereof, Contractor may make a claim therefor as provided for herein. Any difference or conflict arising between the Contractor and any other Contractor employed by AMIH, or between the Contractor and the workers of AMIH with regard to their work, shall be submitted to AMIH and the Contractor shall abide by AMIH's decision in the matter. If the work of the

Contractor is delayed because of any facts or omissions of any other Contractor or of AMIH, the Contractor shall on that account have no claim against AMIH other than for an extension of time.

#### Access to Site

Contractor shall afford each utility company or district and other contractor who is a party to such a direct contract (or AMIH, if AMIH is performing the additional work with AMIH's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect and coordinate the work with theirs. Contractor shall do all cutting, fitting and patching of the work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of AMIH and the others whose work will be affected. The duties and responsibilities of Contractor under this paragraph are for the benefit of such utility companies or districts and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between AMIH and such utility companies or districts and other contractors.

#### Acceptance of Work by Others

If any part of Contractor's work depends for proper execution or results upon the work of any such other contractor or utility company or district (or AMIH), Contractor shall inspect and promptly report to AMIH in writing any delays, defects or deficiencies in such work that render it unavailable or unsafe for such proper execution and results. Contractor's failure so to report will constitute an acceptance of the other work as fit and proper for integration with Contractor's work except for latent or nonapparent defects and deficiencies in the other work.

### **ARTICLE XIX: TESTS AND INSPECTIONS**

#### Tests and Inspections Required by Laws or Regulations

If laws or regulations of any public body having jurisdiction require any work (or part thereof) to specifically be inspected, tested or approved, Contractor shall assume full responsibility therefor, pay all costs in connection therewith and furnish AMIH the required certificates of inspection, testing, approval or compliance. Contractor shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with AMIH's acceptance of a supplier of materials or equipment proposed to be incorporated in the work, or of materials or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the work. The cost of all inspections, tests and approvals in addition to the above which are required by the contract documents shall be paid by AMIH (unless otherwise specified). Contractor must utilize materials and equipment which are available for inspection at the plant or at the point of distribution in California in the case of foreign materials or equipment.

#### Other Inspections and Tests

All inspections, tests or acceptances other than those required by laws and regulations of any public body having jurisdiction shall be performed by organizations acceptable to AMIH.

#### General Requirements

All materials, equipment, installation, and workmanship included in this contract, if so required by AMIH, shall be tested and inspected to prove compliance with the contract requirements. Installed leakage tests and other piping tests shall be as specified in the technical provisions of these specifications.

No tests specified herein shall be applied until the item to be tested has been inspected and approval given for the application of such test. Contractor shall give AMIH timely notice of readiness of the work for all required inspections, tests or approvals.

Tests and inspections shall include:

1. The delivery acceptance test and inspections.
2. The installed tests and inspections of items as installed.

Tests and inspections, unless otherwise specified or accepted, shall be in accordance with the recognized standards of the industry.

The form of evidence of satisfactory fulfillment of delivery acceptance test and of installed test and inspection requirements shall be, at the discretion of AMIH, either by tests and inspections carried out in AMIH's presence or by certificates or reports of tests and inspections carried out by approved persons or organizations. The Contractor shall provide and use forms which include all test information and are acceptable in content to AMIH.

#### Certificates of Compliance

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

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

AMIH reserves the right to refuse to permit the use of material on the basis of a Certificate of Compliance.

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

#### Delivery Acceptance Tests and Inspection

The delivery acceptance tests and inspection shall be at the Contractor's expense for any materials or equipment specified herein and shall include the following:

1. Test of items during the process of manufacture and/or on completion of manufacture, comprising material tests, hydraulic pressure tests, electric tests, performance and operating tests and inspections in accordance with the relevant standards of the industry and more particularly as detailed in individual clauses of these specifications to satisfy AMIH that the items tested and inspected comply with the requirements of this contract. Tests required, other than those specified, will be in accordance with the contract specifications.
2. Inspection of all items delivered at the site in order that AMIH may be satisfied that such items are of the specified quality and workmanship and are in good order and condition at the time of delivery.

#### Installed Tests and Inspection

All equipment shall be tested by the Contractor to the satisfaction of AMIH before any facility is put into operation. Tests shall be as specified herein and shall be made to determine whether the equipment has been properly assembled, aligned, adjusted and connected. Any changes, adjustments or replacements required to make the equipment operate as specified shall be carried out by the Contractor as part of the work.

At least 30 days before the time allowed in the construction schedule for commencing testing and start up procedures, the Contractor shall submit to AMIH, details of the procedures Contractor proposes to adopt for testing and start up of all mechanical and electrical equipment to be operated singly and together, excepting when such procedures have been covered in the specifications. Such tests shall be conducted using potable water where water is required for such testing. The water required for such tests shall be provided by the Contractor.

During the testing of equipment, the Contractor shall make available experienced factory trained representatives of the manufacturers of all the various pieces of equipment, or other qualified persons who shall instruct AMIH's personnel in the operation and care thereof. Instruction shall include step-by-step troubleshooting procedures with all necessary test equipment. All manufacturer's instructions shall be provided in writing.

If, under test, any portion of the work shall fail to fulfill the contract requirements and is altered, renewed or replaced, tests on that portion when so altered, removed or replace, together with all other portions of the work as are affected thereby, shall, if so required by AMIH, be repeated within reasonable time and in accordance with the specified conditions, and the Contractor shall pay to AMIH all reasonable expenses incurred by AMIH as a result of the carrying out of such tests.

Where, in the case of an otherwise satisfactory installed test, any doubt, dispute or difference should arise between AMIH and the Contractor regarding the test results or methods or equipment using in the carrying out by the Contractor of such test, then AMIH may order the test to be repeated. If the repeat test, using such modified methods or equipment as AMIH may require, substantially confirms the previous test then costs in connection with the repeat test will be paid by AMIH, otherwise the costs shall be borne by the Contractor. Where the results of any installed test fail to comply with the contract requirements for such test then such repeat tests as may be necessary to achieve the contract requirements shall be made by the Contractor at Contractor's own expense.

#### Quality Control

AMIH will perform testing for the following as the AMIH deems necessary:

1. Soils compaction control
2. Cast-in-place concrete control
3. Aggregate base rock
4. Portland Cement concrete
5. Asphalt concrete
6. Other materials and work incorporated in project

The Contractor shall pay for testing of those samples which fail to meet acceptable standards.

The Contractor shall provide services of a qualified testing laboratory to perform testing for all other work including but not limited to:

1. Concrete mix design
2. Asphalt concrete mix design

The testing laboratory selected by the Contractor is subject to AMIH's approval. The laboratory shall cooperate with Contractor and AMIH and provide qualified personnel promptly on notice, perform specified inspections, sampling and testing of materials as needed to comply with specified standards, and ascertain compliance with requirements of contract documents.

#### Work Requiring Testing

If any work (including the work of others) that is required by the Contract Documents to be inspected, tested or accepted is covered without written concurrence of AMIH, it must, if requested by AMIH, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given AMIH timely notice of Contractor's intention to cover the same and AMIH has not acted with reasonable promptness in response to such notice.

#### Inspections & Approvals

The Contractor shall coordinate all required inspections with the City of Grass Valley and provide submittals for approval as needed. No deviation from approved plans shall be made without written

consent from the Owner and, where applicable, the building official. Final payment shall be contingent upon receipt of a Certificate of Occupancy and approval of all punch list items.

#### Contractor's Obligation

Neither observations by AMIH nor inspections, tests or approvals by others shall relieve Contractor from Contractor's obligations to perform the work in accordance with the contract documents.

#### Uncovering Work Covered Contrary to AMIH's Request

If any work is covered contrary to the written instructions of AMIH or Code or contract requirements, it must, if requested by AMIH, be uncovered for AMIH's observation and replaced at Contractor's expense.

#### Uncovering Work for Inspection or Testing

In addition to the provisions above regarding work requiring testing, if AMIH considers it necessary or advisable that covered work be observed by AMIH or inspected or tested by others, Contractor, at AMIH's request, shall uncover, expose or otherwise make available for observation, inspection or testing as AMIH may require, that portion of the work in question, furnishing all necessary labor, material and equipment. If it is found that such work is defective, Contractor shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and AMIH shall be entitled to an appropriate decrease in the contract price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in this contract. If, however, such work is not found to be defective, Contractor shall be allowed an increase in the contract price or an extension of the contract time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, Contractor may make a claim therefor as provided for in this contract.

### **ARTICLE XX: SUSPENSION OF WORK AND TERMINATION**

#### AMIH May Suspend Work

AMIH may, at any time and without cause, suspend the work or any portion thereof for a period of not more than ninety days by notice in writing to Contractor. As soon as possible, AMIH will fix the date on which work will be resumed. Contractor shall resume the work on the date so fixed. If Contractor believes that such suspension justifies an increase in the contract price or an extension of the contract time and AMIH and Contractor are unable to agree to the amount or extent thereof, Contractor may make a claim therefor as provided herein.

#### AMIH May Terminate

Except as limited by law or regulation, AMIH may terminate upon the occurrence of any one or more of the following events:

1. If Contractor commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if Contractor takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;
2. If petition is filed against Contractor under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against Contractor under any other federal or state law in effect at the time relating to bankruptcy or insolvency;
3. If Contractor makes a general assignment for the benefit of creditors;
4. If a trustee, receiver, custodian or agent of Contractor is appointed under applicable law or under contract, whose appointment or authority to take charge of property of Contractor is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of Contractor's creditors;
5. If Contractor admits in writing an inability to pay its debts generally as they become due;

6. If Contractor persistently fails to perform the work in accordance with the contract documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established herein as revised from time to time or fails to make prompt payment to subcontractors or for materials or labor or persistently disregards laws, ordinances or instructions of the AMIH);
7. If Contractor disregards laws or regulations of any public body having jurisdiction;
8. If Contractor disregards the authority of AMIH or its agents; or
9. If Contractor otherwise violates in any substantial way any provisions of the contract documents;

AMIH may, after giving Contractor (and the surety, if there be one) seven days' written notice and to the extent permitted by laws and regulations, terminate the services of Contractor, exclude Contractor from the site and take possession of the work and of all Contractor's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the work all materials and equipment stored at the site or for which AMIH has paid Contractor but which are stored elsewhere, and finish the work as AMIH may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the direct, indirect and consequential costs of completing the work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court costs) such excess will be paid to Contractor. If such costs exceed such unpaid balance, Contractor shall pay the difference to AMIH. Such costs incurred by AMIH will be approved as to reasonableness by AMIH and incorporated in a change order, but when exercising any rights or remedies under this paragraph AMIH shall not be required to obtain the lowest price for the work performed. Where Contractor's services have been so terminated by AMIH, the termination will not affect any rights or remedies of AMIH against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by AMIH will not release Contractor from liability.

#### AMIH May Abandon

Upon written notice to Contractor AMIH may, without cause and without prejudice to any other right or remedy, elect to abandon the work and terminate the agreement. Contractor shall stop work as specified in said notice, terminate all subcontracts, deliver all materials already paid for and secure the site. In such case, Contractor shall be paid for all work executed and any actual expense sustained. No lost profit for work not yet undertaken shall be due to Contractor.

#### Contractor May Stop Work or Terminate

If, through no act or fault of Contractor, the work is suspended for a period of more than ninety days by AMIH or under an order of court or other public authority, or AMIH fails to act on any application for payment within thirty days after it is submitted, or AMIH fails for thirty days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days' written notice to AMIH, terminate the agreement and recover from AMIH payment for all work executed and any expense sustained. In addition and in lieu of terminating the agreement, if AMIH has failed to act on an application for payment or AMIH has failed to make any payment as aforesaid, Contractor may upon seven days' written notice to AMIH stop the work until payment of all amounts then due. The provisions of this paragraph shall not relieve Contractor of the obligations to carry on the work in accordance with the progress schedule and without delay during disputes and disagreements with AMIH.

### **ARTICLE XXI AMIH'S AGENT'S STATUS DURING CONSTRUCTION**

#### AMIH's Representative

AMIH may appoint representatives during the construction period. The duties and responsibilities and the limitations of authority of such agents during construction are set forth herein and shall not be extended without written consent of AMIH.

#### Agent's Authority

AMIH may delegate authority to an employee or agent, including an engineer or an architect, to determine the amount, quality, acceptability and fitness of the several kinds of work, material and equipment which are to be paid for under the contract; to decide for the AMIH all questions relative to the true construction, meaning and intent of the contract documents; to decide all questions relative to the classification and measurements of quantities and materials and the fulfillment of this contract, and to reject or condemn all work or material which does not conform to the terms of this contract. The representative's decision in all matters is the decision of AMIH and shall be final and binding on Contractor.

#### Replacement of Representative

AMIH reserves the right to terminate the employment of the representative at any time.

#### Visits to Site

Where a representative represents AMIH, said representative will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract documents. However, Contractor must supervise the work and cannot rely on said representative or AMIH as they will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. The representative's efforts will be directed toward providing for AMIH a greater degree of confidence that the completed work will conform to the contract documents. On the basis of such visits and on-site observations, the representative will keep AMIH informed of the progress and adequacy of the work.

#### Observation of Work

If AMIH and the representative agree, the representative will observe the performance of the work. The duties, responsibilities and limitations of authority of the representative in observing the work will be as provided herein. If AMIH designates another agent to represent AMIH at the site who is not the representative's agent or employee, the duties, responsibilities and limitations of authority of such other person will be as provided in supplementary conditions.

#### Clarifications and Interpretations

The representative may be appointed to issue (with reasonable promptness) such written clarifications or interpretations of the requirements of the contract documents (in the form of drawings or otherwise) as the representative may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the contract documents. If Contractor believes that a written clarification or interpretation justifies an increase in the contract price or an extension of the contract time and the parties are unable to agree to the amount or extent thereof, Contractor may make a claim therefor as provided in the contract. Said claim shall be made to AMIH unless a representative has been selected to provide such clarifications or interpretations.

#### Authorized Variations in Work

If a representative is appointed, such representative may authorize minor variations in the work from the requirements of the contract documents which do not involve an adjustment in the contract price or the contract time and are consistent with the overall intent of the contract documents. These may be accomplished by a field order and will be binding on AMIH, and also on Contractor who shall perform the work involved promptly. If Contractor believes that a field order justifies an increase in the contract price or an extension of the contract time and AMIH and Contractor are unable to agree as to the amount or extent thereof, Contractor may make a claim therefor as provided in this Contract.

#### Rejecting Defective Work

If a representative is appointed, such representative will have authority to disapprove or reject work which the representative believes to be defective, and will also have authority to require special inspection or testing of the work whether or not the work is fabricated, installed or completed. Any decision made by said representative in disapproving or rejecting work shall be binding on Contractor.

#### Determinations for Unit Prices

If a representative is appointed, such representative will determine the actual quantities and classifications of unit price work performed by Contractor. The representative will review with the

Contractor the representative's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an application for payment or otherwise). The representative's written decisions thereon will be final and binding upon Contractor.

#### Claims and Disputes

For purposes of this paragraph, "claim" shall be defined as set forth in Public Contracts Code Section 20104(b)(2). Claims shall be presented in writing and include the documents necessary to substantiate the claim. Claims must be filed with the designated AMIH representative no later than thirty (30) days after the occurrence of the event giving rise thereto or denial of the change order, whichever occurs last. The form of said claims shall be the same as is required by Government Code Sections 910 and 910.2.

If the claim is under \$50,000, AMIH shall respond in writing to Contractor within 45 days of receipt of Contractor's claim or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the AMIH may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to Public Contract Code Section 20104.2, upon mutual agreement of the AMIH and Contractor. The AMIH's written response to the claim, as further documented, shall be submitted to Contractor within 15 days after receipt of the further documentation or within a period of time no greater than that taken by Contractor in producing the additional information, whichever is greater.

For claims over \$50,000 and less than or equal to \$375,000, AMIH shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the AMIH may have against Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to Public Contract Code Section 20104.2, upon mutual agreement of AMIH and Contractor. The AMIH's written response to the claim, as further documented, shall be submitted to Contractor within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by Contractor in producing the additional information or requested documentation, whichever is greater.

If Contractor disputes AMIH's written response, or AMIH fails to respond within the time prescribed above, Contractor may so notify AMIH, in writing, either within 15 days of receipt of AMIH's response or within 15 days of AMIH's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer with such AMIH representatives as the AMIH Executive Officer or the Board of Supervisors directs for settlement of the issues in dispute. Upon such demand, AMIH shall schedule a meet and confer conference within 30 days for settlement of the dispute.

Following the meet and confer conference, if the claim or any portion remains in dispute, Contractor may file a claim with the Board of Supervisors 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. Pursuant to authority granted by Government Code Section 930.2, all claims filed with the Board of Supervisors pursuant to the Government Code shall be filed within 90 days of the denial of the original claim by the AMIH representative. The running of the period of time within which a claim under the Government Code must be filed shall be tolled by any period of time utilized by the meet and confer conference. Any lawsuit which Contractor intends to bring with respect to any claim filed pursuant to the Government Code which claim has been denied by AMIH must be commenced not later than six months after the recording of the notice of completion or not later than six months after the date final payment is deposited in the mail or personally delivered, whichever date comes first. If a civil action is filed, the mediation provisions set forth in Public Contract Code Section 20104.4 shall apply unless waived by mutual stipulation of AMIH and Contractor or unless AMIH elects to resolve the dispute pursuant to Public Contract Code Section 10240 et seq.

For every claim that Contractor makes, it shall provide the following documentation upon request of AMIH as a condition precedent to consideration of the claim: Contractor's bidding calculations forms, cost estimates, time sheets, trend reports, job cost analysis records, labor records, as-built documents, any other records used by Contractor in arriving at its bid price, and any other documents or records kept by Contractor during the course of construction. In the event that claims are made, Contractor agrees that AMIH shall have the right to conduct a complete audit of the books and records of Contractor relating to

this project and any books and records relating to overhead, profit or general office expenses charged to this project.

Public Contract Code Section 9204, as enacted by AB 626, establishes a claim resolution process required for public works projects. In the event of any conflict between the provisions of this Contract and Public Contract Code Section 9204, the provisions of Public Contract Code Section 9204 shall prevail.

#### Representative's Decision

Where a representative is appointed, the rendering of a decision by the representative with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment) will be a condition precedent to any exercise by AMIH or Contractor of such rights or remedies as either may otherwise have under the contract documents or by laws or regulations in respect of any such claim, dispute or other matter.

#### Limitations on Representative's Responsibilities

Neither the AMIH's representative's authority to act nor any decision made by the representative in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the representative or AMIH to Contractor, any subcontractor, any supplier, or any other person or organization performing any of the work, or to any surety for any of them.

#### Construction Methods and Safety

Notwithstanding any references to laws and regulations, rules, codes or standards in the contract documents, the representative and AMIH will not be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and the representative and AMIH will not be responsible for Contractor's failure to perform or furnish the work in accordance with the contract documents.

#### Acts and Omissions of Contractor

Neither the AMIH nor its representatives will be responsible for the acts or omissions of Contractor or of any subcontractor, any supplier, or any other person or organization performing or furnishing any of the work.

### **ARTICLE XXII: PARTIAL COMPLETION**

#### Partial Completion (Completion of a Portion of the Work)

Use by AMIH of any finished part of the work, which has specifically been identified in the contract documents, or which AMIH and Contractor agree constitutes a separately functioning process or facility that can be used by AMIH without significant interference with Contractor's performance of the remainder of the work, may be accomplished prior to completion of all the work subject to the following:

1. AMIH at any time may request Contractor in writing to permit AMIH to use any such part of the work which AMIH believes to be ready for its intended use and substantially complete. If Contractor agrees, Contractor will certify to AMIH that said part of the work is substantially complete and request AMIH to issue a certificate of substantial completion for that part of the work. Contractor at any time may notify AMIH in writing that Contractor considers any such part of the work ready for its intended use and substantially complete and request AMIH to issue a certificate of substantial completion for that part of the work. Within a reasonable time after either such request, AMIH and Contractor shall make an inspection of that part of the work to determine its status of completion. If AMIH does not consider that part of the work to be substantially complete, AMIH will notify Contractor in writing giving the reasons therefor. If AMIH considers that part of the work to be substantially complete, AMIH will deliver to Contractor a written recommendation as to the division of responsibilities pending final payment between AMIH and Contractor for the entire work with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties. Unless Contractor disagrees in writing and so informs AMIH promptly, AMIH's aforesaid recommendation will be binding on Contractor until final payment for the entire work.

2. AMIH may at any time request Contractor in writing to permit AMIH to take over operation of any such part of the work although it is not substantially complete. A copy of such request will be sent to Contractor and within a reasonable time thereafter AMIH and Contractor shall make an inspection of that part of the work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If Contractor does not object in writing to AMIH that such part of the work is not ready for separate operation by AMIH, AMIH will finalize the list of items to be completed or corrected and will deliver such list to Contractor together with a written recommendation as to the division of responsibilities pending final payment between AMIH and Contractor with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the work which will become binding upon AMIH and Contractor at the time when AMIH takes over such operation (unless they shall have otherwise agreed in writing). During such operation and prior to substantial completion of such part of the work, AMIH shall allow Contractor reasonable access to complete or correct items on said list and to complete other related work.
3. No occupancy or separate operation of part of the work will be accomplished prior to the insurers who are then providing the property insurance having acknowledged notice thereof and in writing effecting the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policies, but the property insurance shall not be canceled or lapse on account of any such partial use or occupancy. Each party shall be responsible for notifying its own insurer.

#### **ARTICLE XXIII: ARBITRATION & DISPUTE RESOLUTION**

##### **Arbitration**

Where the total of all claims filed by Contractor are under \$375,000, AMIH shall have the option of electing arbitration pursuant to Public Contract Code Sections 10240, et seq. If AMIH does so elect, the mediation provisions of Public Contract Code Section 20104.4 shall not apply pursuant to Public Contract Code Section 20104(a)(2). If AMIH does not elect such arbitration pursuant to Public Contract Code Sections 10240 et seq., the provisions of Public Contract Code Section 20104.4 shall apply.

Where the total of all claims filed by Contractor are above \$375,000, the arbitration provisions of this contract are voluntary. Neither AMIH nor Contractor shall be required to enter into mediation or arbitration for amounts above \$375,000. Written consent of both parties to mediate or arbitrate such claims shall be a prerequisite to such mediation or arbitration. If the parties agree to arbitrate claims above \$375,000, the provisions of Public Contract Code Sections 10240, et seq. shall be utilized.

##### **Time to Request Arbitration**

No request for arbitration of any claim, dispute or other matter that is required to be referred to AMIH initially for decision will be made until the earlier of (a) the date on which AMIH has rendered a decision or (b) the tenth day after Contractor has presented its evidence to AMIH if a written decision has not been rendered by AMIH before that date. Unless otherwise required by law, no request for arbitration of any such claim, dispute or other matter will be made later than thirty days after the date on which AMIH has rendered a written decision. Notice of the request for arbitration will be in writing to the other party.

##### **Dispute Resolution and Governing Law**

The parties shall attempt in good faith to resolve any dispute, controversy, or claim arising out of or relating to this Agreement promptly by negotiation between individuals who have authority to settle the controversy. If the matter is not resolved through negotiation, the parties agree to submit the matter to non-binding mediation prior to initiating litigation.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. The exclusive venue for any action brought under this Agreement shall be the Superior Court of the County of Placer, California.

## **ARTICLE XXIV: LABOR AND EMPLOYMENT**

### **Worker's Compensation Certification**

By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract.

### **Non-Discrimination and Equal Opportunity**

The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, gender identity, sexual orientation, national origin, age, disability, or any other characteristic protected by law. The Contractor shall take affirmative action to ensure equal opportunity in employment.

### **Prevailing Wage Rates**

In accordance with the provisions of Section 1770 and 1773 of the Labor Code, the AMIH has determined that prevailing wage rates are applicable to the work to be done. The Contractor shall post a copy of the wage rates on the job site. The AMIH is required to provide notice to the Department of Industrial Relations of any public work contract subject to prevailing wages within five (5) days of award.

The general prevailing wage rates determined by the Director of Industrial Relations (DIR), for the AMIH or counties in which the work is to be done, are available from the California Department of Industrial Relations' Internet website at <http://www.wdol.gov>. These wage rates are not included in the proposal and contract for the project. Changes, if any, to the general prevailing wage rates will be available at the same location.

In accordance with Section 1771.1 of the Labor Code, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4014 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in Chapter 1 of Part 7 of the Labor Code, unless currently registered and qualified to perform public work pursuant to Section 1725.5.

Contractor and all subcontractors must comply with the requirements of Labor Code Section 1771.1(a) pertaining to registration of contractors pursuant to Section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract. The DIR has launched an online application to assist public works contractors in meeting these requirements at <https://efiling.dir.ca.gov/PWCR/ActionServlet?action=displayPWCRRegistrationForm>

Pursuant to California Labor Code Section 1775, Contractor shall forfeit Fifty Dollars (\$50.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates for such work or craft, and said amounts shall be distributed pursuant to the requirements of said Section 1775. Any employee whose type of work is not covered by any of the classified wage rates shall be paid not less than the rate of wage listed for the classification which most nearly corresponds to the type of work to be performed.

### **Collective Bargaining Agreements**

Pursuant to California Labor Code Section 1773.8, Contractor shall pay travel and subsistence payments to all workers needed to execute the work as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.

### **Payroll Records**

This Contract is subject to compliance monitoring and enforcement by the DIR. The Contractor and each subcontractor must furnish certified payroll records to the Labor Commissioner at least monthly.

Contractor shall be responsible for keeping accurate payroll records as required by California Labor Code Section 1776. Contractor is aware that a penalty of twenty-five dollars (\$25.00) per day or portion thereof for each worker may be assessed for noncompliance with said section. Contractor shall forward to AMIH a certified copy of each payroll record within ten days after close of each payroll period. Such certification shall include a statement that payroll is correct and complete and complies with prevailing wage requirements.

If by the 15th of the month, the Contractor has not submitted satisfactory payrolls for all work performed during the monthly period ending on or before the 1st of that month, AMIH will retain an amount equal to 5 percent of the estimated value of the work performed during the month from the next monthly estimate, except that such retention shall not exceed \$10,000. Retentions for failure to submit satisfactory payrolls shall be additional to all other retentions provided for in the contract. The retention for failure to submit payrolls for any monthly period will be released for payment on the monthly estimate for partial payments next following the date that all the satisfactory payrolls for which the retention was made are submitted.

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

#### Limitations on Hours Worked

Eight hours constitutes a day's work and workers shall be limited to working 8 hours during any one calendar day and 40 hours during any one calendar week. Contractor and all subcontractors shall keep an accurate record of hours worked by each worker for each calendar day and each calendar week which record shall be available for inspection during business hours. Contractor shall, pursuant to California Labor Code Section 1813, forfeit twenty-five dollars (\$25) for each day for each worker where such worker is required or permitted to work more than 8 hours in any one day and 40 hours in any one week in violation of the provisions of the Labor Code. No overtime shall be authorized unless prior written approval of AMIH is obtained permitting such overtime. If such overtime work is authorized by AMIH, Contractor shall compensate each worker required to work overtime at the rate of one and one-half (1-1/2) times the basic rate of pay. All costs for overtime inspection, except those occurring as a result of overtime and shift work established as a regular procedure, shall be paid by the Contractor. Overtime inspection shall include inspection required during holidays, Saturdays, Sundays, and any weekday between the hours of 5:00 p.m. and 7:00 a.m. Such costs will include but will not necessarily be limited to engineering, inspection, general supervision and other overhead expenses which are directly chargeable to the overtime work. All such charges shall be deducted by AMIH from payments due the Contractor.

#### Equal Employment Opportunity and Nondiscrimination

During the performance of this contract, the contractor agrees to abide by all provisions of Section 1735 of the California Labor Code, as amended, regarding nondiscrimination practices.

#### Employment of Apprentice Labor

Reference is hereby made to Section 1777.5 of the Labor Code of the State of California, which regulations shall govern the employment of apprentices on the work.

#### Preference for Resident Labor

In the employment of labor for doing the work, the Contractor shall give preference to qualified persons residing within the general area of the work.

#### Incompetent Workers

If at any time any worker employed by Contractor or any of the subcontractors shall be declared by AMIH to be incompetent or unfaithful in executing the work, the Contractor, on receiving written notice, shall forthwith initiate appropriate action to dismiss such person.

#### Labor Class Substitutions

If Contractor substitutes a labor classification or provides a new classification which results in a reduction in the contract price, AMIH's execution of a change order evidencing said reduction in price shall in no way be construed, either express or implied, as consent to the use of said labor classification in the performance of any work on the project.

#### **ARTICLE XXV: RECORD RETENTION & AUDIT RIGHTS**

The Contractor shall retain all project-related records, including payroll, materials receipts, and inspection logs, for a minimum of three (3) years after project completion. The Owner or any state agency shall have the right to inspect and audit such records upon request.

#### **ARTICLE XXVI: ASSIGNMENT**

No assignment by a party hereto of any rights under or interests in the contract documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the contract documents.

#### **ARTICLE XXVII: CONFLICT OF INTEREST RESTRICTIONS**

No official of AMIH who is authorized in such capacity and on behalf of AMIH to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspecting, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof. No officer, employee, architect, attorney, engineer, or inspector of or for AMIH who is authorized in such capacity and on behalf of AMIH who is in any legislative, executive, supervisory, or other similar function in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

#### **ARTICLE XXVIII: WAIVER OF RIGHTS**

No action or lack of action on the part of AMIH at any time to exercise any right or remedy conferred upon it under this contract shall be deemed to be a waiver on the part of AMIH of any of AMIH's rights or remedies.

#### **ARTICLE XXIX: SUCCESSORS IN INTEREST**

AMIH and Contractor each bind themselves, their partners, successors, assigns and legal representatives to the other party hereto, their partners, successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the contract documents.

#### **ARTICLE XXX: NOTICE**

##### **Giving Notice**

Whenever any provision of the contract documents requires the giving of written notice, it will be deemed to have been validly given if 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 registered or certified mail, postage prepaid, to the last business address known to the giver of the notice. The business addresses of Contractor given in the bid form and Contractor's office at the site of the work are hereby designated as the places to which all notices, letters, and other communication to Contractor will be delivered. However, AMIH or Contractor may change their addresses at any time by an instrument in writing delivered to the other.

##### **Joint Venture Contractor**

In the event the Contractor is a joint venture of two or more Contractors, all grants, covenants, provisos and claims, rights, powers, privileges and liabilities of the contract shall be construed and held to be several as well as joint; any notice, order, direction, request or other communication required to be or that may be given by AMIH to the Contractor under this agreement shall be well and sufficiently given to all persons being the Contractor if given to any one or more of such persons; any notice, request or other communication given by any one of such persons to AMIH under this agreement shall be deemed to have been given by and shall bind all persons being the Contractor.

**ARTICLE XXXI: VENUE AND JURISDICTION**

This contract shall be construed in accordance with the laws of the State of California and the parties agree that venue shall be in Placer County, California.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the date first written, above. One counterpart each has been delivered to AMIH, Contractor, and the Sureties. All portions of the contract documents have been signed or identified by AMIH and Contractor.

AMIH

By: \_\_\_\_\_  
Jennifer Price. Chief Executive Officer

CONTRACTOR

By: \_\_\_\_\_  
Licensed in accordance with an act providing for the  
registration of Contractors  
License Number:  
Telephone No:

Department of Industrial Relations  
Registration No.: