## SECTION C - GENERAL

### 1. LABOR NONDISCRIMINATION

Attention is directed to the following Notice that is required by Chapter 5 of Division 4 of Title 2 of the California Code of Regulations:

**NOTICE OF REQUIREMENT FOR NONDISCRIMINATION PROGRAM (GOV. CODE, SECTION 12990)**

Your attention is called to the "Nondiscrimination Clause," set forth in Section 7-1.01A(4), "Labor Nondiscrimination," of the Standard Specifications, which is applicable to all non-exempt state contracts and subcontracts, and to the "Standard California Nondiscrimination Construction Contract Specifications" set forth therein. These Specifications are applicable to all non-exempt state construction contracts and subcontracts of $5,000 or more.

### 2. WAGE REQUIREMENTS FOR DISPOSAL OF EXCESS MATERIAL

When excavated material is disposed of outside of the roadway right-of-way, the loading and hauling of such material will be considered as work done under the contract and shall be subject to the labor requirements of the contract.

The labor requirements of the contract shall apply regardless of whether or not the material is sold or donated and the forces involved in the loading and hauling of the material will be considered employees of the Contractor or subcontractor performing work on the contract.

### 3. SUBCONTRACTOR AND DBE RECORDS

The Contractor shall maintain records showing the name and business address of each first-tier subcontractor. The records shall also show the name and business address of every DBE subcontractor, DBE vendor of materials and DBE trucking company, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all of these firms. DBE prime contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

Upon completion of the contract, a summary of these records shall be prepared on “Final Report – Utilization of Disadvantaged Business Enterprises - (DBE), First-Tier Subcontractors” Form CEM-2402(F) and certified correct by the Contractor or his authorized representative, and shall be furnished to the Engineer. The form shall be furnished to the Engineer within 90 days from the date of contract acceptance. The amount of $10,000 will be withheld from payment until a satisfactory form is submitted.

Prior to the fifteenth of each month, the Contractor shall submit documentation to the Engineer showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Engineer showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contactor may count only the fee or commission the DBE receives as a result of the lease arrangement.

The Contractor shall also obtain and submit documentation to the Engineer showing the truck number, owner's name, California Highway Patrol CA number, and if applicable, the DBE certification number of the owner of the truck for all trucks used during that month. This documentation shall be submitted on "Monthly DBE Trucking Verification" Form CEM-2404(F).

## 4. DBE CERTIFICATION STATUS

If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify the Contractor in writing with the date of certification. The Contractor shall furnish the written documentation to the Engineer.

Upon completion of the contract, "Disadvantaged Business Enterprises (DBE) Certification Status Change" Form CEM-2403(F) indicating the DBE's existing certification status shall be signed and certified correct by the Conractor. The certified form shall be furnished to the Engineer within 90 days from the date of contract acceptance.

## 5. PERFORMANCE OF SUBCONTRACTORS

In conformance with Section 2-1.054, "Required Listing of Proposed Subcontractors," of the Standard Specifications, the subcontractors listed by the bidder on the sheet provided in the Proposal for listing subcontractors shall list the name and address of each subcontractor to whom the bidder proposes to subcontract portions of the work in an amount in excess of one-half of one percent of the total bid or $10,000, whichever is greater, in accordance with the Subletting and Subcontracting Fair Practices Act, commencing with Section 4100 of the Public Contract Code. The listed subcontractors shall perform the work and supply the materials for which they are listed unless the Contractor has received prior written authorization to perform the work with other forces or to obtain the materials from other sources. The bidder's attention is invited to other provisions of the Act related to the imposition of penalties for a failure to observe its provisions by using unauthorized subcontractors or by making unauthorized substitutions.

UDBEs must perform work or supply materials as listed in the Local Agency Bidder – UDBE Commitment (Construction Contracts)," Exhibit 15-G1, form specified under Section A-6, "Disadvantaged Business Enterprise ((DBE)," of these Special Provisions. The Contractor shall not terminate a UDBE listed subcontractor for convenience and perform the work with his/her own forces or obtain materials from other sources without prior written authorization from the Department.

The Department grants authorization to use other forces or other sources of materials for requests that show any of the following justifications:

1. Listed UDBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. The Contractor stipulates a bond as a condition of executing the subcontract and the listed UDBE fails to meet the bond requirements.
3. All work performed requires an applicable contractor's license and the listed UDBE does not have the necessary valid license under the Contractors License Law.
4. Listed UDBE fails or refuses to perform the work or furnish the listed materials.
5. Listed UDBE's work is unsatisfactory and not in compliance with the contract.
6. Listed UDBE delays or disrupts the progress of work.
7. Listed UDBE becomes bankrupt or insolvent.
8. Listed UDBE has been debarred by the Labor Commissioner.

## 5. PERFORMANCE OF SUBCONTRACTORS (Continued):

If a listed UDBE subcontractor is terminated, the Contractor must make and document good faith efforts to find another UDBE subcontractor to substitute for the original UDBE subcontractor. The substitute UDBE subcontractor must perform at least the same amount of work as the original UDBE subcontractor under the contract to the extent needed to meet the UDBE goal.

The substitute UDBE subcontractor must be certified as a DBE at the time of the Contractor's request for substitution.

The Department does not pay for work or material unless it is performed or supplied by the listed UDBE subcontractor, unless the UDBE subcontractor is terminated in accordance with this section.

## 6. SUBCONTRACTING

Attention is directed to the provisions in Section 8-1.01, "Subcontracting," of the Standard Specifications, and elsewhere in these Special Provisions.

The provisions in the third paragraph of said Section 8-1.01, "Subcontracting," of the Standard Specifications that states the Contractor shall perform with the Contractor's own organization contract work amounting to not less than 50 percent of the original contract price is changed by the federal-aid funding requirement specified in Subsection VII "Subletting or Assigning the Contract" under "Required Contract Provisions Federal-Aid Construction Contracts" of Section E (FHWA Section 14 and Form1273) of these Special Provisions. The Contractor shall perform **not less than 30 percent** of the original contract work, excluding any specialty items designated by the Department, with the Contractor's own employees and equipment, owned or rented, with or without operators.

Each subcontract and any lower tier subcontract that may in turn be made shall include the "Required Contract Provisions Federal-Aid Construction Contracts" of Section E (FHWA Section 14 and Form1273) of these Special Provisions and any other appropriate contract provisions as indicated necessary in these Special Provisions. Noncompliance shall be corrected and payment for subcontracted work involved will be withheld from progress payments due, or to become due, until appropriate correction is made. Failure to comply may result in termination of the contract.

Each subcontractor must have an active and valid State contractor's license with a classification appropriate for the work to be performed (Business and Professions Code Section 7000 et seq.).

Pursuant to the provisions in Section 1777.1 of the Labor Code, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a subcontractor on a public works project. This list of debarred contractors is available from the Department of Industrial Relations web site at:

http://www.dir.ca.gov/DLSE/Debar.html

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

Before starting subcontracted work, the Contractor shall submit a Subcontracting Request Form. The Contractor shall submit copies of subcontracts upon request by the Engineer.

## 6. SUBCONTRACTING (Continued)

Upon request by the Engineer, the Contractor shall immediately remove and not use a subcontractor again on the project who fails to prosecute the work satisfactorily.

If the Contractor violates Public Contract Code Section 4100 et seq., the Department may exercise the remedies provided under Public Contract Code Section 4110. The Department may refer the violation to the Contractors' State License Board as provided under Public Contract Code Section 4111.

### PROMPT PROGRESS PAYMENT TO SUBCONTRACTORS

Attention is directed to the provisions in Sections 10262 and 10262.5 of the Public Contract Code and Section 7108.5 of the Business and Professions Code concerning prompt payment to subcontractors, as indicated herein:

A prime contractor or subcontractor shall pay any subcontractor not later than 10 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the Department's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

### PROMPT PAYMENT OF WITHHELD FUNDS TO SUBCONTRACTORS

Attention is directed to the provisions in Section 9-1.06, "Partial Payments," and Section 9-1.065, "Payment of Withheld Funds," of the Standard Specifications, and these Special Provisions. Where there is a discrepancy between those sections of the Standard Specifications and the Special Provision requirements below, the Special Provisions shall supersede the Standard Specifications:

The Department shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the Department, of the contract work, and pay retainage to the prime contractor based on these acceptances. The prime contractor, or subcontractor, shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted, including incremental acceptances of portions of the contract work by the Department. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the Department's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

## 7. AIR POLLUTION CONTROL

Air pollution control shall conform to the provisions in Section 7-1.01F, "Air Pollution Control," of the Standard Specifications and these Special Provisions.

Material to be disposed of shall not be burned unless the Contractor has obtained a permit to burn combustible material resulting from clearing and grubbing operations from an air pollution control officer of the local or regional authority. A copy of the permit shall be filed with the Engineer before beginning any burning. All such burning shall be conducted in strict conformance with the provisions stipulated in said permit and at such times and in such manner as to prevent the fire from spreading to areas adjoining the right of way.

## 8. REMOVAL OF ASBESTOS AND HAZARDOUS SUBSTANCES

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

In conformance with Section 25914.1 of the Health and Safety Code, removal of asbestos or hazardous substances, including exploratory work to identify and determine the extent of the asbestos or hazardous substance, will be performed by separate contract.

If delay of work in the affected area delays the current controlling operation, the delay will be considered a right of way delay and the Contractor will be compensated for the delay in conformance with the provisions in Section 8-1.09, “Right of Way Delays.”

## 9. PAYMENTS

Attention is directed to Section 9-1.06, "Partial Payments," and 9-1.07, "Payment After Acceptance," of the Standard Specifications and these Special Provisions. Where there is a discrepancy between those sections of the Standard Specifications and the Special Provision requirements below, the Special Provisions shall supersede the Standard Specifications:

For the purpose of making partial payments pursuant to Section 9-1.06, "Partial Payments," of the Standard Specifications, the amount set forth for the contract items of work hereinafter listed shall be deemed to be the maximum value of said contract item of work, which will be recognized for progress payment purposes.

**Bid Schedule “A” - Monte Vista Avenue:**

| | |
|---|---|
| **Clearing and Grubbing** | **$5,000** |
| **Traffic Control** | **$12,000** |
| **Develop Water Supply** | **$2,500** |
| **Construction Site Management** | **$1,500** |
| **Storm Water Pollution Prevention Plan (SWPPP)** | **$1,500** |
| **Pavement Grinding** | **$5,000** |
| **Final Erosion Control (Type D)** | **$5,000** |

## 9. PAYMENTS (Continued)

**Bid Schedule "B" - Lower Wyandotte Road:**

| | |
|---|---|
| **Clearing and Grubbing** | **$5,000** |
| **Traffic Control** | **$12,000** |
| **Develop Water Supply** | **$2,500** |
| **Construction Site Management** | **$1,500** |
| **Storm Water Pollution Prevention Plan (SWPPP)** | **$1,500** |
| **Pavement Grinding** | **$5,000** |
| **Final Erosion Control (Type D)** | **$5,000** |

After acceptance of the contract pursuant to Section 7-1.17, "Acceptance of Contract," of the Standard Specifications, the amount, if any, payable for a contract item of work in excess of the maximum value for progress payment purposes hereinabove listed for said item, will be included for payment in the first estimate made after acceptance of the contract.

No partial payment will be made for any materials on hand which are furnished but not incorporated in the work.

## 10. PAYROLL RECORDS

Payroll records shall conform to the provisions outlined in Section 7-1.01A(3), "Payroll Records," of the Standard Specifications and these Special Provisions.

## 11. PAYMENT OF WITHHELD FUNDS

The second paragraph of Section 9-1.065, "Payment of Withheld Funds," of the Standard Specifications and the first paragraph of the amended Section 9-1.065, "Release of Retained Funds," is amended to read:

Upon the Contractor's request, pursuant to Public Contract Code Section 22300, and subject to the requirements of these Special Provisions, the County will make payment of funds withheld from progress payments to ensure performance of the contract if the Contractor deposits in escrow with the Butte County Treasurer, or with a bank acceptable to the County, securities equivalent to the amount withheld. The Contractor shall be beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon. Upon satisfactory completion of the contract, the securities shall be returned to the Contractor.

## 12. STOP NOTICE WITHHOLDS

The Department may withhold payments to cover claims filed under Civil Code § 3179 et seq.

Section 9, "Measurement and Payment," of the Standard Specifications is amended by the Amendments to the May 2006 Standard Specifications, updated February 1, 2008. For clarification, the following sections are added to these Special Provisions to reflect these same amendments:

## 13. PERFORMANCE FAILURE WITHHOLDS

During each estimate period the Contractor fails to comply with a contract part, including submittal of a document as specified, the Department withholds a part of the progress payment. The documents include quality control plans, schedules, traffic control plans, and water pollution control submittals.

For one performance failure, the County withholds 25 percent of the progress payment, but does not withhold more than 10 percent of the total bid.

For multiple performance failures, the County withholds 100 percent of the progress payment, but does not withhold more than 10 percent of the total bid.

The County returns performance-failure withholds in the progress payment following the correction of noncompliance.

## 14. PENALTY WITHHOLDS

Penalties include fines and damages that are proposed, assessed, or levied against the Contractor or the County by a governmental agency or citizen lawsuit. Penalties are also payments made or costs incurred in settling alleged permit violations of Federal, State, or local laws, regulations, or requirements. The cost incurred may include the amount spent for mitigation or correcting a violation.

If the Contractor or the County is assessed a penalty, the Department may withhold the penalty amount until the penalty disposition has been resolved. The Department may withhold penalty funds and notify the Contractor within 15 days of the withhold. If the penalty amount is less than the amount being withheld from progress payments for retentions, the Department will not withhold the penalty amount.

If the penalty is resolved for less than the amount withheld, the County pays interest at a rate of 6 percent per year on the excess withhold. If the penalty is not resolved, the withhold becomes a deduction.

Instead of the withhold, the Contractor may provide a bond payable to the County of Butte equal to the highest estimated liability for any disputed penalties proposed.

## 15. NOTICE OF POTENTIAL CLAIM

Notices of potential claims shall be made in accordance with Section 9-1.04, "Notice of Potential Claim," of the Standard Specifications and these Special Provisions.

## 16. FINAL PAYMENT AND CLAIMS

Final payment and claims shall be done in accordance with Section 9-1.07B, "Final Payment and Claims," of the Standard Specifications and these Special Provisions.

The first sentence of the second paragraph of Section 9-1.07B, “Final Payment and Claims” is modified to read:

## 16. FINAL PAYMENT AND CLAIMS (Continued)

The first sentence of the second paragraph of Section 9-1.07B, “Final Payment and Claims” is modified to read:

On the Contractor’s approval, or if the Contractor files no claim within the specified period of 30 days, the Engineer will issue a final estimate in writing in conformance with the proposed final estimate submitted to the Contractor and within 30 days thereafter or 35 days after the recording of the “Notice of Completion”, whichever occurs last, pay the entire sum so found to be due.

The first sentence of the third paragraph of Section 9-1.07B, “Final Payment and Claims” is modified to read:

If the Contractor within the specified period of 30 days files claims, the Engineer will issue a semifinal estimate in conformance with the proposed final estimate submitted to the Contractor and within 30 days thereafter or 35 days after the recording of the “Notice of Completion”, whichever occurs last, pay the entire sum found to be due.

## 17. FINAL PAY ITEMS

Final pay items shall be as outlined in Section 9-1.015, "Final Pay Items," of the Standard Specifications and these Special Provisions.