

SECTION 1C – GENERAL CONDITIONS

ARTICLE 1 - GENERAL PROVISIONS

1C-1.1 THE CONTRACT

- A. The Contract Documents as defined form the Contract between the Airport Authority and the Contractor. The Contract represents the entire integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only as set forth in the Contract Documents. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Airport Authority and any other contractor or subcontractor or supplier of any tier other than the Airport Authority and Contractor.
- B. The Contractor's signing of the Contract signifies (i) Contractor's acknowledgment and agreement that the Contract Time is sufficient for Completion, and (ii) the Contractor's acceptance of all of the other terms and conditions of the Contract Documents.
- C. Contractor acknowledges that it has read every clause in the Agreement, these conditions and the specifications; has examined the location where the Work is to be done; and has made all inquiries and investigations necessary to enable it to understand thoroughly the intent of all parts of the Contract Documents, and the nature of the Work; and agrees that it will not make any claim for compensation, extension of time or other allowance of any sort, based upon or arising out of any alleged misunderstanding by it of any part of the Contract Documents.

1C-1.2 DEFINITION OF TERMS

- A. Whenever in these Contract Documents the following terms are used, their intent and meaning are as follows:
 - 1. The term "Airport Authority" means the San Diego County Regional Airport Authority, a local governmental entity of regional government.
 - 2. The term "airport operations area" shall mean any area designated for the landing, take-off, surface movement, parking, loading and unloading of aircraft (in practice, most areas inside the airport perimeter fence).

3. The word “allowance” means the allocation of funds for items in the bid schedule for the purpose of identification and budgeting of work where quantities and/or cost are unknown at the time of bidding. If the allowance is either greater or less than the allowance, the contract price shall be increased or decreased accordingly upon proof of the amount expended by the Contractor. Allowances shall include all of the costs of materials, fixtures, or equipment and all costs of delivery, handling, and installations. Contractor shall make no claim for additional compensation because of any increase, decrease or elimination of any allowance item.
4. The term “beneficial occupancy” shall mean the point in progress of the Work when the Project is Substantially Complete and the Airport Authority, after notice, takes control of the entire Work as provided for herein.
5. The word “Board” means the Board of the Airport Authority, as specified in the San Diego County Regional Airport Authority Act.
6. The term “Change Order Request” is a written request for either a cost or time adjustment.
7. The term “Completion” shall mean the formal written acceptance of the Work by the Airport Authority and the recordation of a Notice of Completion with the county recorder or, in the event formal acceptance does not occur, the recordation of a Notice of Cessation with the county recorder.
8. The words “Contract” and “Contract Document” mean everything contained in this bound volume and any and all other written instruments and drawings of every kind and nature which are attached to or made a part hereof by reference or by operation of law; such as, but not limited to, Notice Inviting Bids, Instructions to Bidders, Proposal, submitted Bid Proposal Package, Bonds, Addenda, Specifications (General and Special), General Conditions, Special Conditions, Special Provisions, Drawings, the Agreement which is prepared for execution by the Airport Authority and the Contractor, any and all supplemental written agreements, orders or addenda amending or extending the work contemplated and which may be required to complete the work in a substantial and acceptable manner. The Contract Documents shall not include any

other documents or agreements not listed in this section. However, the Contractor may be subject to standards and/or requirements set forth in other documents or agreements to which the Contractor is not a party. When such standards and/or requirements are referenced in the Contract Documents and specifically made applicable to the Contractor, the same are hereby incorporated by reference as though fully set forth herein.

9. The term "Contract Change Order" shall mean a written document prepared by the Airport Authority and signed by the Airport Authority and/or the Contractor stating the agreement on one or all of the following: a significant change in the Work; an adjustment in the Contract sum, if any; and an adjustment in the Contract time, if any. All changes in the Work involving price and or time must be authorized by a Contract Change Order.
10. The term "Contract Completion Date" shall mean the date for Completion of the Work as determined by the Contract Time and the Notice to Proceed Date.
11. The word "Contractor" means the person, firm or corporation with whom the Contract is made by the Airport Authority.
12. The term "Contract Time" shall mean the Contract duration for the performance of the Work as specified by the Contract terms or as modified by a Contract Change Order.
13. The word "Engineer" means the designated employee and/or authorized engineer of the Airport Authority, who shall be in charge of the work and who may be represented on the Work by engineers, assistants and inspectors who are authorized to act for him/her within the scope of the particular entrusted duties.
14. The word "Modification" shall mean any written Contract Change Order or supplemental written agreements or any other written and Airport Authority approved modification to the Contract Documents.
15. The term "OCIP" shall mean the Owner Controlled Insurance Program under which worker's compensation, employer's liability, commercial general liability, excess/umbrella liability, excess auto, and builder's risk insurance are procured by the Airport Authority for the Contractor and its subcontractors

while performing operations at or emanating from the Project Site as defined in the OCIP Contractors Information Manual.

16. The word "Plans" shall mean the drawings, profiles, cross-sections, working drawings and supplemental drawings, or reproductions thereof, approved by the Engineer, which show the location, character, dimensions or details of the Work and incorporated into the Contract.
17. The term "President" means the Airport Authority's President and Chief Executive Officer.
18. The terms "Request for Information" or "RFI" are written requests on the form provided by the Airport Authority (see Form 2, "Request for Information," Appendix 1) from the Contractor to the Airport Authority requesting information or clarification of the plans, specifications, drawings or Work which requires a written response from the Airport Authority.
19. The term "Request for Proposal" is a written request from the Airport Authority to the Contractor describing a proposed change in the Work desired by the Airport Authority and which requires a written response from the Contractor. The Contractor shall respond in the form of a Change Order Request.
20. The term "Substantially Complete" or "Substantial Completion" shall mean when the Work is completed to a sufficient degree and quality, and in strict accordance with the Contract, so as to allow the total and complete use of the Work for all intended purposes. If the Airport Authority is not able to use the Work for one or more of its intended purposes, no matter how small the purpose may be, the Work is not Substantially Complete.
21. The words "Work" or "Project" mean everything required to be furnished or performed under the Contract Documents as defined.
22. The term "Work Site" shall mean the physical location of the Work as particularly identified in the Special Provisions.
23. The term "written direction" is a written direction from the Engineer or its authorized representative which may be in response to a Request for Information, bulletin (See Form 4,

Bulletin," Appendix 1) or any other written form from the Airport Authority to the Contractor.

1C-1.3 INCORPORATION

Whenever a reference is made to any portion of this Contract or any other applicable law or ordinance, the reference applies to all existing and future amendments and additions.

1C-1.4 DIVISIONS OF PLANS AND SPECIFICATIONS

- A. All sections of the specification shall be read and interpreted as constituting a whole and not as an aggregation of individualized parts, and whatever is specified in one section shall be construed as applying to all sections.
- B. The division of the specifications into a number of sections, articles or specifications is for convenience only, and no other construction or interpretations shall be made. In this respect, no section of the specifications is written for an individualized trade, occupation or profession.
- C. The specifications may consist, in part, of abbreviated or "streamlined" type and include incomplete sentences. Omissions of words or phrases such as "the Contractor shall," "in conformity therewith," "shall be," "as noted on the drawings," "according to the plans," "a," "an," "the," and "all" are intentional. Omitted words and phrases shall be supplied by inference in the same manner as they are when a "Note" occurs on drawings. Words "shall be," or "shall" will be supplied by inference where colon (:) is used within sentences or phrases.

1C-1.5 EFFECT OF PLANS AND SPECIFICATIONS

- A. The plans, together with the attached specifications, will govern the Work to be done. Anything mentioned in these specifications and not shown on the plans and detailed drawings, or shown on the plans and detail drawings and not mentioned in these specifications, shall be of like effect as though shown or mentioned in both. The Contractor shall perform all activities at no extra cost to the Airport Authority that are reasonably inferable from the Contract Documents as being necessary to produce and/or achieve the intended results.
- B. The Engineer may furnish from time to time such detail drawings, plans, profiles and information as may be considered necessary for

the Contractor's guidance or clarification, unless otherwise provided in the proposal, agreement or detail specifications. In cases where the Contract Work or any portion thereof is to be performed in accordance with drawings, specifications or lists of data submitted by the Contractor and approved by the Engineer, such approved drawings, submittals, etc., shall become portions of the plans and specifications regarding the specific matters to which such approval applies. The Contractor shall be solely responsible for the correctness of the measurements and other essential information submitted by it and for the correlation of the various portions and features of the Work which are or may be affected by such measurements and information.

- C. Any change required by the Engineer in the drawings, submittals, etc., submitted for approval by the Contractor, shall be considered as necessary in order to comply with the requirements of the plans and specifications, and shall not be the basis of any claim for extra compensation over and above the bid price for the Work, except where changes involving extra work are expressly authorized and ordered in accordance with the section of these specifications relating to changes and extra work.
- D. A copy of the plans and specifications shall be kept upon the Work Site at all times during its progress and access shall at all times be accorded the Engineer.
- E. The Contractor shall, for the price bid, furnish all supervision, labor, materials, transportation and equipment necessary to execute the Work in every respect in a thorough, skillful, workmanlike manner in accordance with the Contract Documents and to the satisfaction of the Engineer. All work shall, during its progress and until its Completion, conform to the lines, elevations and grades shown on said plans and profiles.
- F. The Contractor, upon Completion of the Project, or at any other time at the Airport Authority's request, shall turn over any/all documentation associated with the Project, including, but not necessarily limited to:
 - 1. "Permitted" (perforated) set of construction documents (working drawings)
 - 2. "Signed-off" inspection card (original)
 - 3. Original (or copy if original is not available) of all plan review comment sheets.

4. Copy of permit application form.
5. Copy of hazardous materials questionnaire forms.
6. Any/all notifications received in the field from City of San Diego Building Inspection Department (or other relevant agency) relative to the Project.
7. Water meter data card.

1C-1.6 PRECEDENCE OF DOCUMENTS

In case of any conflict, the order of precedence of the following documents in controlling the Work shall be: (1) Permits from outside agencies required by law and applicable codes or laws, (2) Change Orders, (3) Addenda, (4) Special Conditions, (5) Special Provisions, (6) Plan Details, (7) Plans, (8) General Conditions, (9) Specifically referenced Standard Specifications and Drawings, e.g., Greenbook.

1C-1.7 INTERPRETATION/NOTIFICATION REQUIREMENTS

- A. Interpretation of Plans and Specifications: Should it appear that the Work to be performed or that the Contract Documents are not sufficiently detailed or explained, or should any questions or doubts arise as to the true meaning of any part of the Contract Documents, or shall an error, conflict, ambiguity or mistake be apparent or discovered in the Contract Documents, including the quantity estimates, the Contractor shall make a written request to the Engineer immediately upon discovery for correction, clarification or interpretation of the point(s) in question. Upon receipt of such request, the Engineer shall provide the Contractor a written interpretation correcting, clarifying or interpreting the point(s) in question, which interpretation shall be final and become a part of the Contract. Should the Contractor require clarification of the response from the Engineer, the Contractor shall number the new request as #1, #2, etc, and shall refer to the previous request for information. Should any interpretation, in the opinion of the Contractor, exceed the scope of the Contract Documents, written notice shall be given to the Airport Authority within seven (7) calendar days of the receipt of the Engineer's interpretation and prior to proceeding with the Work in question unless directed otherwise by the Airport Authority. The Engineer may amend its original interpretation, authorize extra work as a Contract Change Order and authorize an extension of time, if applicable, in accordance with the provisions of Article 7 (Change in the Work) or

the Engineer may direct the Contractor to proceed with the original interpretation. The Contractor's failure to provide such notice or the installation of any such Work without authorization or written direction shall relieve the Airport Authority of any claim for added costs or for extensions of time.

- B. Interpretation of Contract Documents: Tenses – The present tense includes the past and future tenses and the future the past. Gender – The masculine gender includes the feminine and neuter. The neutral gender includes the masculine and feminine. Number – The singular number includes the plural and the plural includes the singular.
- C. Where references are made in these specifications to other publications, such publications shall be the latest issue available on the bid date of this specification, except that the Standard Specifications for Public Works Construction (SSPWC) shall be the latest issue adopted by the City of San Diego, complete with the City of San Diego Standard Special Provisions adopted at the same time and the Uniform Building Code (UBC) adopted by the City of San Diego, including UBC revisions adopted therewith. All specified portions of referenced publications shall be a part of these specifications as though quoted in their entirety herein, except that all measurement and payment clauses included in any references are superseded by the provisions of these specifications. Any reference to a controlling authority in any referenced portion shall be considered to mean the Engineer of the Airport Authority. Other publications shall only apply if specifically referenced.

1C-1.8 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

The Contract Documents, including Contractor shop drawings and submittals, were prepared for use for the Work of this Contract only and are the sole property of the Airport Authority. No part of the Contract Documents shall be used by the Contractor for any other construction or for any other purpose except with the written consent of the Airport Authority. Any unauthorized use of the Contract Documents is at the sole risk and liability of the user.

ARTICLE 2 - AIRPORT AUTHORITY

1C-2.1 AIRPORT AUTHORITY'S RIGHT TO STOP WORK

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents or fails to carry out Work in

accordance with the Contract Documents or for any cause whatsoever, the Engineer may order the Contractor to stop the Work, or any portion of the Work, until the cause for such order has been eliminated; however, the Engineer's right to exercise this provision shall not be for the benefit of the Contractor or any other person or entity. If the Engineer stops the Work because of conduct by the Contractor, its agents, representatives or subcontractors, no compensation in time or money shall be owed to the Contractor for such stoppage.

1C-2.2 AIRPORT AUTHORITY'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out Work in accordance with the Contract Documents and fails within ten (10) days or within the time specified, whichever is less, after receipt of written notice from the Airport Authority to commence and continue correction of such default or neglect with diligence and promptness, the Airport Authority may by any means acceptable to it, without prejudice to other remedies the Airport Authority may have, correct such deficiencies. In such case an appropriate Contract Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost or estimated cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor and/or its surety shall pay the difference to the Airport Authority.

1C-2.3 NO WAIVER OF RIGHTS

- A. Observation or Inspection by the Airport Authority or its authorized agents or representatives, any order or certificate for payment of money, any payment for, acceptance of the whole or any part of the Work by the Airport Authority, any extension of time, any position taken by the Airport Authority or its authorized agents or representatives shall not operate as a waiver of any provision of this Contract, or of any power herein reserved by the Airport Authority or any right to damages. No waiver of any breach of Contract shall be held to be a waiver of any other or subsequent breach, and payment shall not be deemed to be the equivalent of acceptance.
- B. All remedies provided in this Contract shall be taken and construed as cumulative; that is, in addition to each and every remedy provided herein, the Airport Authority shall have any and all equitable and legal remedies that it would otherwise have.

1C-2.4

AIRPORT AUTHORITY'S ADMINISTRATION OF THE CONTRACT

- A. The Airport Authority will administer the Contract as described in the Contract Documents, unless notice is given to the Contractor that a Construction Manager or like entity has been retained to administer the Contract.

- B. The Work will be performed under the jurisdiction of the Engineer, who may execute general control over the conduct of the Work as may be necessary to safeguard the interest of the Airport Authority. The Contractor shall promptly comply with any and all orders and instructions given by the Engineer in accordance with the terms of this Contract. The Contractor assumes all risks and consequences of performing the Contract in accordance with any order, including but not limited to, instruction, direction, interpretation or determination, of anyone not authorized to issue such order.

1C-2.5

AUTHORITY OF ENGINEER

- A. The Engineer will decide all questions which may arise as to acceptability of:
 - 1. Materials furnished.
 - 2. Quality of workmanship.
 - 3. Manner of work performed.
 - 4. Rate of work progress.
 - 5. Equipment used in work performance.
 - 6. Labor furnished, including acceptability of subcontractors.
 - 7. Arrangements for public access.
 - 8. Traffic control devices furnished.
 - 9. Pay estimates.
 - 10. Work hours.

- B. The Engineer will decide questions arising under the Contract, including but not limited to:
 - 1. Interpretation of Contract Documents, including plans and specifications.
 - 2. Interpretation of applicable codes.
 - 3. Quantity of work performed.
 - 4. Acceptable fulfillment of the Contract on the part of the Contractor.
 - 5. Substantial Completion
 - 6. Completion

- C. Except as provided herein , including but not limited to Article 10, “Claims and Disputes” or by law, the decision of the Engineer will be final. The Engineer has authority to enforce and make effective such decisions that the Contractor fails to promptly carry out.

1C-2.6

AIRPORT AUTHORITY’S OBSERVATION OF WORK

- A. Inspectors employed by or on behalf of the Airport Authority shall be authorized to observe all work done and all materials furnished. Such observation may extend to all or any part of the Work and to the preparation, fabrication or manufacture of the materials to be used. The inspector is not authorized to revoke, alter or waive any requirements of the specifications or Contract Documents. The inspector is authorized to call to the attention of the Contractor any failure of the Work or materials to conform to the specifications and Contract. He shall have the authority to reject materials or suspend the Work until any questions at issue can be referred to and decided by the Engineer.
- B. The inspector shall in no case act as foreman or perform other duties for the Contractor, nor interfere with the management of the Work by the latter. Any advice that the inspector may give the Contractor shall not be construed as binding to the Engineer in any way or as releasing the Contractor from fulfilling all the terms of the Contract.
- C. If the Contractor refuses to suspend operations on verbal order, the inspector shall issue a written Notice to Stop Work giving the reason for shutting down the Work. (See Form 8, “Notice to Stop Work,” Appendix 1) After placing the order in the hands of the Contractor or its agent, the inspector shall immediately leave the job. Work done during the absence of the inspector will not be accepted nor paid for, and any associated expense shall be the sole responsibility of the Contractor.
- D. Observation of a method of procedure, process or system of operations of the Contractor, or failure of the Engineer to warn the Contractor that the method or methods of construction adopted by it are hazardous to persons or to property, shall not relieve the Contractor of its obligations hereunder, including the obligations of indemnification of the Airport Authority, nor give rise to any claims against the Airport Authority.
- E. If the project is wholly or partially federally funded, the Work Site may be inspected at any time by a representative of the funding federal agency.

1C-2.7 DEFECTIVE WORK – NOTICE TO CONTRACTOR

- A. If, in the opinion of the Engineer, Work is not being done in accordance with any applicable codes or laws or the plans and specifications, written notice as provided in Section 1C-2.2 shall be given to the Contractor or its authorized agent. (See Form 6, “Nonconformance Report,” Appendix 1) Written notice to any foreman or agent in charge of any portion of the Work in the absence of the Contractor shall be considered as notice to the Contractor.

- B. Work which is defective in its construction or deficient in any of the requirements of these specifications, will not be considered as accepted in consequence of the failure of any employee of the Airport Authority or inspector connected with the Work to point out said defects or deficiency during construction. The Contractor shall at its sole expense correct any imperfect work whenever discovered. If Contractor refuses or neglects to replace defective work, such work may be replaced by the Airport Authority in accordance with 1C-2.2, after notice to the Contractor and its sureties, at the expense of the Contractor, and the Contractor and its sureties shall be liable therefor. If directed by the Airport Authority, the Contractor shall uncover and/or expose work for its inspection by the Airport Authority. Should the work thus exposed or examined prove acceptable, adjustments in Contract Time and price will be made pursuant to this Contract for the uncovering or removing, and the replacing of the covering or making good of the parts removed. Should the work exposed or examined prove unacceptable, the uncovering or removing and replacing shall be at the Contractor’s expense.

1C-2.8 ACCEPTANCE OF NONCONFORMING WORK

If in the judgment of the Airport Authority, it is undesirable or impracticable to replace any defective or nonconforming Work, the compensation to be paid to the Contractor shall be reduced by Contract Change Order by such amount as in the judgment of the Airport Authority shall deem equitable.

ARTICLE 3 - CONTRACTOR

1C-3.1 REVIEW OF CONTRACT AND FIELD CONDITIONS

- A. The Contract Documents are not complete in every detail but show the purpose and intent only and the Contractor shall comply with the Contract Documents true intent and meaning, taken as a whole, and shall not avail itself of any manifest error, omission,

discrepancy or ambiguity which appears in the Contract Documents, instructions or Work performed by others.

- B. The Contract Documents are complementary and what is called for by any one shall be binding as if called for by all. This provision does not negate the precedence of documents outlined in Section 1C-1.6.
- C. Before ordering any materials or doing any work, the Contractor shall verify all measurements, dimensions, elevations and quantities. No extra charge or compensation over and above payment for the actual quantities of the various items of work at the respective bid prices will be allowed on account of differences between actual measurements, dimensions, elevations and quantities and those indicated on the drawings and in the specifications; any difference therein shall be submitted to the Engineer in accordance with Section 1C-1.7.A. for consideration before proceeding with the Work. The quantities noted in the schedules of the proposal are estimates for comparing bids only.
- D. The Contractor shall notify the Airport Authority in writing immediately or no later than five (5) calendar days upon the discovery of errors, omissions, discrepancies or ambiguities in the Contract Documents as provided in Article 1, at 1C-1.7.
- E. If the Contractor proceeds with the work without receiving an interpretation as provided in Article 1, at 1C-1.7, the Airport Authority shall be relieved of any liability and Contractor shall be responsible for all resulting damage and defects.
- F. As required to maintain the progress of the Work, the Contractor shall review the appropriate portions of the Contract Documents a minimum of thirty (30) days prior to the commencement of the related Work for the express purposes of checking for any manifest errors, omissions, discrepancies or ambiguities and shall notify the Airport Authority of any as required by Subsection D, above.
- G. The Contractor shall be responsible for its costs to implement and administer a Request for Information (RFI) system throughout the Contract Time. Regardless of the number of RFIs (or written directions) issued, the Contractor will not be entitled to additional compensation or additional Contract time unless the cause and impacts of each RFI are identified and attributable to parties other than the Contractor. The Contractor shall be responsible for the Airport Authority's administrative costs for answering RFIs where the answer could reasonably be found by reviewing the Contract

Documents or are solely for the convenience of the Contractor; such costs may be deducted from progress payments.

1C-3.2

SUPERVISION AND CONSTRUCTION PROCEDURES

- A. The Contractor shall supervise and direct the Work, using its best skill and attention, and shall determine, subject to applicable law, the means and methods to be implemented. The Contractor is at all times responsible for the Work Site until acceptance of the project as defined in Article 9. The Contractor shall at all times during the performance of the Contract prosecute the Work with such forces and equipment as, in the opinion of the Engineer, are appropriate to complete the different portions of the Work in the order required and within the specified time, and to secure a satisfactory quality of Work. The Contractor shall submit a Daily Activity Report to the Engineer for each Work day including weekends and holidays, which shall include the information addressed as required in the pre-construction conference and on the form provided by the Airport Authority. Failure to submit a Daily Activity Report as required herein may result in the Airport Authority retaining an amount equal to 10 percent of the estimated value of the work performed during the month from the next submitted Progress Estimate, except that such retention shall not exceed \$10,000, nor be less than \$1,000. Upon receipt of the required Daily Activity Report, any such withheld amounts will be released with the next progress payment. Until such time as the final Daily Activity Report information is provided, no Final Payment shall be due and owing. The delivery of a Daily Activity Report to the Airport Authority shall not be deemed the acceptance of the accuracy of the information contained therein. The Airport Authority shall have no obligation to correct any discovered discrepancies or errors therein, but may, at its discretion, notify the Contractor of any such error or discrepancy.
- B. Supervision:
1. General: The Contractor shall at all times, while the Work is in progress, be represented on the Work in person, or by superintendents, foremen, managers, or other duly designated and authorized representatives or agents. The work of such representatives shall be limited to supervisory duties only. The Contractor shall not designate a subcontractor as its representative. In the event the Contractor's representative's authority is limited in any way, the Contractor shall notify the Airport Authority within ten (10) days after entering into the Contract of such limitation.

2. Contractor's Residence: The Contractor or its authorized representative shall reside in San Diego County from the start of the Work to final acceptance of the Work and its residence in San Diego County shall have an active telephone.
3. Contractor's Headquarters: Before starting Work, the Contractor shall give the Engineer a written statement of the address and telephone number of the Contractor's headquarters in San Diego County for the duration of the Work.
4. Contractor's Representative: When a Contractor cannot be in person on the Work site during its progress, it shall designate in writing to the Engineer the name of its authorized representative in charge of the Work. When a Contractor consists of a multiple entity such as, but not limited to, two or more persons, partnerships, corporations, firms or other entities, such Contractor shall designate in writing to the Engineer the name of the authorized representative in charge of the Work.
5. Contractor's Representative – Responsibility of: In the absence of the Contractor, its authorized representative shall be empowered in writing to act for the Contractor. Any order given by the Engineer to the Contractor's authorized representative shall be construed to have been given to the Contractor.
6. Contractor – Availability of: The Contractor or its authorized representative shall be available day and night for all the calendar days during the Contract Time. The Contractor or its authorized representative shall provide the Airport Authority with a prioritized list of personnel to be contacted during emergency situations who can respond to emergencies and/or have the authority to direct other employees to respond to such emergencies. This list shall contain the names and local telephone numbers of these individuals and shall be submitted on or before commencement of construction of the Work. The listed personnel shall be subject to call by the Engineer at any time (24 hours a day) during the Contract Time, when, in the opinion of the Engineer, its presence is required on the Work Site or for any other purpose related to the Work.

- C. The Contractor shall conduct the Work in compliance with all laws and regulations of the United States Government, the State of California, the County of San Diego, the Airport Authority and the appropriate municipal jurisdiction, limiting or controlling the Work in any manner. Unless otherwise provided by the Contract, the Contractor shall at its own expense obtain all necessary permits, including but not limited to building permits, licenses and pay all fees and taxes required by law.

1C-3.3 LABOR AND PREVAILING WAGES

- A. Labor: None but skilled personnel shall be employed on Work requiring special qualifications, and when required by the Engineer, the Contractor shall take the necessary action to remove from the Work any person who is, in the opinion of the Engineer, disorderly, dangerous, insubordinate, incompetent or otherwise objectionable. Such removal shall not be the basis of any claim for compensation or damages against the Airport Authority or any of its officers.
 - 1. Eight Hour Day: Unless as otherwise excepted by law, neither Contractor nor any subcontractor doing work pursuant to the terms of this Contract shall require or permit any worker to work more than eight (8) hours per day and forty (40) hours in any one week, provided, however, work performed in excess of eight (8) hours per day shall be compensated at the rate of no less than one and one-half times the basic rate of pay.
 - a. Contractor shall, as a penalty to Airport Authority, forfeit twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in one calendar day and forty (40) hours in any one calendar week unless compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours per week is not less than as required by law.
 - b. Contractor and each subcontractor shall keep an accurate record showing the name, labor classification and actual hours worked each calendar day and each calendar week by each worker employed by it in connection with the Work performed pursuant to this Contract, and shall make such records available for inspection at all reasonable

hours by the Airport Authority and the Division of Labor Standards Enforcement. Neglecting to comply with this section is a misdemeanor.

2. A Contractor or subcontractor who has been debarred pursuant to Labor Code Section 1777, et seq. shall not bid, work on or be awarded any Airport Authority Contracts.

B. Wage Rates (Prevailing Wages):

1. In accordance with the provisions of Labor Code Section 1773, the Airport Authority has ascertained from the Department of Industrial Relations the general prevailing rate of per diem wages (which rates include employer payments for health and welfare, vacation, pension and similar purposes) and the general prevailing rate for holiday and overtime work in the locality in which the Work is to be performed under this Contract for each craft, classification or type of worker needed to perform the Contract, which rates are set forth in the Special Conditions or are on file and available for inspection at Airport Authority offices at 2320 Stillwater Road, San Diego, California. A copy of the wage rates shall be posted on the Work Site by the Contractor.
2. Contractor and each subcontractor shall pay not less than the specified prevailing rates of wages to all workers employed in the execution of this Contract. As allowed by law, the Contractor shall, as penalty to Airport Authority, forfeit not more than Fifty Dollars (\$50.00) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing rates for such Work or craft in which such worker is employed for any Work done under this Contract, including Work for any subcontractor. The amount of said forfeiture shall be determined by the Labor Commissioner in accordance with Labor Code Section 1775. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor pursuant to the provisions of Labor Code Section 1775. The Airport Authority shall not be liable or responsible in any manner to any subcontractor or worker who is paid less than the prevailing rate.
3. The Airport Authority shall not recognize or be responsible for any claim for additional compensation because of

payment by the Contractor for any wage rate in excess of the wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining its bid.

4. Any Contractor who is awarded a public works Contract and who intends to use a craft or classification not shown on the general prevailing wage determinations shall pay the wage rate of that craft or classification most closely related to it as shown in the general wage determinations effective on the bid date of the project.
5. The Contractor shall comply with Labor Code Section 1775, (b).

C. Payroll records:

1. Contractor and each subcontractor shall keep an accurate, certified payroll record of the name, address, social security number, work classification, occupation, straight time and overtime hours worked each day and week, and actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by it in connection with Work performed under this Contract. The Contractor shall submit, on a weekly basis, a certified copy of each payroll on Form WH-347 (U.S. Dept. of Labor) to the Airport Authority. In lieu thereof and subject to the Airport Authority's approval, the Contractor may submit a computer printout of the complete payroll information with a cover certification on Form WH-348 (Statement of Compliance). Certified copies of all such records and the U.S. Department of Justice Form I-9 (or its equivalent) shall be made available for inspection or furnished upon request to the Airport Authority, the Division of Apprenticeship Standards and the Division of Labor Standards Enforcement in accordance with the provisions of Labor Code Section 1776. Certified copies of such record shall be made available to the public as provided in Section 1776. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or its representative on request. Contractor shall be responsible for compliance with these provisions and with the requirements of Labor Code Section 1776.
2. Contractor and each subcontractor shall provide monthly payroll figures for pay periods within each calendar month by submitting a completed Payroll Reporting Form to the OCIP

Administrative Broker as defined in the OCIP Contractor Information Manual. It is the Contractor's sole responsibility to ensure that each subcontractor promptly and accurately submits the required payroll information. At the Completion of Work, the submitted Payroll Reporting Form shall be marked "final."

3. Failure to submit payroll reporting forms as required herein may result in the Airport Authority retaining an amount equal to 10 percent of the estimated value of the work performed during the month from the next submitted Progress Estimate, except that such retention shall not exceed \$10,000, nor be less than \$1,000. Upon receipt of the required payroll forms, any such withheld amounts will be released with the next progress payment. Until such time as the final payroll information is provided, no Final Payment shall be due and owing.

1C-3.4 MATERIALS AND SAMPLES

- A. All materials shall be new and of the specified quality and fully equal to samples, where samples are required or requested. The Contractor shall furnish to the Engineer for review or test, whenever requested and free of charge, samples of all materials proposed to be used in the Work. It shall also submit any required detailed drawings of articles or equipment for Airport Authority approval. Rejected materials must be immediately removed from the Work Site and shall not be brought again upon the Work or used in the Work.
- B. Materials furnished by the Airport Authority:
 1. In cases where the Airport Authority furnishes all or a portion of the equipment or materials to be used in the Work ("materials"), the Contractor shall accept delivery of such materials as may be provided. If the Contractor is required to haul such materials under this Contract to the Work Site, it shall pick them up promptly after notification by the Engineer, and shall pay at its own cost any demurrage or other charges which have accrued due to its failure to pick up the materials promptly.
 2. Contractor shall be responsible for the materials including proper storage and handling from the time it receives them until final acceptance of the Work and it shall replace or repair, at its own cost in a manner satisfactory to Engineer,

any of the materials which are lost or damaged after the Contractor's receipt of same.

3. Any Airport Authority furnished materials which remain unused at the Completion of the Work shall be delivered by the Contractor to the Airport Authority's storage yard designated by the Engineer.
4. All compensation to be received by the Contractor for handling and protecting Airport Authority furnished material is included in the Contract price, and no extra compensation will be paid to the Contractor for complying with the provisions of this section.

1C-3.5 GUARANTEE

In addition to, but not in limitation of, the provisions of California Code of Civil Procedure Sections 337.1 and 337.15, all work shall be guaranteed by the Contractor against defective workmanship and materials for a period of one (1) year from the later of (a) the date of Substantial Completion, if any, (b) the date of Completion, if any, or (c) the date of termination of the Contract, if any. The Contractor shall promptly replace or repair, in a manner satisfactory to the Engineer, any such defective work after notice to do so from the Engineer, and upon the Contractor's failure to make such replacement or repairs promptly, the Airport Authority may perform this Work and the Contractor and its sureties shall be liable for the cost thereof. For any Work which is replaced or repaired pursuant to this provision, a new one (1) year guarantee period shall begin after acceptance by the Airport Authority of the repaired or replaced Work.

1C-3.6 RECORD DRAWINGS AND TESTS

- A. The Contractor shall maintain at the Work Site record set of full-size project drawings upon which all field changes are recorded on a daily basis. This data shall be legibly recorded on blueline prints (furnished by the Engineer) to the satisfaction of the Engineer. Records shall be kept up to date with all entries checked by the Engineer before the work is buried or otherwise concealed. In the event the Contractor fails to maintain record drawings up to date on a monthly basis (see Form 3, "As Built Drawing Certification," Appendix 1), as required herein, the Airport Authority shall retain an amount equal to 10 percent of the estimated value of the work performed during the month from the next submitted Progress Estimate, except that such retention shall not exceed \$10,000, nor be less than \$1,000. Upon the Contractor producing the required up to date record drawings, any such withheld amounts will be

released with the next progress payment. Until such time as the final up to date record drawings are produced, no Final Payment shall be due and owing.

- B. Upon Completion of the Work and as a condition precedent to acceptance and the issuance of final payment, the Contractor shall deliver to the Engineer a complete set of corrected prints, in good condition and with complete installation and every change in the Work indicated thereon whether concealed or visible.
- C. Any work showing faults under test, and any Work not in accordance with the specifications and the accompanying drawings, shall be made good by the Contractor at its own expense.
- D. Should the Contractor refuse or neglect to make any tests necessary to satisfy the Engineer or its representative that it has carried out the true intent and meaning of the specifications, the Airport Authority may make such tests and charge the expense to the Contractor, to be retained out of a progress or final payment as provided in these General Conditions.
- E. The Airport Authority may require the testing of materials by a competent testing laboratory of its selection or by other means. The cost of the material to be tested, delivered to the point of testing, shall be borne by the Contractor and the cost of the initial tests will be borne by the Airport Authority. The Contractor shall pay all costs for subsequent tests where work or material fails to pass initial tests. Any Work or material showing faults under test shall be corrected by the Contractor at its own expense.

1C-3.7 UTILITIES

Contractor shall provide at its own cost all utilities, including water, which are necessary for performance of Work. Said utilities, including water, shall be from sources approved by the Engineer.

1C-3.8 RIGHT-OF-WAY

The right-of-way for Work to be constructed under this Contract will be provided by the Airport Authority. Right-of-way Agreements may be inspected at the office of the Engineer.

1C-3.9 SANITATION

The Engineer may establish sanitary and police rules and regulations for all forces employed under this Contract and the Contractor shall be responsible for compliance therewith, and in the event of noncompliance, the Engineer may enforce them at the expense of the Contractor. The Contractor shall provide its own sanitary facilities unless permission to use Airport Authority facilities is granted by the Airport Authority in writing or in the Special Conditions.

1C-3.10 DATUM PLANE AND MEASUREMENTS

All distances shown on the plans, profiles or other drawings are in feet and decimals of the foot or in feet and inches. Depth or elevations are in feet and decimals of a foot, and are above (plus) or below (minus) the U.S. Coast and Geodetic Survey zero or mean lower low water as established for the Bay of San Diego, unless another datum plane is indicated on the drawings.

1C-3.11 SETTING STAKES

The Contractor shall lay out its work from Airport Authority established base lines and bench marks indicated on the drawings and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the Work. The Contractor shall be responsible for executing the Work to the lines and grades that may be established or indicated by the Airport Authority. The Contractor shall be responsible for maintaining and preserving all stakes and other marks established by the Airport Authority until authorized to remove them. If such marks are destroyed by the Contractor or its agents before their removal is authorized, the Airport Authority may replace them and deduct the expense of the replacement from any amount due or to become due to the Contractor.

1C-3.12 TRENCHES OR OTHER EXCAVATIONS AND HAZARDOUS OR CONTAMINATED CONDITIONS

A. In Contracts exceeding \$25,000.00, the Contractor shall comply with Labor Code Section 6705. In the event an excavation is five (5) or more feet in depth, the Contractor shall cause a competent person to be placed at the site of the Work for the purposes of observing backfilling operations in those cases where the backfill operator is unable to see into the excavation. The Contractor shall make sufficient excavation to construct all of the Work shown on the drawings or specified herein and shall abide by the

Construction Safety Orders issued by the Division of Industrial Safety of the State of California. The Contractor shall submit to the Engineer a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection. If such plan varies from the shoring system standards established by the Division of Industrial Safety, the plan shall be prepared by a registered civil engineer or structural engineer. No shoring, sloping or protective system less effective than that required by the Division of Industrial Safety shall be used. All permits for excavating in excess of five (5) feet shall be obtained by the Contractor and shall be the Contractor's sole responsibility.

- B. If this Contract involves digging trenches or other excavations below the surface no matter the depth, the Contractor shall promptly, and before the following conditions are disturbed, notify the Airport Authority, in writing of any:
1. Material that the 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.
- C. The Airport Authority shall promptly investigate the conditions, and if it finds that the conditions materially differ, or involve hazardous waste and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work, may issue a Contract Change Order under the procedures described in this Contract.
- D. In the event that a dispute arises between the Airport Authority and the Contractor whether the conditions materially differ, involve hazardous waste, or cause a decrease or increase in the Contractor's cost of or time required for performance of any part of the Work, the Contractor shall not be excused from any scheduled Completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor

shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests.

- E. In the event conditions involve hazardous waste or contaminated material or other materials which may require remediation or special handling, the Contractor shall not move or disturb the materials or objects and shall immediately notify the Engineer both verbally and in writing. If it is determined that remediation or special handling is required, the Airport Authority will take all action necessary to remediate or handle such materials, including, but not limited to, hiring a third party Contractor to perform the remediation or other work or issue a Contract Change Order to the Contractor.

1C-3.13 EXISTING UTILITIES, IMPROVEMENTS AND OBSTRUCTIONS

- A. Whenever any pole, structure, culvert, conduit, cable or other obstruction, either above or below ground surface within the area to be utilized by the Contractor in the performance of the Work is, or may be affected by the Contractor's operations, the Contractor shall preserve the same intact or it shall make such arrangements with the owner of same for its protection, support, alteration or removal and reinstallation, as may be required by the conditions encountered.
- B. The Contractor shall notify in advance and cooperate with each owner of poles, structures, pipes, culverts, conduits, cables or other improvements that may be encountered or affected in any way by the Work under this Contract. It shall be the responsibility of the Contractor to verify the existence and exact location of existing utilities prior to construction.
- C. Where water mains or services are altered or removed and reinstalled either to avoid interference with the Work under this Contract or for the convenience of the Contractor, such alteration, removal and reinstallation shall be performed in accordance with the rules and regulations of the owner, and the cost shall be borne as outlined in the following paragraphs.
- D. It shall be the Contractor's responsibility at its sole expense to verify the existence and the exact location of existing underground utilities prior to excavation. Contractor shall pothole to determine depths and exact location of utilities prior to excavation in the area. The Contractor shall uncover sewer laterals, telephone and electric conduits, water mains and gas mains or any other major utility crossings and other high risk underground facilities in advance of trenching operations a minimum of five (5) working days sufficient

to permit grade changes, should such changes be required. The cost of such work shall be included in the Bid for items of work necessitating such location.

- E. Unless otherwise specifically provided in these Contract Documents, all costs of protecting, potholing, supporting, altering, obliterating, removing, salvaging, reconstructing and reinstalling pipes, poles, structures, trees and other obstructions, shall be borne by the Contractor, including facilities which are altered or removed and reinstalled for the Contractor's convenience, except:
1. Unless otherwise provided, where a subsurface obstruction is encountered which is not shown on the Contract drawings or mentioned in the specifications.
 2. Where it is necessary to remove or alter obstructions which are maintained under a Airport Authority franchise, ordinance, Contract, permit or other agreement by the terms of which the obstruction is required to be moved or adjusted.
 3. The Airport Authority shall not be required to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Work Site can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the construction; provided, however, nothing herein shall relieve the Airport Authority from identifying main or trunklines in the plans and specifications. The Airport Authority shall compensate the Contractor for the costs of locating, repairing damage not due to the failure of the contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the project necessarily idled during such work.
- F. Except as otherwise expressly provided herein, the Contractor shall not be entitled to any additional compensation due to the presence of, or interference, delays or expense caused by obstructions, or the removal and/or replacement of obstructions where such obstructions could have been reasonably anticipated and such removal and/or replacement is required for proper Completion of the Work. The Contractor shall not be assessed liquidated damages as provided by Section 1C - 8.3 for delay in the Completion of the Work, when such delay was caused by the failure of the Airport Authority or the owner of the utility facilities as provided by Government Code Section 4215.

- G. Where the Work requires the removal of or damage to existing pavement, sidewalks, curbs, lawns, shrubbery, trees, hedges, gardens, drives, walls, fences, buildings or other improvements, the Contractor shall take precautions to limit the removal or damage to the least practicable amount; and it shall at its own cost replace or restore said improvements to as near its original location and condition as it reasonably possible, except as otherwise provided. Great care shall be exercised in placing and compacting backfill in areas where improvements are to be placed upon said backfill.
- H. Trees shall not be removed without the express permission of the Engineer or as shown in the Contract Documents. Damage to or excessive trimming of trees in the street or right-of-way shall be avoided. If directed by the Airport Authority, the Contractor shall replace with like kind any tree removed and/or overly trimmed in violation of this provision.

1C-3.14 ROYALTIES AND PATENTS

The Contractor shall hold and save the Airport Authority, its officers, agents, servants and employees harmless from liability of any nature or kind, or any damages, claims for damages, costs or expenses in law or equity, including attorneys' fees therefor, for or on account of any infringement of the patent rights, copyright or trademark of any person of any patented invention, article or appliance included in the material or supplies furnished under this Contract, and should the Contractor, its agents, servants, employees, or any of them, be enjoined from furnishing or using any invention, article, material or appliance supplied or required to be supplied or used under this Contract, the Contractor shall promptly substitute other articles, materials or appliances in lieu thereof, of equal efficiency, quality, finish, suitability and market value and satisfactory in all respects to the Engineer. In the event that the Engineer elects, in lieu of such substitutions, to have supplied and to retain and use any such invention, article, material or appliance as may by this Contract be required to be supplied, then the Contractor shall pay such royalties and secure such valid licenses as may be requisite and necessary to enable the Airport Authority, its officer, agents, servants and employees, or any of them, to use such invention, article, material or appliance without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof. Should the Contractor neglect or refuse promptly to make the substitution hereinbefore required, or to pay such royalties and secure such licenses as may be necessary and requisite for the purpose aforesaid, then in that event, the Engineer shall have the right to make such substitution, or the Airport Authority, its agents, officers, servants and employees, may pay such royalties and secure such licenses and charge the cost thereof against any money due the Contractor from the Airport

Authority or recover the amount thereof from its sureties, notwithstanding final payment under this Contract may have been made. The provisions of this paragraph do not apply to articles which the Contractor is required to manufacture or furnish in accordance with detail drawings furnished by the Airport Authority, its officers, agents, servants, employees or any of them included in this Contract. The provisions of this paragraph shall apply, however, where such drawings and the specifications cover only the type of device without restrictions as to details.

1C-3.15 INDEMNIFICATION

- A. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Airport Authority, its agents, and employees, from and against any and all claims, damages, liability, judgments, demands, losses and expenses, including, but not limited to, attorneys' fees and costs including consultants' fees, for damage to property of any kind whatsoever and to whomever belonging, including Contractor, and/or for injury to or death of any person or persons, including employees for Contractor or subcontractor of any tier, arising out of or is in any way connected with the acts or omissions, willful misconduct or negligent conduct, whether active or passive of Contractor, Contractor's agents or employees including subcontractors and their agents and employees, arising and/or relating directly or indirectly out of the obligations undertaken in this Contract, the performance of Work under the Contract by Contractor, Contractor's agents or employees including subcontractors and their agents or employees, products installed and/or furnished on the Project by Contractor, Contractor's agents or employees including subcontractors and their agents or employees, or arising from the use of the premises, facilities or services of the Airport Authority, its agents or employees, save and except claims or liability arising through the sole negligence, willful misconduct or active negligence (as provided by California Civil Code Section 2782) of Airport Authority and Contractor shall reimburse Airport Authority for any expenditures, including reasonable attorneys' fees and costs, which Airport Authority may incur by reason of such matters and, if requested by Airport Authority, shall defend any such suit at the sole cost and expense of the Contractor. Failure to defend may, at the sole discretion of the Airport Authority, be grounds for termination or suspension by the Airport Authority of the Contract as provided herein. Such indemnity shall extend to claims, damages, liabilities, judgments, demands, losses and expenses or injuries occurring after Completion of the Project as well as during the Work's progress.

- B. In addition to the foregoing, the Contractor shall defend, indemnify and hold harmless the Airport Authority, its agents, and employees, from and against any and all claims, damages, liability, judgments, demands, losses and expenses, including, but not limited to, attorneys' fees and costs including consultants' fees, to which the Airport Authority may be subject to resulting from the non-Completion of the Contract which negatively affects separate contractors on adjoining or overlapping work. The obligations set forth in this section and Section A , above, are not limited by, but are in addition to, the performance bonds required by this Contract.
- C. In addition to the Contractor's obligation to fully indemnify and hold harmless the Airport Authority, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend Airport Authority from any claim which actually or potentially falls within this indemnification provision, even if the allegations of the claim are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by Airport Authority and continues at all times thereafter.
- D. In the event Contractor or Contractor's insurance carrier fails or refuses to accept the tender of defense of a claim by the Airport Authority or if any such claim exceeds the limits of the Contractor's insurance limits, Airport Authority shall have the right to estimate the amount of damage to third parties to which the Airport Authority may be liable and any estimated amounts for attorneys' fees and costs to defend itself, and to cause the Contractor to pay same, and the amount due the Contractor under this Contract, or the whole or so much of the money due or to become due to the Contractor under this Contract, as may be considered necessary by the Airport Authority, shall be retained by the Airport Authority until such suit or claim for damages, or other remedy, shall have been settled or otherwise disposed of and satisfactory evidence to that effect is furnished the Airport Authority. The Airport Authority's election to exercise or not exercise rights pursuant to this provision shall be in addition to any common law rights which the Airport Authority may possess.

1C-3.16 ASSIGNMENT OF CONTRACT

- A. The Contractor shall not assign this Contract or any rights or duties herein without the prior written consent of both the Airport Authority and the surety in each instance; provided, however, that the Contractor may, with the consent of Airport Authority and surety, make an assignment of any sums of money due or to become due

under this Contract as collateral for financial purposes in connection with the Contract.

- B. Any such assignment shall contain a clause in the instrument of assignment to the effect that it is agreed that the funds to be paid the assignee under the assignment are subject to all liens or claims of any kind whatsoever authorized by law, whether prior or subsequent, for services rendered or materials supplied for the performance of the Work called for in the Contract in favor of all persons, firms or corporations rendering such services or supplying such materials.

1C-3.17 ANTITRUST CLAIMS

- A. These provisions are included in this Contract as required by California law:
 - 1. In entering into a public works Contract or a subcontract to supply goods, services or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the Airport Authority all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the Airport Authority tenders final payment to the Contractor, without further acknowledgement by the parties.
 - 2. In submitting a bid to the Airport Authority, the Bidder offers and agrees that if the bid is accepted, it will assign to the Airport Authority all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials or services by the Bidder for sale to the Airport Authority pursuant to the bid. Such assignment shall be made and become effective at the time the Airport Authority tenders final payment to the Bidders, without further acknowledgement by the parties.

1C-3.18 BANKRUPTCY OF CONTRACTOR

The Contractor shall immediately notify the Airport Authority of its own or of any of its subcontractor's filing for bankruptcy protection and provide the Airport Authority with a copy of the Bankruptcy Case Number and title of the Court in which the petition for bankruptcy was filed. Filing for bankruptcy protection shall be a default of this Contract and grounds for termination as provided by Article 11.

1C-3.19 CONTACT WITH MEDIA

Contractor shall refer all media inquiries to the Airport Authority's Public Relations Department at (619) 400-2400 and shall not speak to media personnel about Airport Authority projects without written permission from the Airport Authority. No media personnel shall be allowed on the Work Site without written permission of the Airport Authority.

ARTICLE 4 - SUBCONTRACTORS

1C-4.1 REQUIREMENTS AT BID

A. List of subcontractors:

1. Every Bidder shall comply with the Subletting and Subcontracting Fair Practice Act, Public Contract Code Sections 4100, et seq., and shall set forth in its bid:
 - a. The name, locale (e.g., city, state) of the place of business for each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the Work or improvement to be performed hereunder who, under subcontract to the Contractor, specially fabricates and installs a portion of the Work or improvement according to detailed drawings in the plans and specifications, in an amount in excess of one-half of one percent (1%) of the Contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of one percent (1%) of the Contractor's total bid or Ten Thousand Dollars (\$10,000.00), whichever is greater.
 - b. A description of the Work to be performed by each subcontractor. The Contractor shall list only one

subcontractor for each portion of the Work as is defined by the Contractor in its bid.

2. If Contractor fails to specify a subcontractor or specifies more than one subcontractor for the same portion of Work to be performed under this Contract, Contractor agrees that it is fully qualified to perform that portion itself and that Contractor shall perform that portion itself.

1C-4.2

SUBCONTRACTUAL RELATIONS

- A. The Contractor shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the Contractor by terms of the Contract Documents and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Contract Documents, assume toward the Airport Authority. The subcontracts shall also require the subcontractors to abide by the obligations set forth in the SDCRAA CIP Safety Manual. Each subcontract agreement shall preserve and protect the rights of the Airport Authority under the Contract Documents with respect to the Work to be performed by the subcontractor so that subcontracting will not prejudice such rights. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with sub-subcontractors. Prior to the execution of the subcontract agreement, the Contractor shall make available to each proposed subcontractor, copies of the Contract Documents to which the subcontractor will be bound, and, upon written request of the subcontractor, identify the terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective sub-subcontractors.
- B. Contractor may be required to furnish the Airport Authority with information as to the technical experience, financial status, location of shop, factory or plant and adequacy of the shop, factory, plant or equipment of each subcontractor identified in its proposal. The Contractor, upon the written request of the Airport Authority, shall provide a copy of any subcontract entered into by the Contractor to the Airport Authority for its review. The Contractor shall not begin Work until the information required herein has been provided to the Airport Authority.
- C. The Airport Authority will promptly notify the Contractor in writing if the Airport Authority, after due investigation, has a reasonable objection to any such proposed subcontractor.

- D. The Contractor shall not Contract with a proposed person or entity to whom the Airport Authority has made a reasonable and timely objection. If the Airport Authority has a reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Airport Authority has no reasonable objection.
- E. Contractor shall include in all subcontracts and in all purchase orders a clause specifically binding the respective subcontractor and supplier to the dispute resolution provisions of these Contract Documents.

ARTICLE 5 - PROTECTION OF PERSONS AND PROPERTY

1C-5.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor has executed the SDCRAA CIP Safety Manual Affidavit and will either abide by its safety program or the requirements of the SDCRAA's CIP Safety Manual (See Appendix 4) and by all applicable federal, state, and local laws and regulations.

1C-5.2 EMERGENCIES

In an emergency affecting safety or protection of persons or property or the Work, the Airport Authority may act without notice to the Contractor and the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss, and shall promptly as conditions permit notify the insurance carrier and the Airport Authority of the nature of the emergency and related circumstances. Immediately thereafter, the Contractor shall prepare a written report setting forth in detail the action taken and describing in detail all circumstances and conditions which are related to such action.

1C-5.3 CARE AND CUSTODY OF WORK/LOSS AND DAMAGE

- A. The Contractor shall be held responsible for, and be required to make good at its own expense, all damage to persons or property caused by Contractor or its subcontractors, agents or the employees of either of them, during the progress of the Work and until Completion.
- B. All loss or damage to the Work arising from any unforeseen difficulties which may be encountered in the progress of the Work or from any action of the elements, fire or acts of God, or from any act or omission by the Contractor or any agent or person employed

by it, shall be sustained by the Contractor. There shall be no apportionment of any such loss or damage between the Airport Authority and Contractor and the fact that periodic or other type payments may be made shall not make this Contract divisible and severable, the intent of the parties being that the Contract is entire, unqualified and absolute and must be performed no matter what the cost to the Contractor. Notwithstanding the foregoing, in the event any such loss or damage is proximately caused by an act of God as defined in Public Contract Code Section 7105, Contractor shall repair or restore said loss or damage at its sole cost and expense to the extent of five percent (5%) of the full original Contract amount and perform and complete the entire Contract, provided, however, in the event such loss or damage from said cause exceeds said five percent (5%), Airport Authority shall have the option to require Contractor to perform and complete the entire Contract and require the Contractor to pay at Contractor's sole cost and expense for all said loss or damage to the extent of five percent (5%) of the full Contract amount (the Airport Authority to pay for the remainder of such loss or damage in accordance with Article 7), or the Airport Authority may terminate the entire Contract. If the Airport Authority exercises the option to terminate the entire Contract, Contractor shall be paid under the terms of the Contract for work actually performed prior to said loss or damage, less payments previously made, which shall constitute payment in full. Furthermore, in the event of such termination, Contractor shall be relieved from the obligation to repair or restore the loss or damage to the extent of five percent (5%) of said Contract amount and from the further obligation to perform and complete the Work.

- C. The Contractor shall maintain the work during construction and until Completion. This maintenance shall constitute continuous and effective work prosecuted as required with adequate equipment and forces to the end that all parts of the work be kept in satisfactory condition at all times. All costs of maintenance during construction and before Completion shall be included in the price bid and the Contractor will not be paid additional amounts for such work, unless otherwise noted.
- D. Particular attention shall be given to drainage, both permanent and temporary. The Contractor shall use all reasonable precautionary measures to avoid damage or loss that might result from accumulations and concentrations of drainage water, and material carried by such water and such drainage shall be diverted or removed when necessary to prevent damage to excavation, embankments, surfacing, structures, or property. Suitable measures shall be taken by the Contractor to prevent the erosion of

soil in all construction areas where the existing ground cover has been removed. Contractor shall prevent storm and waste water and storm debris from reaching the Work Site from any source to avoid damage to the Work. Contractor shall be responsible for any damage to person or property on or off the Work Site due to its operations, interrupting or diverting such storm or wastewater.

- E. In the event the Contractor fails to maintain the Work Site as required by this Contract, the Engineer shall notify the Contractor of such failure. If the Contractor fails to remedy the unsatisfactory maintenance within 24 hours of receipt of the notice, the Engineer may immediately proceed with adequate forces and equipment to maintain the Project and the entire cost of such maintenance will be deducted from any monies due the Contractor.

ARTICLE 6 - INSURANCE AND BONDS

1C-6.1 CONTRACTOR'S INSURANCE

A. OCIP AND CONTRACTOR PROVIDED INSURANCE:

- 1. The Project falls within the OCIP. The Airport Authority will procure coverages for the Contractor and subcontractors at any tier who perform Work on the "Project Site," as defined by the OCIP Contractors Information Manual (the "Project Site"). OCIP coverage does not provide coverage for all Work performed by the Contractor and such subcontractors, even though enrolled in the OCIP. The types of coverage and limits of such coverage provided by OCIP are defined and described in the OCIP Contractors Insurance Manual and in Section 1C-6.1 D. Neither the Contractor nor any subcontractors at any tier shall be granted compensation or time extension for failure to timely provide insurance as specified.
 - a. No access to the Project Site will be provided to any Contractor or subcontractor at any tier until the insurance required under this section (and as may be set forth in the Special Conditions) is in effect, such insurance has been approved by the Airport Authority, and such Contractor or subcontractor has been enrolled in OCIP. Access to the Project Site will be denied until all insurance certificates and the required OCIP enrollment forms have been submitted and enrollment in OCIP has been confirmed.

- b. The Contractor shall submit the following documents before the Contractor and any subcontractor at any tier shall be allowed access to the Project Site: (1) OCIP enrollment forms at least 48 hours prior to entering the Project Site, with enrollment effective at least 24 hours prior to entering the Project Site; and (2) evidence of all other insurance required by the Airport Authority, e.g., automobile liability insurance for airside travel.

B. CONTRACTOR PROVIDED INSURANCE FOR OFF-PROJECT SITE ACTIVITIES:

- 1. Types of Insurance: The Contractor shall maintain in full force and effect, until Completion, each of the following types of insurance for all off-Project Site activities, and shall furnish satisfactory proof thereof, by certificate or otherwise, as may be required by the Airport Authority, in its sole discretion, all of which insurance shall protect against claims arising out of or resulting from acts or omissions of the Contractor and all subcontractors at any tier, and anyone directly or indirectly employed by any of them, and anyone for whose acts or omissions any of them may be liable:
 - a. **WORKERS' COMPENSATION:** The Contractor shall maintain or cause to be maintained adequate workers' compensation insurance in accordance with California Labor Code Section 3700 to secure the payment of compensation to its employees and employees of any subcontractor at any tier who may come within the protection of such workers' compensation laws of the State of California. This workers' compensation policy shall be endorsed to include a waiver of subrogation in favor of the Airport Authority.
 - b. **EMPLOYERS' LIABILITY:** The Contractor shall provide and cause to be provided employers' liability insurance for the benefit of its employees and the employees of any subcontractor at any tier not protected by such workers' compensation laws.
 - c. **COMMERCIAL GENERAL LIABILITY:** The Contractor and each subcontractor at any tier shall take out "OCCURRENCE FORM" Commercial General Liability insurance, including completed

operations and Contractual Liability coverage, to protect the Contractor and each such subcontractor, respectively, against loss from liability imposed by law from damages on account of bodily injury, including death resulting therefrom, suffered or alleged to have been suffered by any person or persons, other than employees, resulting directly or indirectly from the performance or execution of this Contract or any subcontract thereunder, and to protect the Contractor and each such subcontractor against loss from liability imposed by law for damage to any property, resulting directly or indirectly from the performance or execution of this Contract or any subcontract thereunder.

- d. **BUSINESS AUTO INSURANCE:** Contractor and each subcontractor at any tier shall take out Business Auto insurance covering accidents arising out of the use and operation of all owned, non-owned and hired automobiles and trucks.

2. **Duration, Limits and Requirements of Coverage:** All insurance for off-Project Site activities shall be maintained by the Contractor and each subcontractor at any tier in full force and effect until Completion unless otherwise set forth in the Special Conditions. Such insurance shall satisfy the following requirements:

- a. Commercial General Liability covering bodily injury and property damage on an occurrence (not claims made) basis of at least: (i) \$2,000,000 per occurrence and annual aggregate, and with a maximum deductible amount of \$25,000 per occurrence, in the case of the Contractor; and (ii) \$1,000,000 per occurrence and annual aggregate, and with a maximum deductible amount of \$25,000 per occurrence, in the case of each subcontractor at any tier;
- b. Business Auto Liability covering owned, non-owned and hired autos and trucks, bodily injury and property damage on an occurrence basis of at least: (i) \$2,000,000 per occurrence and annual aggregate, in the case of the Contractor; and (ii) \$1,000,000 per occurrence and annual aggregate, in the case of each subcontractor at any tier;

- c. All said liability insurance policies shall: (1) name, or be endorsed to name, the Airport Authority, its officers, officials, agents and employees as additional insureds or, in the case of the automobile policy, shall name the Airport Authority as a certificate holder; (2) protect the Airport Authority against all liabilities, costs, damages, expenses and provide for the legal defense of claims and attorneys' fees and the cost thereof; (3) state, or be endorsed to state that the insurance is primary and not excess or contributing to any insurance issued in the name of the Airport Authority; and (4) contain a severability of interest or cross-liability clause.
- d. The workers' compensation policy shall include a waiver of subrogation.
- e. All said policies of insurance shall provide that the insurer must notify the Airport Authority in writing at least thirty (30) days in advance of any change in, or cancellation of, coverage. The Contractor shall also provide notice to the Airport Authority prior to cancellation of, or any change in, the stated coverages of such insurance. All such notices shall be delivered to the Airport Authority's Facilities Development Department. All insurance companies must be satisfactory to the Airport Authority, in its sole discretion, and all such policies shall contain standard industry terms, conditions and exclusions, as determined by the Airport Authority, in its sole discretion. Notwithstanding any other provision of this Contract, in addition to (and not in lieu of) any other rights and remedies provided by this agreement or by law, the Airport Authority may suspend the performance of this Contract or terminate this Contract for the Contractor's breach if at any time the Airport Authority determines, in its sole discretion, that the Contractor or any subcontractor at any tier has not complied with any of the requirements set forth in this Section 1C-6.1.
- f. The procuring of such required policies of insurance shall not be construed to limit (i) the liability of the Contractor or any subcontractor at any tier, or (ii) the obligations of the Contractor or any subcontractor at

any tier under the indemnification provisions and requirements of this Contract. The Contractor and each subcontractor at any tier shall be responsible for paying all deductibles.

- g. Nothing herein contained shall be construed as limiting in any way the extent to which the Contractor or any subcontractor at any tier may be held responsible for the payment of damage to persons or property resulting from its operations or the operations of any subcontractor under it. In addition to the insurance required by this Contract, the Contractor and each subcontractor at any tier shall maintain for all of its operations such insurance as is adequate and in accordance with industry standards, given the scope and nature of such operations.
- h. Certificates evidencing all required insurance and endorsements effecting coverage required by this clause shall be delivered to the Airport Authority's Facilities Development Department with the executed Contract; provided, however, that certificates of the insurance required to be maintained by subcontractors at any tier shall be delivered instead to the Contractor, and the Contractor shall provide such certificates to the Airport Authority immediately upon the Airport Authority's request.
- i. The Airport Authority reserves the right to require complete, certified copies of all required insurance policies at any time.
- j. If any insurance policies are written on a "claims made" basis, then, the Contractor and each subcontractor at any tier, as applicable, shall, at its own expense, obtain "tail" coverage if at any time the coverage provided under any such policy is terminated or provide proof of continuing coverage as to such policies for a period of not less than five (5) years after Completion or the date on which this Contract is terminated, whichever is later.

C. CONTRACTOR PROVIDED INSURANCE FOR ON-PROJECT SITE ACTIVITIES:

The Contractor and each subcontractor at any tier shall maintain in full force and effect, until Completion, each of the following types of insurance for all on-Project Site activities, and shall furnish satisfactory proof thereof, by certificate or otherwise, as may be required by the Airport Authority, in its sole discretion, all of which insurance shall protect against claims arising out of or resulting from acts or omissions of the Contractor and all subcontractors at any tier, and anyone directly or indirectly employed by any of them, and anyone for whose acts or omissions any of them may be liable:

1. Business Auto Liability (required for the Contractor or any subcontractor at any tier, if the Contractor or such subcontractor drives any vehicle on the airside): Covering owned, non-owned and hired autos and trucks, bodily injury and property damage on an occurrence basis, with a limit of at least \$10,000,000.00 per occurrence and annual aggregate. Upon the request of the Contractor or any such subcontractor, an excess policy from \$2 million to \$10 million will be provided by the Airport Authority pursuant to the OCIP. Any contractor or subcontractor at any tier that is not eligible to enroll in the OCIP for General Liability and Worker's Compensation cannot request this excess policy coverage. No airside automobile access will be allowed until such insurance coverage is in place.
2. Liability Policy (required for the Contractor or any subcontractor at any tier, if the Contractor or such subcontractor is to perform any asbestos abatement or remediation of environmental hazards): Covering any and all asbestos abatement or abatement or remediation of environmental hazards, as applicable, on an occurrence (not claims made) basis, with a limit of at least \$2,000,000 per occurrence and annual aggregate, and with a maximum deductible amount of \$25,000 per occurrence. In addition, the Contractor shall ensure that the owner of each hazardous waste site to which any materials are transported in connection with the performance of this Contract maintains adequate liability insurance coverage, with a limit of at least \$2,000,000 per occurrence and annual aggregate, and with a maximum deductible amount of \$25,000 per occurrence.
3. The insurance policies required by this Section 1C-6.1.C shall comply with the requirements set forth in Section 1C-6.1.B.2.c through Section 1C-6.1.B.2.j, other than Section 1C-6.1.B.2.d.

D. AIRPORT AUTHORITY PROVIDED INSURANCE:

1. Type of Insurance Provided: The Airport Authority shall procure commercial general liability, builders risk, workers compensation, employers liability, and excess auto for air side (if requested) insurance for the Contractor and all appropriate subcontractors of any tier through the OCIP for Work performed or emanating directly from the Project Site. The OCIP insurance provided by the Airport Authority will in no way relieve or limit any responsibility or obligation imposed by the Contract or otherwise on the Contractor or any subcontractor at any tier.
2. Coverage: OCIP coverage will apply to the Contractor and all subcontractors of any tier that have a contractual obligation to perform some part of the Work at the Project Site. Airport Authority-provided OCIP insurance will not apply to vendors, suppliers, materialmen, and others who merely transport, pick up, deliver or carry materials, personnel, parts, equipment, or any other items or persons to or from the Project Site, and OCIP shall not apply to any asbestos abatement or abatement or remediation of environmental hazards. The Contractor and each subcontractor at any tier shall procure its own coverages for such operations, as applicable. OCIP coverage shall be effective during the warranty period of this Contract, unless otherwise determined by the Airport Authority, in its sole discretion.
3. The Airport Authority makes no representations, guarantees, or warranties, express or implied, as to the fitness and/or quality of coverage provided by the Airport Authority, if any.
4. The Contractor shall forward OCIP enrollment forms to each and every subcontractor at any tier. Upon receipt of the completed OCIP enrollment forms for such subcontractors, the Contractor shall return those properly completed forms to the Airport Authority or its designated agent. The Contractor shall ensure that each subcontractor at any tier is enrolled in OCIP. **NEITHER THE CONTRACTOR NOR ANY SUBCONTRACTOR AT ANY TIER SHALL COMMENCE ANY WORK ON THE PROJECT SITE UNTIL THE CONTRACTOR OR SUCH SUBCONTRACTOR, RESPECTIVELY, HAS BEEN ENROLLED IN OCIP.** The Contractor shall submit OCIP enrollment forms for itself and

each subcontractor at any tier at least 48 hours prior to the commencement of Work at the Project Site by the Contractor or such subcontractor, respectively, and the Contractor and each such subcontractor shall be enrolled in OCIP at least 24 hours before commencing Work at the Project Site.

5. The Contractor and each subcontractor at any tier shall provide a monthly payroll summary in the form provided by Section 7.7 of the OCIP Contractors Information Manual. Failure to submit monthly payroll summary as required herein may result in the Airport Authority retaining an amount equal to 10 percent of the estimated value of the Work performed during the month from the next submitted Progress Estimate, except that such retention shall not exceed \$10,000, nor be less than \$1,000. Upon receipt of the required monthly payroll summary, any such withheld amounts will be released with the next progress payment. Until such time as the final monthly payroll summary information is provided, no Final Payment shall be due and owing.
6. The Airport Authority's rights pursuant to Section 1C-7.7 shall apply to any audit of the Contractor's insurance cost itemization as required herein and any documents related to insurance for the Project.

1C-6.2

PERFORMANCE AND LABOR AND MATERIAL BONDS

- A. The Contractor shall furnish within fourteen (14) calendar days after the Notice of Award of Contract along with an executed Contract the following bonds:
 1. The Contractor shall furnish a labor and material bond in an amount not less than one hundred percent (100%) of the estimated Contract price, to be paid to the Airport Authority, conditioned upon the payment by the Contractor for all materials, services, supplies and transportation furnished in the performance of the Work contracted to be done by the terms of said Contract, and for any work or labor of any kind done thereon by an admitted surety, as defined in Code of Civil Procedure Section 995.120, authorized to do business as such in the State of California. Bonds shall cover the Contractor's obligations during the guarantee and/or warranty periods as well as the construction period. Bonds shall comply with California Civil Code Section 3248 and

shall be enforceable pursuant to California Civil Code Sections 3249, 3250, 3251 and 3252.

2. The Contractor shall also concurrently furnish a faithful performance bond in an amount not less than one hundred percent (100%) of the estimated Contract price, to be paid to the Airport Authority, conditioned upon the faithful performance by the Contractor of all covenants and stipulations in the Contract by a surety acceptable to the Airport Authority which is an admitted surety, as defined in Code of Civil Procedure Section 995.120, authorized to do business as such in the State of California. Bonds shall cover the Contractor's obligations during the guarantee and/or warranty periods as well as the construction period.
3. Each bond shall be accompanied by all of the documents described in California Code of Civil Procedure Section 995.660(a), including, without limitation:
 - a. The original, or a certified copy, of the unrevoked appointment, power of attorney, bylaws, or other instrument entitling or authorizing the person who executed the bond to do so;
 - b. A certified copy of the certificate of authority of the surety issued by the California Insurance Commissioner;
 - c. A certificate from the clerk of the county in which the court or officer is located that the certificate of authority of the surety has not been surrendered, revoked, canceled, annulled, or suspended or, in the event that it has, that renewed authority has been granted; and
 - d. Copies of the surety's most recent annual statement and quarterly statement filed with the California Department of Insurance pursuant to Article 10 (commencing with Section 900) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.
4. The Contractor shall (and shall cause its surety to) provide any additional certifications or information requested at any time by the Airport Authority, in its sole discretion, in order to enable the Airport Authority to evaluate the surety's ability to perform its obligations under any bond. To the extent

permitted by law, the Airport Authority, in its sole discretion, at any time may reject any bond or require the Bidder to replace any bond or surety at the Contractor's own cost.

- B. If, during the term of the Contract, the Airport Authority in its sole discretion deems any of the sureties to be unacceptable, then, to the extent permitted by law, the Airport Authority may require additional or replacement bonds, which the Contractor shall furnish at the Contractor's own cost within ten (10) days after receiving notice from the Airport Authority. If the Contractor does not deliver such bonds within such ten (10)-day period, then the Airport Authority may terminate or suspend the Contract for cause in accordance with Sections 1C-11.1 and 1C-11.3.
- C. If the Contract sum is increased, the Contractor shall advise the surety of the increased amount and the performance bond and labor and materialmen's bond shall be increased accordingly, at the Contractor's own cost.

ARTICLE 7 - CHANGES IN THE WORK

1C-7.1 CHANGES AND EXTRA WORK

- A. Changes are alterations made to the Contract after the bids are opened, which modify the character or increase or decrease the limits of the Work, such as but not limited to, those affecting design, materials, installation, construction, shapes, dimensions, quantities, locations or schedules. The Airport Authority, before the final acceptance of the Work, may order changes in the Work and may order extra materials and extra work in connection with the performance of the Contract, and the Contractor shall promptly comply and diligently carry out such orders in accordance with the Contract Documents. The Airport Authority reserves the right to make changes which may increase, decrease or have no effect on the amount of Work to be done or the time duration in which the work is to be performed.
- B. A variation between estimated quantities in the bid schedule and actual quantities of work or material required to construct the Work as it is shown on the Contract Documents as they exist at the time the bids are opened does not constitute a change or extra Work and does not require additional authorization and all quantities shall be paid for at the unit or lump sum prices established in the bid.
- C. Changes in the Work and extensions of Contract Time by reason of the change shall not in any way release any guarantees/warranties

given by the Contractor pursuant to the provisions of the Contract, nor shall such changes in the Work relieve or release the sureties of bonds issued for the Work. The sureties in executing such bonds shall be deemed to have expressly agreed to any such change in the Work or increase in the Contract amount and to any extension of Contract Time.

D. Authorization Limits:

1. Price: For Contracts less than or equal to \$1,000,000.00, a Contract Change Order in an amount that does not exceed ten percent (10%) of the amount of the original Contract award may be approved by the President and any greater amount must be approved by the Board. For Contracts of more than \$1,000,000.00 but less than or equal to \$5,000,000.00, a Contract Change Order in an amount that does not exceed six percent (6%) of the amount of the original Contract award may be approved by the President and any greater amount must be approved by the Board. For Contracts of more than \$5,000,000.00, a Contract Change Order in an amount that does not exceed four percent (4%) of the amount of the original Contract award may be approved by the President and any greater amount must be approved by the Board.
2. Time: An increase in time which is less than or equal to ninety (90) calendar days may be approved by the President. All other increases in time must be approved by the Board.

1C-7.2 FORM OF CHANGES

The Engineer shall have the authority to order changes in the work involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes may be affected by written direction from the Engineer and shall be binding on the Airport Authority and Contractor. The Contractor shall carry out such written orders promptly. Such written directions may be in the form of a response to a RFI, a written direction, a CCO, or in any other written form determined by the Airport Authority. In the event the Contractor contends that a written direction will increase the Contract sum, it shall commence the noted Work and submit a Change Order Request (COR), as provided in Section 1C-7.3.B.4. If such COR is denied, the Contractor may within ten (10) days resubmit the denied COR with all accompanying documentation to the Project Manager's supervisor for reconsideration. A CCO can be of two types: A Bilateral Change that is

agreed upon and signed by the Airport Authority and the Contractor or a Unilateral Change that is not signed by the Contractor. Until such time as a bilateral change order is entered into concerning the Airport Authority's written direction, the Contractor shall conduct the Work as Force Account Work as outlined in 1C-7.3C and shall be subject to the same requirements found therein.

1C-7.3 BILATERAL CHANGES

- A. There are two types of Bilateral Changes: fixed price and force account.
- B. Fixed Price Changes: If changes in design, workmanship, materials or time duration are of such a nature as to increase or decrease the cost of the Work, the price fixed in the Contract shall be increased or decreased by the amount as the Contractor and the Airport Authority may agree upon as reasonable. Proper allowance for the increase or decrease in the cost of the Work shall be computed at the Contract rate, so far as possible. If the change involves an increase or decrease in a unit price item, the increase or decrease shall be the changed quantity multiplied by the unit price.
 - 1. No order for alteration, modification or extra work which shall increase or decrease the cost of the Work shall be invoiced or payable unless the resulting increase or decrease in price or Contract Time shall have been agreed upon in writing and the CCO signed by the Contractor and the Airport Authority, or their agents and authorized representatives or, in the event of a Unilateral Change Order, signed by the Airport Authority.
 - 2. The Contractor, in its price proposals for changes in the Work that will increase the Contract amount, shall individually and specifically list its costs and use percentage markups as described hereinafter. The Contractor shall require its subcontractors to do the same, and the subcontractors' price proposals shall accompany the Contractor's price proposals.
 - 3. The Contractor shall upon request of the Airport Authority permit inspection of the original unaltered bid estimate, subcontract agreements and purchase orders relating to the change and documents substantiating all costs associated with the cost proposal.

4. The Contractor shall submit a Change Order Request (“COR”) on Form 9, Appendix 1, within fifteen (15) calendar days, or sooner if so requested based on schedule restrictions, upon receipt of a Request for Proposal (“RFP”) or a written direction from the Airport Authority. Any COR by the Contractor shall include a complete breakdown of costs of both credits and extras itemizing materials, labor, taxes, overhead and profit on a form approved by the Airport Authority. Subcontract Work shall be so indicated and written proposals for subcontractors shall be included with similar breakdowns furnished. Following submissions of cost breakdowns, the Contractor shall meet with the Airport Authority if requested to discuss all aspects of the scope, costs, scheduling and construction methods, to ensure agreement.
5. For all contracts with a critical path schedule, the Contractor shall prepare and submit with a COR which requests a time extension a Time Impact Evaluation (“TIE”) which includes both a written narrative and a fragnet (small time-scaled logic diagram). The fragnet shall indicate how the Contractor proposes to incorporate the changed work into the schedule and how the changed work impacts the current schedule’s critical path and contractual milestones, if at all.
6. If the Contractor fails to timely submit the COR, the Airport Authority has the right to order the Contractor in writing to commence the Work immediately on a Force Account Change Order basis or a Unilateral Change Order to the Contract price in accordance with the Airport Authority’s estimate of cost. If the change is issued based on the Airport Authority’s estimate, the Contractor waives its right to dispute the action unless within thirty (30) calendar days following Completion of the specified added or deleted Work, the Contractor presents written proof that the Airport Authority’s estimate was in error.
7. Contractor’s failure to timely submit a COR constitutes an agreement by it that the work is not extra-contractual and/or that a contract time extension is not needed and that it will not be paid for the work as a change order and/or or no time extension will be given.

C. Force Account Change Order

1. In the discretion of the Airport Authority for any reason, a Force Account Change Order may fix a maximum price which shall not be exceeded unless authorized by the Airport Authority in writing, and subject to such limitation, such alteration, modification or extra shall be paid for at the actual necessary cost as determined by the sum of the following items in Subparagraphs (a) through (f), inclusive, and as further defined as Section 1C-7.5:
 - a. Prevailing wage or actual rate paid to workers.
 - b. Markup for labor burden, including premium on compensation insurance and charges for social security taxes and other taxes pertaining to labor and the proportionate cost of premiums of public liability, property damage and other insurance applicable to the extra work involved and required by the Contract for off site work and auto only. Markup shall not include any premiums for any insurance provided by OCIP.
 - c. Materials, including sales tax and other applicable taxes pertaining to materials.
 - d. Plant and equipment rental, at rates previously agreed to or required by the Contract. No charge for the cost of repair to plant or equipment will be allowed and equipment items having a capital cost of under Five Hundred Dollars (\$500.00) are considered small tools and are included in the stipulated markup percentages for overhead and profit.
 - e. Markup for overhead and profit is limited in these General Conditions. Special attention is directed to 1C-7.5.A.1, in these General Conditions.
 - f. The proportionate actual costs for bonds required in accordance with these General Conditions.
2. The Airport Authority reserves the right to furnish such materials, as it may deem expedient and no allowance will be made for profit thereon.
3. Whenever any Force Account Change Order Work is in progress, the amount, but not the price, of all extra Work performed shall be entered by the Contractor upon report sheets furnished by the Engineer (see Form 1, "Time and

Materials Report,” Appendix 1) and signed by both parties on the date the particular Work is performed, which daily reports shall be the true record of extra Work done. No claim for compensation for such extra Work will be allowed unless such report shall have been made by the Contractor daily and countersigned by the Airport Authority’s representative. It is the Contractor’s responsibility to obtain the Airport Authority representative’s countersignature.

4. In the event the Contractor and the Airport Authority reach a negotiated, signed agreement while the work is proceeding under a Force Account, the Contractor’s signed written daily reports shall be discontinued and all previously signed daily reports shall become invalid for purposes of payment.
5. The Contractor shall bear all of its costs of administering Force Account Change Orders. These costs are considered included within the markup for overhead and profit referenced above.
6. The Contractor shall at all times during the performance of the Contract prosecute the Force Account Change Order work with such forces and equipment as, in the opinion of the Airport Authority, are appropriate to complete the different portions of the work in the order required and within the specified time and to secure a satisfactory quality of work.

1C-7.4 UNILATERAL CHANGE ORDERS

If the Airport Authority and the Contractor fail to agree as to a Bilateral Change Order, if adequate cost information is not provided as required, or for any other reason whatsoever in the discretion of the Airport Authority, the Contractor shall proceed immediately with the changed Work upon receipt of a Unilateral Change Order or written direction from the Airport Authority. If the Contractor disputes the Unilateral Change Order or written direction, the Contractor may make a claim as required by this Contract but shall be obligated to conduct the Work addressed by the Unilateral Change Order or written direction.

1C-7.5 PRICING FOR ALL TYPES OF CHANGES

- A. The following limitations shall apply in the calculation of the costs of changes in all changed work:
 1. Markups for Overhead and Profit:

- a. For Work performed by the Contractor shall equal a maximum of fifteen percent (15%) of the direct cost (as defined herein) for overhead and profit, unless Contractor's overhead is stipulated as a daily rate in the bid schedule, in that event, the maximum allowable markup for Contractor performed work is five percent (5%).
- b. For Work performed by a subcontractor of any tier shall equal a maximum of fifteen percent (15%) of its direct costs (as defined herein). Both the Contractor and subcontractor shall receive a five percent (5%) markup on the total cost of their respective subcontractors.
- c. In no case shall the markup exceed twenty-five percent (25%) of the direct cost as described in Subparagraphs (a) and (b), above, regardless of the number of Contract tiers actually existing.
- d. For deleted Work of any Contract tier described in 1(a) through 1(c) above, the credit markup shall be ten percent (10%), unless Contractor's overhead is stipulated as a daily rate in the bid schedule, in that event, the maximum credit markup for Contractor performed work is five percent (5%).
- e. For deleted Work, neither the Contractor nor subcontractor shall be allowed a positive markup on their respective subcontractor to administer the credit Change Order.
- f. The Airport Authority will reimburse the Contractor at a higher percentage for overhead and profit if the increased rate is substantiated by audit of the Contractor's financial records, unless Contractor's overhead is stipulated as a daily rate in the bid schedule, in that event, the bid daily rate shall apply. The cost of the audit shall be borne by the Contractor.
- g. The markup for overhead and profit for the Contractor and subcontractors of any tier shall be considered to include insurance required by the Contract of the Contractor (and shall not include insurance provided by OCIP) other than mentioned herein, field and office

supervisors, salaries for project managers, engineers, superintendent, timekeeper, storekeeper and secretaries, assistants, inspectors, watchmen, use of small tools, consumables, incidental job burdens and general field and home office expenses, including the preparation of Change Orders, and no separate allowance will be made thereof. Payment for markup, which includes overhead and profit, shall constitute satisfaction of all costs incurred as a result of performing the Change Order work. Incidental job burdens include, but are not limited to, office equipment and supplies, computer services, small tools, reproduction costs and services, temporary toilets, telephone, facsimile, office personnel and conformance to regulatory requirements. Items such as, but necessarily limited to, review and coordination, estimating, recording, detailing, engineering and expediting relative to Contract changes are associated with field and office supervision and are considered to be included in the Contractor's markup percentages for profit and overhead.

- h. The mark-up for overhead and profit for the Contractor and subcontractors of any tier shall not include the actual cost of scheduling services required for the preparation of the time impact evaluation resulting from excusable and compensable delays. The fully burdened rate for this work shall not exceed one hundred dollars (\$100) per hour.

2. Direct costs:

- a. Direct costs for the purposes of markup shall include basic rates for labor and the actual cost to the Contractor for the equipment and materials directly required for the performance for the changed Work. Direct costs shall not include any employer payments to or on behalf of the workers for health, welfare, vacation and similar purposes.
- b. Premium and/or overtime rates shall not be paid by the Airport Authority unless specifically authorized or directed by the Airport Authority in writing. The Contractor shall not increase labor rates for Change Order work; nor shall the Airport Authority be responsible for any labor rates for Change Order work

in excess of the prevailing wage rate or rate previously paid by the Contractor for Contract work. The costs for all supervision, including general superintendents and foremen, shall be included in the markups established by the Contract. The only exception to this may be working foreman who performed actual manual labor or superintendents in excess of Contract Work, in the discretion of the Engineer. No labor charges will be accepted for engineering or proposal preparation. These costs shall be included in the markups established by the Contract. If not previously submitted, a breakdown of the payroll rates for each trade shall be furnished for all Change Orders within fifteen (15) days after issuance of a notification to commence with the change order work, including the base rate and labor burden, including but not limited to benefits, payroll taxes and insurance.

- c. Equipment Costs: The allowance for equipment costs (both rental as well as Contractor-owned equipment) shall not exceed that as recommended by the rental rates established by the Rental Rate Blue Book.
 - 1) In computing the hourly rental of equipment, any time less than thirty (30) minutes shall be considered one-half (1/2) hour. No payment will be made for time while equipment is inoperative due to breakdown or for non-workdays. Whenever equipment is ordered by the Engineer to be held on the Work on a standby basis, or when the Airport Authority is obligated for other reasons to pay for idle equipment, the rate will be seventy five percent (75%) of the rental rate with no allowance for operating costs. Standby or idle time cannot exceed eight (8) hours per day and will not be allowed for Saturday, Sunday, or holidays. Non-operating time for equipment required for account work is not considered standby or idle time if the equipment is operated and used at least once during each working day. In addition, the rental time shall not include the time required to move the equipment to the Work Site for rental of such equipment and to return it to the source. No mobilization or

demobilization will be allowed for equipment already on site. If such equipment is not moved by its own power, then loading and transportation costs will be paid in lieu of rental time thereof. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the project in any other way than upon the changed Work.

- 2) Individual pieces of equipment having a replacement value of Five Hundred Dollars (\$500.00) or less shall be considered to be small tools or small equipment and no payment will be made thereof. Small tools are part of the Contractor's markup.
- 3) The amount to be paid to the Contractor for the use of the equipment as set forth above shall constitute full compensation to the Contractor for the cost of fuel, power, oil, lubricants, supplies, small tools, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage insurance, labor (except for equipment operators) and any and all costs to the Contractor incidental to the use of the equipment.

3. Taxes and Insurance:

- a. Federal excise tax shall not be included.
- b. State and City sales taxes and payroll taxes and insurance for auto and off-site only shall be shown separately and will be allowed on extras and shall be credited on credits. No markup shall be included for all coverages provided by OCIP. No markup for overhead and profit will be allowed on taxes and insurance.

4. Bond Premiums: The actual rate of bond premiums paid on the total cost of the Change Order will be allowed. No markup for overhead and profit will be allowed on bond premiums.

5. Records:

- a. The Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of extra work and the cost of the original Contract Work. This requirement pertains to CORs, Contract Change Orders and Work the Contractor considers to be potential Change Orders.
- b. The Contractor shall furnish within seven (7) days after issuance of Notice to Proceed a certified statement and detailed calculations from its accountant establishing the job site and pro rata home office overhead rates for itself and its major subcontractors, as determined by the Airport Authority. Such shall be updated quarterly.

No oral instruction of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this Contract.

1C-7.6 DIFFERING SITE CONDITIONS

The Contractor shall promptly and before the conditions are disturbed, give written notice to the Engineer of (1) subsurface or latent physical conditions at the Work Site which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in construction activities of the character provided for in the Contract Documents. The Airport Authority shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract modified in writing accordingly. No request by the Contractor for an equitable adjustment to the Contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed for giving written notice may be extended by the Engineer. No request by the Contractor for an equitable adjustment to the Contract for differing conditions shall be allowed if made after final payment under this Contract.

1C-7.7 AUDIT

- A. The Airport Authority shall have the right to designate its own employee representative(s) or its contracted representatives with a certified public accounting firm who shall have the right to audit the Contractor's accounting procedures and internal controls of the Contractor's financial systems and to examine any cost, revenue, payment, claim or other records or supporting documentation resulting from any items set forth in the Contract Documents including any insurance documents required to complete the Alternate Bid Schedule - Insurance. Any such audit(s) shall be undertaken by the Airport Authority or its representative(s) after notice and at reasonable times and in conformance with generally accepted auditing standards. The Contractor agrees to fully cooperate with any such auditor(s) and shall make office and support facilities available to the Airport Authority's representative(s) as may be reasonably necessary to complete any such audit(s) and inspections.
- B. This right to audit shall extend during the length of the Contract and for a period of three (3) years or longer, if required by law, following the date of final payment. The Contractor agrees to retain all necessary records/documentation for the entire length of this audit period.
- C. The Contractor will be notified in writing of any exception taken as a result of any audit. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within thirty (30) days from presentation of the Airport Authority's findings to the Contractor. If the Contractor fails to make such payment, the Contractor agrees to pay interest, accruing monthly, at the rate of ten percent (10%) per annum. Interest will be computed from the date of written notification of exception(s) to the date the Contractor reimburses the Airport Authority for any exception(s).
- D. If an audit inspection or examination discloses overcharges (of any nature) by the Contractor to the Airport Authority in excess of one percent (1%) of the value of that portion of the Contract that was audited, the actual cost of the audit shall be reimbursed to the Airport Authority, in addition to any other remedies allowed by law.
- E. Subcontractor Audit Clause: The Contractor shall include a clause in its agreement with subcontractors reserving the right for audits to be performed by its representatives from or agents of the Airport Authority, who shall have the right to audit the accounting procedures and internal controls of the financial systems and to examine any cost, revenue, payment, claim, other records or

supporting documentation resulting from any items set forth in its agreement including any insurance documents required to complete the Alternate Bid Schedule - Insurance. This right shall extend during the length of this Contract and for a period of three (3) years or longer if required by law, following the date of final payment to the Contractor. The Contractor shall require its subcontractors to agree in writing to retain all necessary records/documentation for the entire length of this audit period.

ARTICLE 8 - TIME

1C-8.1 PROGRESS AND COMPLETION

- A. Unless otherwise specified, the Contractor shall commence the Work on or before fourteen (14) calendar days from the date of issuance of the Notice to Proceed or the date specified within the Notice to Proceed (the "Notice to Proceed Date") and shall diligently prosecute the Work to its Completion. A Notice of Completion shall be recorded for the Work.

- B. The continuous prosecution of the Work by the Contractor shall be subject only to the delays defined in this Contract. The start of Work shall include attendance at pre-construction conferences, preparation and submittal of submittals, equipment lists, and schedule of values, schedules, requests for substitutions and other similar activities. Submittals shall be prepared in accordance with the Contract Documents and shall be made in the time limits indicated. Except as specifically authorized by the Airport Authority, no Work shall commence on site before the Notice to Proceed Date or after the Notice to Proceed Date but before all applicable Contract requirements have been satisfied including enrollment in OCIP. The Contract Time shall begin on the Notice to Proceed Date.

- C. The Work shall be brought to Completion, as determined by the Airport Authority, in the manner provided in the Contract Documents and in the number of calendar days set forth in the Special Conditions (Contract Time).

- D. The Contractor shall allow for the following review time periods: RFIs, seven (7) calendar days; submittals, 21 calendar days; substitution requests, 28 calendar days.

- E. Failure to reach Completion as determined by the Airport Authority within the Contract Time and in the manner required by the Contract Documents shall subject the Contractor to liquidated

damages as stipulated in the Special and General Conditions unless extensions of time are granted in accordance with these General Conditions.

- F. The Contractor shall at all times keep on the premises sufficient material and employ sufficient supervision and workers to prosecute the Work at a rate necessary to reach Completion of the Work required within the Contract Time and in accordance with the initial Contract schedule. Work shall not start nor shall the Work be left in an incomplete state for an indeterminate period of time, while equipment and materials are in transit.
- G. It shall be the responsibility of the Contractor to maintain its schedule so as not to delay the progress of the Work or the schedules of other contractors and workers who may be employed by the Airport Authority on any Work in the vicinity of the Work to be done pursuant to this Contract, and it shall conduct its operations so as not to interfere with the Work of such contractors or workers. The Contractor is required by virtue of this Contract to cooperate in every way possible with other contractors or workers in order to complete the Work within the Contract Time. Except as otherwise provided, no additional compensation will be paid for such cooperation. If the Contractor delays the progress of the Work or the progress of other contractors or workers, it shall be the responsibility of the Contractor to take some or all of the steps outlined below to improve its progress. See 1C-3.15.
- H. If, in the opinion of the Airport Authority, the Contractor falls behind with the Work or current update of the Contract schedule and is not entitled to an extension of time, the Contractor shall take some or all of the steps outlined below to improve its progress at no additional charge to the Airport Authority, and shall submit operation plans to demonstrate the manner in which the desired rate of progress may be regained.
 - 1. Increase construction personnel in such quantities and crafts as will substantially eliminate the backlog of Work and allow the Contractors to complete the Work within the Contract Time.
 - 2. Increase, when permitted, the number of working hours per shift, shifts per working day, working days per week or the amount of construction equipment or any combination of the foregoing, sufficient to substantially eliminate the backlog of Work.

3. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities; and/or
 4. Expedite delivery of materials and equipment.
- I. The Airport Authority shall reimburse the Contractor for reasonable costs of complying if such written directive to accelerate was issued in order to overcome delay resulting from the fault or negligence on the part of the Airport Authority; however if the Airport Authority directs the Contractor to take measures previously described due to conduct of the Contractor or its agents, the Contractor shall bear all costs of complying.
 - J. Should the Contractor at any time during the progress of the Work, refuse, neglect or be unable for avoidable reasons to supply sufficient material, supervision or workers to prosecute the Work at a rate necessary to complete the Work within the Contract Time or in accordance with the currently accepted updated construction schedule, the Airport Authority shall have the right to terminate the Contract or it may give the Contractor written notice, specifying the default and requiring its correction as set provided in 1C-2.2. If the Contractor does not comply with a notice of termination from the Airport Authority within the time specified in the notice, the Airport Authority shall have the right to provide the materials and workers to finish the Work and/or terminate the Contract. The expenses incurred by the Airport Authority to complete such Work shall be deducted from any monies due or which may become due under the Contract and/or the construction fund for the Work. In the event the expenses incurred exceed the amounts due to the Contractor of the construction fund for the Work, the Contractor or its surety shall reimburse the Airport Authority for any such shortage in funds.
 - K. The Contractor shall submit to the Engineer when the project is forty percent (40%) complete, a list of proposed maintenance and instruction manuals and the scheduled dates of all required field instruction to be provided by the Contractor of the manufacturer's representatives. Five (5) copies of the maintenance and instruction manuals must be furnished to the Engineer at least two weeks prior to the scheduled dates of any required Contractor furnished field instructions or at least one month prior to Substantial Completion or Beneficial Occupancy, if no Contractor-furnished field instructions are required.

LIQUIDATED DAMAGES

- A. The Contractor and Airport Authority agree that the date of beginning and the time for Completion as specified in the Contract of the Work to be done hereunder are ESSENTIAL CONDITIONS of this Contract and that the Airport Authority will suffer financial loss in the form of lost revenues, contract administration expenses (including project management and consultant's expenses), delay and/or loss of public use if the Work is not completed within the Contract Time; and it is further mutually understood and agreed that the Work embraced in this Contract shall be commenced on the Notice to Proceed date as defined by this Contract. The Contractor agrees that said Work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure Completion within the Contract Time. It is expressly understood and agreed by and between the Contractor and the Airport Authority that the time for the Completion of the Work is a reasonable time for its Completion, taking into consideration the average climatic range prevailing in the locality.
- B. If the Contractor shall neglect, fail or refuse to complete the Work within the Contract Time or any portion of the Work as indicated by Contract Time milestone, or any proper extension granted by the Airport Authority, then the Contractor agrees, as a part consideration for the awarding of this Contract, to pay to the Airport Authority the daily amount specified in the Special Conditions of the Contract, not as a penalty but as liquidated damages for such breach of Contract, for each and every calendar day that the Contractor shall be in default after the Contract Completion Date or Contract Time milestone. Liquidated damages shall not be assessed when the delay is due to excusable causes beyond the control of and without the fault or negligence of the Contractor, including acts of the Airport Authority, as defined in Section 8.3 below. The assessment of liquidated damages for the Contract Completion Date ceases upon Completion, not Substantial Completion. If applicable, the assessment for Contract Time milestone liquidated damages ceases upon the meeting of that milestone.
- C. The liquidated damages amount is fixed and agreed upon by and between the Contractor and the Airport Authority because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Airport Authority would in such event sustain, and the amount is agreed to be the amount of damages which the Airport Authority would sustain and the amount shall be retained from time to time by the Airport Authority from current periodical

estimates. Contractor and the Airport Authority also recognize the delays, expense and difficulties involved in the calculation and proof of the actual loss suffered by the Airport Authority if the Work is not completed on time. Accordingly, instead of requiring such proof, the Airport Authority and Contractor agree that the amount of Liquidated Damages specified in Special Conditions, which amount shall be presumed to be the damages suffered by the Airport Authority resulting from the delay in Completion of the Work. It is agreed that the amount of liquidated damages to be paid by the Contractor for failure to complete the Work within the Contract Time shall be in the daily amount as set forth in the Special Conditions. The Contractor specifically agrees at the time of Contracting that the amount of liquidated damages is manifestly reasonable under the circumstances for this Work.

- D. It is further agreed that time is of the essence of each and every portion of this Contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the Completion of any Work, the new time limit fixed by such extension shall be of the essence of this Contract. Beneficial occupancy of the Work or partial utilization of the Work by the Airport Authority prior to Completion of the Work does not waive the Contract Completion Date for purposes of computing and assessing liquidated damages. In addition, any applicable warranty periods do not begin to accrue until the later of (a) the date of Substantial Completion, if any, (b) the date of Completion, if any, or (c) the date of termination of the Contract, if any.
- E. If specified in the Special Conditions, the Airport Authority may make a payment of extra compensation to the Contractor, as a bonus, for Completion prior to the Contract Completion Date.

1C-8.3 DELAYS AND EXTENSIONS OF TIME

- A. Delays:
 - 1. Excusable Delays:
 - a. Excusable delay is an interruption of the Work beyond the control of the Contractor and which interruption the Contractor could not have avoided by the exercise of care, prudence, foresight and diligence. A Contractor experiencing an excusable delay will be entitled to a Contract Time extension but will not be entitled to additional costs. Such delays include and

are limited to acts of God; acts of the public enemy; unreasonable or unusual adverse weather conditions, fires, floods, windstorms, tornadoes, wars, riots, insurrections, epidemics, quarantine restrictions, strikes, lock-outs, labor shortages caused by war or other Federal hindrances, fuel shortages, freight embargoes, accidents, delays caused by an injunction, judgment or other decree or order of a court of competent jurisdiction, priorities or privileges established for the manufacture, assembly or allotment of material by order, decree or otherwise of the United States or by any department, bureau, commission, committee, agent or administrator of any legally constituted public authority, the prevention of the Contractor from commencing or prosecuting the Work because of the acts of persons or entities not parties to this Contract, excepting the Contractor's subcontractors or agents or suppliers, and the inability to procure or the failure of public utility services. The duration of said excusable delays shall be limited to the extent that the commencement, prosecution and Completion of the Work are delayed thereby, as determined by the Engineer.

- b. The Engineer may provide by resolution for extensions of time for causes other than those stated in Subparagraph 8.3.A.1(a), which the Contractor could not have avoided by the exercise of care, prudence, foresight and diligence.
- c. The Engineer may order the Contractor to suspend any Work because of climatic conditions. When delay is caused by an order given to suspend Work on account of climatic conditions, which in the opinion of the Engineer could have reasonably been foreseen, the Contractor will not be entitled to any extension of time or other compensation on account of such order.
- d. Delays due to adverse weather conditions will not be considered for weather conditions that could have been reasonably anticipated. Rain day delays shown in Table 1 below are to be included in the contract time limits. The Contractor's schedule will be considered to have incorporated these anticipated rain day delays. Contract time extensions due to delays caused by excessive precipitation will only be

considered if the delay caused by excessive precipitation can be shown to delay a task on the critical path; and precipitation is greater than 0.10 inches per any one day; and the number of days for rain delays is more than the average number of rain days anticipated for any given month as defined in the following table.

| | Month | | | | | | | | | | | |
|-------------------|-------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Average Rain Days | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
| | 7 | 5 | 7 | 2 | 1 | 1 | 0 | 0 | 1 | 2 | 3 | 5 |

2. Inexcusable Delays: A Contractor experiencing an inexcusable delay will not be entitled to a time extension or additional costs. Inexcusable delays in the prosecution or Completion of any work shall include:
 - a. All delays that could have been avoided by the exercise of care, prudence, foresight and diligence on the part of the Contractor, are caused by the Contractor, or are directly attributable to the Contractor.
 - b. Delays in the prosecution of parts of the Work, which may in themselves be excusable but do not necessarily prevent or delay the prosecution of other parts of the Work, nor the Completion of the whole Work within the Contract Time.
 - c. Delays arising from the interruptions occurring in the prosecution of the Work on account of the reasonable interference from other Contractors employed by the Airport Authority, which do not impact the Contractor's critical path.

- B. Notice of Delay: The Contractor shall promptly notify the Airport Authority in writing of any anticipated delay in the prosecution of the Work, and, in any event, promptly upon the occurrence of the delay. Said notice shall constitute an application for an extension only if the notice requests such extension and sets forth the Contractor's estimate, if feasible, of the additional time required together with a full recital of the cause of the delay relied upon. The Airport Authority may take steps to prevent the occurrence or continuance of the delay and may determine to what extent the Completion of the Work is delayed. The determination of the existence of any delay for which an extension of time will be

granted will be based on whether such delay can be demonstrated by the Contractor to extend the Contractor's current critical path on the construction schedule or require the formulation of a new critical path. A critical path method schedule indicating the occurrence of delays along the critical path is the only method of demonstration that will be accepted by the Airport Authority to document and claim delays. If notice of a delay is not submitted on or prior to seven (7) consecutive working days after the start of the occurrence of such a delay, the Contractor admits the occurrence had no effect on the length of its duration of Work, that no extension of time is necessary, and that no extension of time or extra compensation will be granted by the Airport Authority or is due to the Contractor.

- C. No Damages for Delay: Except as otherwise provided by law or the provisions of these Contract Documents, no monetary damages or compensation for any kind shall be paid the Contractor, or any subcontractor or any supplier because of delays which are not the responsibility of the Airport Authority, which are reasonable under the circumstances involved and were within the contemplation of the parties. To the fullest extent permitted by law, the Contractor and all subcontractors and all suppliers waive all claims against the Airport Authority, its consultants and their respective directors, officers, members, employees and authorized representatives for any loss or damage sustained by reason of delays in the Completion of the Work beyond the Contract Completion Date which are not the responsibility of the Airport Authority, which delays are reasonable under the circumstances, and which delays were within the contemplation of the parties. However, an extension of time for the Completion of the work may be granted for a period equal to the period of delay, as defined in these General Conditions.
- D. Extensions of Time:
1. Should the Contractor seek an extension of time for the Completion of the Work under these provisions, the Contractor must submit justification for the extension of the time requested and otherwise comply with all provisions of these Contract Documents with respect to requests for extension of time.
 2. Neither this provision, nor any other provision of the Contract Documents, is intended by the parties to be contrary to any express provision of law. The parties specifically agree, acknowledge and warrant that neither this provision, nor any other provision of the Contract Documents, has for its

objective, directly or indirectly, the exemption of the Airport Authority, its consultants and their respective directors, officers, members, employees and authorized representatives, from responsibility for their own sole negligence, violation of the law or other willful injury to the person or property of another.

3. Warranties: In the event it is deemed necessary by the Airport Authority to extend the time of Completion of the Work, such extensions shall in no way release any guarantees/ warranties given by the Contractor pursuant to the provisions of the Contract Documents, nor shall such extension of time relieve or release the sureties on the bonds executed pursuant to said provision. The sureties in executing such bonds shall be deemed to have expressly agreed to any such extension of time. The amount of time allowed in any extension of time shall be limited to the period of the delay as determined by the Airport Authority. The granting of an extension of time because of delay shall in no way operate as a waiver on the part of the Airport Authority of the right to collect damages or of any other right which the Airport Authority is entitled.

ARTICLE 9 - PAYMENTS AND COMPLETION

1C-9.1 PERIODIC PAYMENTS

- A. Each month there shall be paid to the Contractor a sum equal to ninety-five percent (95%) of the value of the Work (based on the schedule of values) performed up the last day of the previous calendar month, less the aggregate of the previous payments. The monthly payments shall be made on the basis of monthly Progress Estimates that shall be submitted by the Contractor and approved by the Engineer. Quantities used in computing partial payments shall be considered as estimates only and shall be subject to revision in subsequent estimates. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall operate to release the Contractor or any surety from damages arising from such work or from the enforcement of each and every provision of this Contract and the Airport Authority shall have the right subsequently to correct any error made in any Progress Estimate for payment. Materials delivered but not incorporated or installed in the Work will not be included in Progress Estimates and/or payments unless allowed by Special Conditions. If a Progress Estimate received from the Contractor is undisputed and properly submitted, payment shall be made within

thirty (30) days after received, and if not so paid, Public Contract Code Section 20104.50 may apply. If, however, the Progress Estimate (or Payment Request as denoted in Section 20104.50) is determined not to be proper or correct, the Airport Authority may at its option correct the Progress Estimate and pay the amended amount or return the Progress Estimate no later than seven (7) days after receipt, accompanied by a document setting forth in writing the reasons it is not proper. The number of days available to make payment without incurring interest shall be reduced by the number of days the Airport Authority exceeds the seven (7) day return requirement. Improper or incorrect payment estimates include, but are not limited to: the amount invoiced is inconsistent with the Contract; the estimate or performance under the Contract is in dispute and the Contractor has failed to otherwise comply with the Contract requirements; the item or services have not been accepted; the quantity of items delivered is less than the quantity invoiced; the items or services do not meet the quality requirements of the Contract; proper backup documentation for changed work was not attached to the estimate.

- B. Notwithstanding any other provision in this Contract, as provided in Public Contract Code Section 22300 and subject to the requirements thereof, Contractor may substitute securities for monies withheld by the Airport Authority to ensure proper performance under this Contract. The substitution of securities or the deposit of the amount retained shall be at the sole expense of and request of Contractor.
- C. The Contractor shall pay each subcontractor, materialmen and/or supplier in the time periods required by law.

1C-9.2 APPLICATIONS FOR PAYMENT (PROGRESS ESTIMATES)

- A. In Contracts with a duration of sixty (60) days or longer, on or before the 15th day of each calendar month, the Contractor shall submit to the Engineer a Progress Estimate of the value of work done and materials used to the last day of the previous calendar month. Progress Estimates shall be made in the form of itemized invoices in duplicate on a form provided by the Airport Authority (see Form 5, "Summary of Progress Estimate of Value of Contract Work Completed," Appendix 1) and shall be submitted together with the data set forth below:
 - 1. A detailed estimate of work completed to date including items of Work, unit price and total value of completed Work for each item of the proposal.

2. A recapitulation showing balance due current month as follows:

| | |
|----------------------------------------------------------|-----|
| Original Contract Amount | xxx |
| Approved Change Order Amount | xxx |
| Revised Contract Amount to Date | xxx |
| Original Contract Value of Work Completed to Date | xxx |
| Change Order Work Completed to Date | xxx |
| Gross Value of Work Completed to Date | xxx |
| Less 5% Retention | xxx |
| Gross Value to Date | xxx |
| Less Previous payments | xxx |
| Balance Due this Request | xxx |
| Less Deductions (e.g., stop notices, liquidated damages) | xxx |

- B. Contractor warrants that upon submittal of the Progress Estimate that all work for which previous Progress Estimates have been made and payments received from the Airport Authority shall, to the best of the Contractor's knowledge, information and belief, be free and clear of claims, security interests or encumbrances in favor of the Contractor, subcontractors, material suppliers or other persons, or entities making a claim by reason of having provided labor, materials and equipment related to the Work and that all work for which payment is demanded has been performed in accordance with the Contract and that the amount claimed is due. With each Progress Estimate, Contractor shall certify that the as-built drawings have been updated and jointly reviewed with the Airport Authority for the month that payment is requested. (see Form 3, "As-Built Drawing Certification Form", Appendix 1)
- C. Beginning with the second Progress Estimate, each Progress Estimate shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Progress Estimates.
- D. Contractor agrees to furnish, if and when required by Airport Authority, receipts, vouchers, releases and/or waivers of claims for labor, material, equipment and services performed by Contractor and any and all subcontractors performing Work or furnishing materials under this Contract or any subcontract with Contractor, all in a form satisfactory to Airport Authority, and it is agreed that no payment shall be made except at Airport Authority's option until and unless such receipts, vouchers or releases and/or waivers, or any

and all of them, have been furnished. Any progress payment made prior to acceptance of the Work by Airport Authority shall not be construed as evidence of acceptance of any part of Contractor's Work.

1C-9.3 ACCEPTANCE AND PAYMENT

- A. **SUBSTANTIAL COMPLETION:** When the Contractor considers the Work ready for its intended purpose, the Contractor shall notify the Airport Authority in writing that it considers the Work Substantially Complete. The Contractor shall attach to this Notice a list of all work items that remain to be completed. Within fourteen (14) days thereafter, the Airport Authority and the Contractor shall make an inspection of the Work to determine the status of Completion. If the Airport Authority does not consider the Work Substantially Complete, or the list of remaining work items to be comprehensive, the Airport Authority will notify the Contractor in writing setting forth the reasons therefore. If the Airport Authority considers the Work Substantially Complete, the Airport Authority will prepare and deliver to Contractor a Certificate of Substantial Completion (See Form 14), which shall fix the date of Substantial Completion. Attached to the Notice of Substantial Completion shall be a tentative list of items to be completed or corrected prior to final payment and acceptance of the Work.
1. The Airport Authority shall have the right to exclude the Contractor from the Work after Substantial Completion, but the Airport Authority shall allow the Contractor reasonable access to complete or correct items on the list of remaining work items, or for Warranty Work.
 2. The Contractor's obligation to complete the Work in accordance with the Contract Documents is absolute. Neither recommendation of any progress or final payment by the Airport Authority, nor the issuance of a Notice of Completion, nor any payment by the Airport Authority to the Contractor under the Contract Documents, nor any use or occupancy of the Work or any part thereof by the Airport Authority, nor any acceptance by the Airport Authority or failure to do so, nor any review of the Shop Drawings or sample submittals, will constitute an acceptance of work not in accordance with the Contract Documents or a release of the Contractor's obligation to perform the Work in accordance with the Contract Documents or a waiver of liquidated damages until Completion.

- B. FINAL INSPECTION – Upon written notice from the Contractor that the entire Work or agreed portion is complete, the Airport Authority and Contractor will conduct a final inspection. The Airport Authority will notify the Contractor of all items of the Work which are incomplete or defective. The Contractor shall immediately take sure measures as are necessary to complete such Work or remedy such deficiencies. In the event the Airport Authority accepts the Work without all Work being complete, the Airport Authority shall withhold 150% of the estimated cost of the Work not yet completed in accordance with Public Contract Code Section 7107. Should the Airport Authority be required to perform a second or subsequent inspection after notice from the Contractor that the Work is complete because of Contractor's failure to comply with the Airport Authority's written notifications, the Airport Authority may deduct the cost of such inspection from the final payment to the Contractor.
- C. FINAL APPLICATION FOR PAYMENT: After the Contractor has completed all remaining Work items identified by the Airport Authority, removed all temporary structures and utilities, cleared the site, delivered all maintenance and operating instructions, conducted all training, schedules, guarantees, warranties, certificates of inspection, as-built record drawings, Final OCIP Payroll worksheets and other documents as required by the Contract, and after the Airport Authority has indicated that the Work has been recommended for acceptance, the Contractor may make application for final payment following the procedure for progress payments and the accrual of liquidated damages will cease. The final application shall be accompanied by all documentation called for in the Contract together with an executed Final Release of Claims against the Airport Authority in a form provided or approved by the Airport Authority (see Form 13, Appendix 1) and a Conditional Waiver and Release Upon Final Payment provided, however, said release(s) may specifically exclude disputed Contract claims.
- D. FINAL PAYMENT AND ACCEPTANCE: Once the Airport Authority determines that all Work has been completed and the Contractor's obligations under the Contract Documents have been fulfilled, a recommendation will be made to the Board for acceptance of the Project, a Notice of Completion recorded. Final payment including retention will then be made or as required by Public Contract Code Section 7107, whichever occurs first.
- E. Final payment of the Contract price shall include full compensation to the Contractor for all labor, materials (except as otherwise expressly provided herein), equipment use and expense required

for or incidental to the Completion of the Work in accordance with the drawings and specifications and to the satisfaction of the Engineer. Acceptance by the Contractor of the final payment shall constitute a waiver of all claims against the Airport Authority arising under the Contract Documents except those previously made in writing and identified by the Contractor as unsettled at the time of the final pay request.

- F. In case of suspension of the Contract, any unpaid balance shall be and become the sole and absolute property of the Airport Authority to the extent necessary to repay to the Airport Authority any costs incurred to complete the Work.

1C-9.4

PARTIAL UTILIZATION AND BENEFICIAL OCCUPANCY

- A. The Airport Authority shall have the right to utilize or place into service any item of equipment or other usable portion of the Work that is Substantially Complete prior to Completion and acceptance of all the Work. Whenever the Airport Authority plans to exercise said right, the Airport Authority will perform an inspection and formulate a punchlist of unfinished work, the Contractor will then be notified in writing with a Notice of Partial Utilization signed by the Engineer identifying the specific portion of the Work to be utilized or otherwise placed into service and a copy of the punchlist of unfinished work.
- B. The Airport Authority shall have the right to take control of the entire Work if it is Substantially Completed. Whenever the Airport Authority plans to exercise said right, the Contractor will be notified in writing with a Notice of Beneficial Occupancy and a copy of the punchlist of unfinished work.
- C. The Contractor understands that until a Notice of Beneficial Occupancy or Notice of Partial Utilization is issued or plant start up begins, all responsibility for the care and maintenance of all of the Work shall be the responsibility of the Contractor. Upon issuance of any Notice of Beneficial Occupancy or Notice of Partial Utilization the Airport Authority will accept responsibility for the protection and maintenance of all such items or portions of the Work described in the written notice, except for those items included on the accompanying punchlist. The Contractor shall retain full responsibility for the Completion of all of the Work, regardless of whether a portion of the Work has been partially occupied or utilized by the Airport Authority. The Contractor shall not refuse to allow the Airport Authority to partially utilize or beneficially occupy the Work.

- D. The Airport Authority may follow the provisions of Public Contract Code Section 9203 in Beneficial Occupancy or Partial Utilization circumstances or in circumstances where the Contract work is clearly divisible.

1C-9.5

QUANTITY UNITS, PAYMENTS AND MEASUREMENTS

- A. Quantity Units: The quantity units, such as tons, square feet, cubic yards and other units listed in the proposal, shall be the basis for payment. All Work to be paid for at the Contract price per unit of measurement will be measured by the Engineer in accordance with United States standard measures.
 - 1. The Contractor shall accept the compensation as provided by the Contract unit prices and by measurement and/or Contract lump sum prices as full payment for furnishing all supervision, labor, materials and equipment to perform all Work shown on the plans and specified herein, and for all expenses, loss, damage or risk of every description connected with the prosecution of the Work.
- B. Area and Linear Measurements: Unless otherwise indicated on the plans and/or specified in Special Conditions, area and linear measurements of surface or underground improvements shall be made horizontally.
- C. Earthwork: Quantity of earthwork within the limits indicated on the plans and/or specified in Special Conditions may be computed in cubic yards by the method of average end areas and centerline distances. Correction for curvature may not be applied to quantities within the roadway prism as indicated on the cross sections. The Engineer shall make the computation of the quantity by the method which, in its opinion, is best suited to obtain accurate results.
- D. Concrete: When payment for concrete is on the basis of cubic yards, it will be measured by certified weighmaster delivery tickets as proscribed by Business and Professions Code Section 12700, et seq., or other applicable law. At the discretion of the Engineer, volumes may be verified by measurement of dimensions shown on the plans or such other dimensions as determined by the Engineer.
- E. Asphalt Concrete and Cement Treated Base: When payment for asphalt concrete or cement treated base is on the basis of tons and the price includes the cost of placing asphalt concrete or cement treated base as pavement, and the completed pavement exceeds

the thickness specified, then the computed weight of the asphalt concrete or cement treated base in the excess thickness up to but not exceeding one-fourth (1/4) inch, will be included in payment quantity.

- F. Weight – Measurements: Weight measurements shall be in pounds or tons consisting of 2,000 pounds avoirdupois. Unless otherwise specified, material paid for by weight shall be weighed on platform scales furnished by the Contractor or on public scales. Scales furnished by the Contractor shall be satisfactory to the Engineer and shall be inspected and sealed by a representative of the State Division of Weights and Measures as often as the Engineer may deem necessary to insure their accuracy. The Contractor shall furnish to the Engineer on the date the materials are delivered to the Project licensed weighmaster's original certified weight tickets for each load.
1. If the material is shipped by rail, the car weights will be accepted provided the actual weight only of material will be paid for and not the minimum car weight used for assessing freight tariff, and provided further that car weights will not be acceptable for material to be passed through mixing plants.
 2. Trucks used to haul material being paid for by weight shall be weighed empty daily at such times as Engineer directs, and each truck shall bear a plainly legible identification mark. Full compensation for all expense involved in measuring and weighing shall be included in the prices bid, and no additional payment will be made therefor.
 3. Quantities of material wasted or disposed of in a manner not called for under this Contract, or rejected loads of material, including material rejected after it has been placed, material not unloaded from vehicles, material placed outside the plan lines or material remaining on hand after Completion of the Work, will not be paid for and such quantities will not be included in the final total measured quantities. No compensation will be allowed for disposing of rejected or excess material.
 4. Unless otherwise specifically provided, when mineral aggregate, imported borrow or other specified roadway material is being paid for on a weight basis, the weight of material to be paid for will be determined by deducting from the weight of material delivered to the Work, the weight of water in the material at the time of weighing, in excess of six percent (6%) of the dry weight of the material, except that

when the material is to be bituminous treated, deduction will be made for the weight of water in excess of three percent (3%). No compensation or other allowance will be made for the weight of such water deducted. The procedure followed for the determination of water shall be in accordance with the "Standard Method for Determination of Moisture of Volatile Distillates in Bituminous Mixtures" of the American Association of State Highway Officials, Serial Designation T-110-42, with the exception that commercial xylene shall be used as the solvent and the percentage of water shall be expressed on the basis of the dry weight of the material according to the following formula:

$$\% \text{ Water} = \frac{\text{Volume of water in trap in milliliters} \times 100}{\text{Weight of wet samples in grams} - \text{Volume of water in milliliters}}$$

ARTICLE 10 - CLAIMS AND DISPUTES

1C-10.1 CLAIMS AND DISPUTES

A. Definitions:

1. "Dispute" or "claim" means a written demand or written assertion by one of the Contracting parties seeking, as a matter of right, the payment of money in a sum certain, the extension of Contract Time, the adjustment or interpretation of Contract terms, or other relief arising under or relating to this Contract including, but not limited to, questions or doubts as to the true meaning of the Contract Documents should any error, ambiguity or mistake be apparent in the Contract Documents including quantity estimates. A claim arising under a Contract, unlike a claim relating to that Contract, is a claim that can be resolved under a Contract clause that provides for the relief sought by that claimant. A voucher, invoice or other routine request for payment that is not in dispute when submitted is not a claim or dispute under the Contract. The submissions may be converted to a claim under the Contract by complying with the submission requirements of the Contract Documents, if it is disputed either as to liability or amount.
2. A claim by the Contractor shall be made in writing and submitted to the Airport Authority for a written decision. A claim by the Airport Authority against the Contractor shall be made in writing.

B. Procedure:

1. Mediation: The Contractor and the Airport Authority shall make a good faith attempt to resolve all claims and disputes that may arise from time to time during the performance of the Work. If the parties are unable to resolve the claim or dispute by direct negotiation or such other procedures as may be agreed upon at a Partnering Workshop or as required by law, and if the claim is not time barred, the parties agree first to attempt to settle the dispute by mediation administered at San Diego, California by the American Arbitration Association under its Construction Industry Mediation Rules, or by such other agreed upon provider.
2. Arbitration: If the mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association under its Construction Industry Arbitration Rules, or by such other agreed upon provider, provided however, that any arbitration award shall be non-binding and advisory only. Any resultant agreements shall be documented and may be used as the basis for a Change Order as appropriate.

C. Procedure for Protest of Disputed Work:

1. Protest of Disputed Work: If the Contractor considers any Work required of it to be outside the requirements of the Contract, or if it considers any instruction, meaning, requirement, ruling or decision of the Airport Authority or its representative to be unauthorized pursuant to the Contract, it shall within fifteen (15) calendar days after such demand is made, or instruction given, or receipt of a decision after reconsideration, file a written protest with the Airport Authority stating clearly and in detail its objections and reasons therefore.
2. The Contractor shall promptly comply with the Work required of it even though a written protest has been filed. If a written protest is not issued within fifteen (15) calendar days, said claim shall be time barred and the Contractor's failure to provide such notice or the installation of any such Work without authorization shall be construed as relieving the

Airport Authority of any claim either for added costs or for extensions of time.

3. The Airport Authority will review the Contractor's timely written protest and provide a decision within 45 days. If after reviewing the Airport Authority's decision, the Contractor still considers the Work required of it to be outside the requirements of the Contract, the Contractor shall notify the Airport Authority in writing within seven (7) calendar days after receiving the decision that a formal claim will be issued. Within thirty (30) days of receiving the decision, the Contractor shall submit its claim in writing with the documents required as set forth in Sections C and D, infra. Failure to furnish notification within seven (7) days and all justifying documentation within thirty (30) days shall render the claim time barred and shall constitute a waiver of Contractor's claim.
4. Upon receipt of the Contractor's formal claim including all required documentation supporting Contractor's position, the Airport Authority or its designee will review the issue and within thirty (30) days from receipt of the Contractor's claim render a final determination. In the event the Airport Authority does not respond, the claim shall be deemed denied.

D. Certification:

1. The Contractor shall submit under penalty of perjury with each claim its and each subcontractor's written certification that:
 - a. The claim is made in good faith.
 - b. Supporting data are accurate and complete to the best of the Contractor's knowledge and belief.
 - c. The amount requested accurately reflects the Contract adjustment for which the Contractor believes the Airport Authority is liable.
 - d. If the Contractor is an individual, the certification shall be executed by that individual.

- e. If the Contractor is not an individual, the certification shall be executed by an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.
 - f. The Contractor understands that if a false claim is submitted, it will be considered fraud and the Contractor may be subject to criminal prosecution and any other available relief pursuant to Governmental Code Section 12650, et seq.
2. Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by the Airport Authority, is a condition precedent to any action, proceeding, litigation, suit or demand for arbitration by Contractor.

E. Claim Format:

- 1. The Contractor shall submit the claim justification in the following format:
 - a. Summary of claim merit and amount and that Contract provision under which the claim is made.
 - b. List of documents relating to the claim:
 - 1) Specifications
 - 2) Plans
 - 3) Clarifications/Requests for Information
 - 4) Schedules
 - 5) Other
 - c. Chronology of events and correspondence
 - d. Analysis of claim merit
 - e. Analysis of claim cost
 - f. Analysis of schedule delays
 - g. Cover letter and certification

- h. Attachments:
 - 1) Specifications
 - 2) Plans
 - 3) Clarifications/Requests for Information
 - 4) Correspondence
 - 5) Schedules (all schedules relating to delays must be in a critical path method indicating the cause and occurrence of the delay. No other type of schedule will be accepted)
 - 6) Other

1C-10.2 CONSTRUCTION CLAIMS LESS THAN \$375,000

A. Construction Claims:

- 1. These provisions are included in this Contract as required by the California Public Contract Code:
 - a. This section applies to all public work claims of Three Hundred Seventy-Five Thousand Dollars (\$375,000.00) or less which arise between a Contractor and the Airport Authority.
 - b. "Claim" means a separate demand by the Contractor for: (1) a time extension, (2) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Contract for a public work and payment of which is not otherwise expressly provided for or the Contractor is not otherwise entitled to, or (3) an amount the payment of which is disputed by the Airport Authority.
- 2. For any claim filed under this section, the following requirements apply:
 - a. The claim shall be in writing and include the documents necessary to substantiate the claim as defined in Section 1C-10.1.E. Claims must be filed on or before the date of final payment. Nothing in this section is intended to extend the time limit or

supersede notice requirements otherwise provided by Contract for the filing of claims.

- b. For claims of less than Fifty Thousand Dollars (\$50,000.00) the Airport Authority shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the Airport Authority may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this section, upon mutual agreement of the Airport Authority and the Contractor. The Airport Authority's written response to the claim, as further documented, shall be submitted to the Contractor within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater.
- c. For claims of over Fifty Thousand Dollars (\$50,000.00) and less than or equal to Three Hundred Seventy-Five Thousand Dollars (\$375,000.00), the Airport Authority shall respond in writing to all written claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the Airport Authority may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this section, upon mutual agreement of the Airport Authority and the Contractor. The Airport Authority's written response to the claim, as further documented, shall be submitted to the Contractor within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.
- d. If the Contractor disputes the Airport Authority's written response, or the Airport Authority fails to respond within the time prescribed, the Contractor may so notify the Airport Authority, in writing, either within fifteen (15) days of receipt of the Airport

Authority's response or within fifteen (15) days of the Airport Authority's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the Airport Authority shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

- e. If following the meet and confer conference, the claim or any portion remains in dispute, the Contractor may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits its written claim pursuant to Section 2(a), above until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer progress.
- f. The proceeding sections do not apply to non-Contract claims and do not effect any applicable time periods for filing such claims.

- B. Unless this Contract provides otherwise, all claims, counter-claims, disputes and other matters in question between the Airport Authority and the Contractor arising out of or relating to this Contract or its breach shall be decided in a court of competent jurisdiction within the County of San Diego in the State of California and shall be governed by the laws of the State of California.

ARTICLE 11 - TERMINATION OR SUSPENSION OF THE CONTRACT

1C-11.1 TERMINATION OR SUSPENSION FOR CAUSE

- A. If the Contractor fails to begin the delivery of the material, to commence Work as provided in the Contract, to make delivery of material promptly as ordered, to maintain the rate of delivery of material or progress of the Work in such a manner as in the opinion of the Engineer will insure a full compliance with the Contract Time, files for bankruptcy protection, or if in the opinion of the Engineer the Contractor is not carrying out the provisions of the Contract in their true intent and meaning or persistently disregard laws,

ordinances, Contract terms or rules or regulations or orders of a public authority having jurisdiction, persistently fails to timely pay its subcontractors, materialmen, or suppliers as required by law or otherwise has breached a provision of the Contract Documents, written notice will be served on the Contractor to provide satisfactory compliance with the Contract within a specified time period. In the event Contractor neglects or refuses to comply with such notice, the Engineer may with the written consent of the President and consent of the Board evidenced by resolution, terminate the operation of all or any part of the Contract, or the Engineer may in its discretion after such notice, at the expense and for the account of the Contractor, cause to be performed any part of the Work, or purchase any or all of the material included in the Contract or required for its Completion, without terminating the Contract.

- B. If the Contractor is debarred by the Board pursuant to Airport Authority ordinance, this Contract and any other existing Contract by and between the Airport Authority and the Contractor shall be terminated. Notwithstanding the foregoing, the Board may continue this Contract, and any other existing Contract, upon advice from the President as to the effect of termination of this Contract.
- C. Upon termination, the Engineer may, at its discretion, take possession of all or any part of the machinery, tools, appliances, material and supplies used in the Work covered by the Contract or that have been delivered by or on account of the Contractor for use in connection therewith and the same may be used either directly by the Airport Authority or by other parties for it, in the Completion of the Work suspended; or the Airport Authority may employ other parties to perform the Work or may substitute other machinery or material or purchase the materials contracted for in such manner as it may deem proper or hire such force and buy such machinery, tools, appliances, materials and supplies at the Contractor's expense as may be necessary for the proper conduct and Completion of the Work. When the Airport Authority terminates the Contract for cause, the Contractor shall not receive future payments until the Work is completed. Any cost to the Airport Authority in excess of the Contract arising from the suspension of the Contract, or from Work performed or purchases made by the Airport Authority either before or after suspension and required on account of the failure of the Contractor to comply with this Contract or other orders of the Engineer issued in pursuance thereof, and any costs incurred by the Airport Authority in locating and/or Contracting with a replacement Contractor, shall be charged to the Contractor and its sureties, who shall be liable therefor. The

Contractor shall maintain all insurance required by the Contract as if the Contract had been satisfactorily completed and accepted by the Airport Authority.

- D. A special lien to secure the claims of the Airport Authority in the event of termination for cause of the Contract is hereby created against any property of the Contractor taken into the possession of the Airport Authority under the terms hereof, and such lien may be enforced by a sale of such property under the direction of the Board and the proceeds of the sale, after deducting all expenses thereof, and connected therewith, shall be credited to the Contractor. If the net credits shall be in excess of the claims of the Airport Authority against the Contractor, the balance will be paid to the Contractor or its legal representatives.
- E. The Contractor shall not make any disposition of the plant, machinery, tools, appliances, supplies or materials used on or in connection with the Work, either by sale, conveyance or encumbrance, inconsistent with the special lien of the Airport Authority expressly created by this Contract.
- F. The decision of the Engineer, when approved by the President and by the Board evidenced by resolution, shall be final and binding upon both parties. In the event it is determined that cause did not exist for termination pursuant to these provisions, the termination shall be without further notice considered termination for convenience. Suspension of the Contract or any part thereof, shall operate only to terminate the right of the Contractor to proceed with the Work covered by the Contract or the suspended portions thereof. The provisions of the Contract permitting the Airport Authority to make changes and to make proper adjustment of accounts to cover any increase or decrease of cost on account of such changes, and all other stipulations of the Contract except those giving the Contractor the right to proceed with Work on the item covered by the suspension, shall be and remain in full force and effect after such suspension and until the Contract shall have been completed and final payment or final adjustment of account made.

1C-11.2 TERMINATION OR SUSPENSION FOR CONVENIENCE

- A. The Airport Authority may, without cause, order the Contractor in writing to suspend, interrupt or terminate performance of the Work in whole or in part for such period of time as the Airport Authority may determine. An adjustment may be made for an increase in the cost of performance of the Contract including profit on the

increased cost of performance, if any, caused by any such suspension or interruption or termination. An equitable adjustment may be made of the price or prices specified in the Contract relating to the portion of the Work not suspended, interrupted or terminated by the notice of suspension, interruption or termination. No adjustment shall be made to the extent:

1. That performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
2. An equitable adjustment is made or denied under another provision of this Contract.

1C-11.3 EFFECT OF SUSPENSION, INTERRUPTION OR TERMINATION FOR CAUSE OR CONVENIENCE

- A. Any suspension, interruption or termination for cause or convenience shall be effected by delivery to the Contractor of a written notice of suspension, interruption or termination specifying the extent to which performance of Work under the Contract is suspended, interrupted or terminated and the date upon which such suspension, interruption or termination becomes effective. After receipt of the notice of suspension, interruption or termination and except as otherwise directed by the Airport Authority, the Contractor shall:
1. Stop Work under the Contract on the date and to the extent specified in the notice of suspension, interruption or termination;
 2. Place no further orders or subcontracts for materials, services or facilities except as necessary to complete the portion of the Work under the Contract which is not suspended, interrupted or terminated;
 3. Place no further equipment at the Project except as necessary to complete the portion of the Work under the Contract which is not suspended, interrupted or terminated;
 4. Terminate all orders or subcontracts to the extent they relate to the performance of Work suspended, interrupted or terminated by the notice of suspension, interruption or termination;

5. Assign to the Airport Authority in the manner, at the times, and to the extent directed by the Airport Authority, all the right, title and interest of the Contractor under the orders and subcontracts so suspended, interrupted or terminated. The Airport Authority shall have the right, in its discretion, to settle or pay any or all claims arising out of the suspension, interruption or termination of such orders and subcontracts;
6. Settle all outstanding liabilities and all claims arising out of such suspension, interruption or termination of orders and subcontracts, with the approval or ratification of the Board to the extent the Board may so require. The Board's approval or ratification shall be final for all purposes of this clause;
7. Transfer title to the Airport Authority, and deliver in the manner, at the times, and to the extent, if directed by the Airport Authority, the fabricated or unfabricated parts, work in process, completed Work, supplies and other materials produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of suspension, interruption or termination, and the completed or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the Airport Authority;
8. Use its best efforts to sell, in the manner, at the times, and to the extent, and at the price or prices that the Airport Authority direct or authorized, any property of the types previously referred to herein, but the Contractor shall not be required to extend credit to any purchaser and may acquire any such property under the conditions prescribed and at a price or prices approved by the Airport Authority. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Airport Authority to the Contractor under this Contract or shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in such other manner as the Airport Authority may direct;
9. Complete performance of such part of the Work as shall not have been suspended, interrupted or terminated by the notice of suspension, interruption or termination;
10. Take such action as may be necessary, or as the Airport Authority may direct, for the protection and preservation of the property related to this Contract which is in the

possession of the Contractor and in which the Airport Authority has or may acquire an interest;

11. The Contractor shall maintain the Work site and provide such ingress and egress for local resident or tenants or the public as may be necessary during the period of suspended work or until the Contract has been declared terminated; and
 12. Maintain all required insurance as if the Contract had been satisfactorily performed and accepted by the Airport Authority.
- B. After receipt of the notice of suspension, interruption or termination, the Contractor shall submit to the Airport Authority a certified suspension, interruption or termination claim. Such claim shall be submitted promptly but in no event later than ninety (90) days from the effective date of the notice of suspension, interruption or termination. If the Contractor fails to submit a suspension, interruption or termination claim at any time after such ninety (90) day period, the Airport Authority may determine, on the basis of information available to it, the amount, if any, due to the Contractor. The Airport Authority shall then pay to the Contractor the amount so determined.
- C. After receipt of a certified claim, the Airport Authority and the Contractor may agree upon the whole or any part of the amount or amounts to be paid to the Contractor because of the total or partial suspension, interruption or termination of the Contract. The amount may include a reasonable allowance for profit on Work performed. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of Work not suspended, interrupted or terminated and any claims the Airport Authority may have against the Contractor. Nothing in Paragraph E of this section, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.
- D. After receipt of a certified claim, if the Contractor and Airport Authority fail to agree on the amounts to be paid to the Contractor, the Airport Authority shall determine, on the basis of the information available to it the amount, if any, due to the Contractor by reason of the suspension, interruption or termination and shall pay the Contractor the amount which shall be determined as follows:

1. For all work specified in the Contract which is performed before the effective date of the notice of suspension, interruption or termination, the total of:
 - a. The reasonable cost to the Contractor, without profit, for all Contract Work performed prior to the notice of suspension, interruption or termination, including the Work done to secure the project for termination. In determining the reasonable cost, the Airport Authority may utilize the schedule of values, Contract unit prices, Contract lump sum, the percentage of Work completed and any other method available to it. For purposes of determining reasonable costs, deductions will be made for the cost of materials to be retained by the Contractor, amounts realized by the sale of materials, and for other appropriate credits against the cost of the Work. When in the opinion of the Airport Authority the cost of an item of Work is unreasonably high, the reasonable cost to be allowed will be the estimated reasonable cost of performing such Work in compliance with the requirements of the plans and specifications and excessive actual cost shall be disallowed.
 - b. Reasonable cost will include a reasonable allowance for project overhead and general administrative overhead not to exceed a total of ten percent (10%) of direct costs of such Work.
 - c. A reasonable allowance for profit on the cost of the Work performed as determined under Subsection (a) provided the Contractor established to the satisfaction of the Airport Authority that it would have made a profit had the Contract been completed and provided further, that the profit allowed shall in no event exceed five percent (5%) of the cost of the Work completed.
 - d. The reasonable cost to the Contractor of handling material returned to the vendor, delivered to the Airport Authority or otherwise disposed of as directed by the Airport Authority.
- E. In no event shall the Airport Authority be liable for costs incurred by the Contractor or any of its subcontractors after receipt of a notice of suspension, interruption or termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the

Contract post-suspension, post-interruption or post-termination, employee salaries, administrative expenses, overhead or unabsorbed overhead, the costs of preparing and submitting the bid, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, pre-judgment interest, or any other expense which is not reasonable or authorized under Subparagraph D of this section.

*** END OF SECTION ***