

EXHIBIT B

PROPOSED HCAOG SAFE CONTRACT

THIS CONTRACT is entered into on _____, by and between the HUMBOLDT COUNTY SERVICE AUTHORITY FOR FREEWAY EMERGENCIES hereinafter called HCSAFE, and _____, hereinafter called CONTRACTOR. The parties agree as follows:

1. **DUTIES.** CONTRACTOR agrees to exercise special skill to accomplish the following results:

A. Provide all technical and professional services, including labor, material equipment, transportation, supervision and expertise necessary to ensure proper functioning of all call boxes and equipment as specified in **Attachment A: Call Box Requirements** for one hundred percent of call boxes operated by the HCSAFE.

B. Fully and adequately provide maintenance as specified in **Attachment B: Scope of Work**, which by this reference is incorporated herein.

C. Conduct Site Improvements to bring Humboldt County call boxes into compliance with Americans with Disabilities Act (ADA) of 1990 requirements and maintain this compliance as specified in **Attachment B: Scope of Work**.

D. Provide necessary support to the HCSAFE and its designated cellular service contractor to ensure that the call box equipment is able to connect to cellular service in locations where cellular service is available and trouble shoot potential cellular service issues.

E. Provide necessary support to the HCSAFE and its designated call answering center to ensure that the call boxes are programmed to call the appropriate call answering center phone number.

F. Maintain data for all call boxes operated by the HCSAFE including: site type, location, maintenance, maintenance history and call activity and provide call box data to the HCSAFE as specified in **Attachment B: Scope of Work**.

G. Complete a callbox expansion plan as described in **Attachment B: Scope of Work**.

2. **COMPENSATION.**

A. Fees: In consideration of CONTRACTOR accomplishing said result the HCSAFE agrees to pay CONTRACTOR based on a combination of a Monthly Flat Fee per in service call box and Time and Material basis. The Monthly Flat Fee per in service call box and the assumptions on which it is based are as set forth in **Attachment C: Monthly Flat Fee Schedule**, attached hereto and incorporated by this reference. Time and Material Costs are set forth in **Attachment D: Time and Materials Basis Fee Schedule**, attached hereto and incorporated by this reference and will be paid for activities approved by the HCSAFE and not included in the Monthly Flat Fee per call box. All such fees and costs, where applicable, include all costs of labor, materials, equipment, tools,

machinery, utilities, transportation, license or permit fees, overhead and profit and all other services necessary for proper execution and completion of work.

B. Method of Payment: Monthly Flat Fee per call box and Time and Material Costs will be invoiced on a monthly basis by CONTRACTOR to the HCSAFE. Information, including, but not limited to, date of service, total and frequency of call boxes serviced and the tasks (maintenance or other) completed during the invoice period will accompany each invoice. The CONTRACTOR shall provide itemized invoices for knockdown events to assist HCSAFE in cost recovery efforts from motorists who damage call boxes. Payment of the approved portion of an invoice shall be made to CONTRACTOR by the HCSAFE within thirty (30) calendar days following HCSAFE receipt of the invoice.

C. Approval of Work: Compensation will be provided for work approved by the HCSAFE Program Manager. Approved work is considered those activities which result in the call box achieving all the Call Box Requirements included in **Attachment A: Call Box Requirements**. If upon completion of work the call box does not meet all Call Box Requirements included in **Attachment A: Call Box Requirements**, the work will not be approved by the HCSAFE Project Manager, unless otherwise negotiated. Compensation will not be provided for services that are not performed in accordance with the **Attachment B: Scope of Work** (including reporting requirements) and not included in the Monthly Flat Fee or not approved in writing (electronic email) by the HCSAFE Program Manager prior to its initiation.

3. **TERM**. The term of this contract shall be: through May 31, 2026 with the option at the sole discretion of HCSAFE to extend the contract for up to 5 additional years.

4. **EARLY TERMINATION**.

A. Termination of Convenience. HCSAFE may, by written notice stating the extent and effective date, terminate its Contract or any portion thereof, with the CONTRACTOR, for convenience, at any time, based on circumstances affecting the call box program, its funding, HCSAFE or any other reason. Upon receipt of notice of termination, CONTRACTOR shall stop work under this Contract immediately, to the extent provided in the notice of termination, and shall promptly submit its termination claim to HCSAFE. HCSAFE shall pay the CONTRACTOR as full compensation for work performed prior to termination: (i) the Monthly Flat Fee for completed and accepted work, adjusted as provided in Attachment C, if applicable, (ii) the Time and Materials Cost in accordance with Attachment D for completed and accepted work, not included in the Monthly Flat Fee and approved by the HCSAFE and; (iii) reimbursement for costs incurred on incomplete work, provided that such costs are not otherwise recoverable from other sources by CONTRACTOR, and subject to the maximum payment for such work, if completed.

B. Termination for Default of CONTRACTOR. If CONTRACTOR becomes insolvent, assigns or subcontracts the work without HCSAFE approval, does not perform the services specified in Attachment B, fails to perform in a manner called for, or fails to comply with any other provision of this Contract, HCSAFE may terminate this Contract for default. Termination shall be affected by serving a ten (10) day advance written notice of termination on CONTRACTOR, setting forth the manner in which CONTRACTOR is in default. If CONTRACTOR does not cure the breach or propose a plan and schedule for curing the breach acceptable to HCSAFE within the ten (10) day period, this Contract shall be deemed terminated and written notice to that effect shall be served upon the CONTRACTOR's surety. If

CONTRACTOR's surety does not cure the breach or propose an acceptable plan and schedule for cure within ten (10) days of receiving the notice of termination, HCSAFE may take possession of all project material and may let the unfinished work to another contract.

In the event of termination for default hereunder, CONTRACTOR shall be entitled to payment as provided in (a) above for services performed in accordance with the Contract only, offset by any costs or damages incurred by HCSAFE Contract arising from Contractor's breach of the Contract.

Should CONTRACTOR be deemed terminated for default, CONTRACTOR may not submit a proposal or bid on the same project that it defaulted on should HCSAFE rerelease the project.

If it is determined by HCSAFE the CONTRACTOR's failure to perform resulted from unforeseeable causes beyond the control of CONTRACTOR, such as fire, flood, earthquake or other event that is not the fault of, or is beyond the control of CONTRACTOR, HCSAFE may allow CONTRACTOR to continue to perform maintenance services, or treat the termination as a termination for convenience.

5. WARRANTY.

A. Call box enclosures shall be guaranteed by CONTRACTOR against corrosion and fading for the period of this Contract. CONTRACTOR shall use preventive maintenance visits (as defined in Attachment B) to protect boxes from corrosion and fading. CONTRACTOR shall replace or repair any such defective enclosures in a timely and satisfactory manner. At the CONTRACTOR's discretion the CONTRACTOR may replace aluminum boxes with Lexan Call Boxes in areas where call boxes are demonstrating high corrosiveness. The Lexan call boxes will meet the same specifications as the Aluminum Boxes including but not limited to call connect light brightness and size, environmental specifications and functioning capabilities. If CONTRACTOR fails to eliminate corrosion or keep paint color within specific parameters, the HCSAFE may perform the necessary Work and CONTRACTOR's sureties shall be liable for the cost therefore.

B. The CONTRACTOR warrants to HCSAFE that materials and equipment furnished under the contract will be of good quality and new unless otherwise required or permitted by the contract documents, that the work will be free from defects not inherent in the quality required or permitted, and that the work will conform with the requirements of the contract documents for no less than one (1) year. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by HCSAFE, the CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment. All installation repairs must be guaranteed for no less than one (1) year from the date of certification.

6. GRANT OF LICENSE. Should CONTRACTOR provide as part of its services under the Project any deliverable or part of a deliverable that contains software to which CONTRACTOR or a third party to this Contract holds the copyright, CONTRACTOR hereby grants the HCSAFE a perpetual non-exclusive, royalty free license to use such software in the context of the Project and/or warrants the existence of such a grant of license from the third party.

7. PREVAILING WAGE REQUIREMENTS. The work under this Contract is considered "public works," and therefore pursuant to Section 1700, and following, of the California Labor Code, the CONTRACTOR shall pay not less than the prevailing rate of per diem wages as determined by the California Department of Industrial Relations. Copies of such prevailing rate of

per diem wages are on file at the office of the Humboldt County Association of Governments, 611 I Street, Suite B, Eureka, California CA 95501. A copy of the prevailing wage rates may also be available on the California Department of Labor website (<http://www.dir.ca.gov/dlsr/PWD/index.htm>). Those copies shall be made available to any interested party upon request. The CONTRACTOR shall forfeit, as penalty to HCSAFE, Fifty Dollars (\$50.00) for each calendar day or portion thereof, for each workman paid less than the stipulated prevailing rates for any work done under the contract by it or by any subcontractor under it, in violation of the provisions of such Labor Code.

The CONTRACTOR shall post a copy of the general prevailing rates per diem wages in a conspicuous place at the job site forthwith upon undertaking the public work called for herein. The CONTRACTOR shall also keep an accurate certified payroll record in accordance with requirements set forth in Section 1776 of the Labor Code of the State of California and these contract documents.

8. EQUAL EMPLOYMENT OPPORTUNITY. During and in relation to the performance of this Contract, CONTRACTOR agrees as follows:

A. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment; advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

B. If this Contract provides compensation in excess of \$50,000 to CONTRACTOR and if CONTRACTOR employs fifteen (15) or more employees, the following requirements shall apply:

(i) The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment; advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. In addition, the CONTRACTOR shall make a good faith effort to consider Minority/Women/Disabled Owned Business Enterprises in CONTRACTOR'S solicitation of goods and services, Definitions for Minority/Women/Disabled Business Enterprises are available from the COUNTY General Services Purchasing Division.

(ii) In the event of the CONTRACTOR'S non-compliance with the non-discrimination clauses of this Contract or with any of the said rules, regulations, or orders said CONTRACTOR may be declared ineligible for further contracts with the HCSAFE.

(iii) The CONTRACTOR shall cause the foregoing provisions of this Subparagraph 7B. To be inserted in all subcontracts for any work covered under this Contract by a subcontractor compensated more than \$50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

9. HARASSMENT. HCAOG maintains a strict policy prohibiting unlawful harassment, including sexual harassment, in any form, including verbal, physical and visual harassment by any employee, supervisor, manager, officer or Board member, or agent of the employer. Vendors, contractors, and consultants shall not engage in conduct that has an effect of unreasonably interfering with an HCAOG employee's work performance or creates an intimidating, hostile or offensive work environment.

10. FEDERAL, STATE AND LOCAL LAWS. CONTRACTOR warrants that in the performance of this Contract, it shall comply with all applicable, current and future federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated hereunder.

11. INDEPENDENT CONTRACTOR STATUS. CONTRACTOR and HCSAFE have reviewed and considered the principal test and secondary factors below and agree that CONTRACTOR is an independent contractor and not an employee of HCSAFE. CONTRACTOR is responsible for all insurance (workers compensation, unemployment, etc.), all payroll related taxes and all other laws and regulations governing such matters. CONTRACTOR is not entitled to any employee benefits. HCSAFE agrees that CONTRACTOR shall have the right to control the manner and means of accomplishing the result contracted for herein. CONTRACTOR shall be responsible for its own acts and those of its agents and employees during the term of this Contract.

PRINCIPAL TEST: The CONTRACTOR rather than HCSAFE has the right to control the manner and means of accomplishing the result contracted for.

SECONDARY FACTORS: (i) The extent of control which, by this Contract, HCSAFE may exercise over the details of the work is slight rather than substantial; (ii) CONTRACTOR is engaged in a distinct occupation or business; (iii) In the locality, the work to be done by CONTRACTOR is usually done by a specialist without supervision, rather than under the direction of an employer; (iv) The skill required in the particular occupation is substantial rather than slight; (v) The CONTRACTOR rather than the HCSAFE supplies the instrumentalities, tools and work place; (vi) The length of time for which CONTRACTOR is engaged is of limited duration rather than indefinite; (vii) The method of payment of CONTRACTOR is by the job rather than by the time; (viii) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of HCSAFE; (ix) CONTRACTOR and HCSAFE believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (x) The HCSAFE conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that over all there are significant secondary factors which indicate that CONTRACTOR is an independent contractor.

By their signatures to this Contract, each of the undersigned certifies that it is his or her considered judgment that the CONTRACTOR engaged under this Contract is in fact an independent contractor.

12. NONASSIGNMENT AND SUBCONTRACTS. CONTRACTOR shall not assign the Contract without the prior written consent of the HCSAFE. Any attempted assignment without prior written consent by HCSAFE, is void.

13. ACKNOWLEDGMENT. CONTRACTOR shall acknowledge in all reports and literature that the material is prepared for and on behalf of the HCSAFE.

14. RETENTION AND AUDIT OF RECORDS. CONTRACTOR shall maintain such books, records, data and documents in accordance with generally accepted accounting principles. CONTRACTOR shall retain records pertinent to this Contract for a period of not less than five (5) years after final payment under this Contract or until a final audit report is accepted by HCSAFE, whichever occurs first. CONTRACTOR hereby agrees to be subject to the examination and audit by the HCSAFE Auditor-Controller, the Auditor General of the State of California, or the designee of either during CONTRACTOR's performance hereunder and for a period of five (5) years after final payment under this Contract. COMMISSION's right to audit books and records directly related to this Contract shall also extend to all subcontractors to this Contract.

15. WORK PRODUCTS. All material, data, information, and written, graphic or other work produced under this Contract is subject to the unqualified and unconditional right of HCAOG to use, reproduce, publish, display, and make derivative use of all such work, or any part of it, free of charge and in any manner and for any purpose; and to authorize others to do so. If any of the work is subject to copyright, trademark, service mark, or patent, the HCAOG is granted and shall have a perpetual, royalty-free, nonexclusive and irrevocable license to use, reproduce, publish, use in the creation of derivative works, and display and perform the work, or any part of it, and to grant to any third party a comparable and coextensive sublicense.

The grantee shall include in any contract with a third party for work under this Contract terms that preserve the rights, interests, and obligations created by this section, and that identify the HCAOG as a third-party beneficiary of those provisions.

The grantee shall not utilize the work produced under this Contract for any profit-making venture, or sell or grant rights to a third party for that purpose.

16. DRUG-FREE WORKPLACE. CONTRACTOR shall comply with the provisions of Government Code § 8350 *et seq.*, the Drug-Free Workplace Certification requirement and with the U.S. DOT regulations "Drug-Free Workplace Requirements Grants" in 49 CFR Part 29, Subpart F.

17. ATTACHMENTS. This Contract includes the following documents, all of which are incorporated herein by reference:

Attachment A: Call Box Requirements and Specifications

Attachment B: Scope of Work

Attachment C: Monthly Flat Fee Schedule

Attachment D: Time and Material Basis Fee Schedule

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed this _____ day of _____, 20__.

1. CONTRACTOR

3. HUMBOLDT COUNTY ASSOCIATION OF GOVERNMENTS

By: _____
Signed

By: _____
Signed

Printed

Printed

Company Name: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

2. APPROVED AS TO INSURANCE:

4. APPROVED AS TO FORM:

By: _____
Administrative Services Officer

By: _____
HCAOG Counsel

DISTRIBUTION:

- *HCAOG Fiscal & Project Manager*
- *Contractor*

CONTRACT ATTACHMENT A
CALL BOX REQUIREMENTS AND SPECIFICATIONS [PLACEHOLDER]

CONTRACT ATTACHMENT B
SCOPE OF WORK [PLACEHOLDER]

CONTRACT ATTACHMENT C
MONTHLY FLAT FEE SCHEDULE [PLACEHOLDER]

ATTACHMENT D

HUMBOLDT COUNTY ASSOCIATION OF GOVERNMENTS
SERVICE AUTHORITY FOR FREEWAYS AND EMERGENCIES

FAITHFUL PERFORMANCE BOND

KNOW ALL MEN/WOMEN BY THESE PRESENTS, that we, _____

_____, as Principal, and

_____, as Surety, are held and firmly bound unto the Humboldt County Association of Governments Service Authority for Freeways and Emergencies, a municipal corporation of the State of California, hereinafter called HCSAFE, in the penal sum of _____ DOLLARS (\$ _____), and no more, for the work described below, for the payments of which sum in lawful money of the United States of America well and truly to be made to the HCSAFE, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents as herein above provided.

THAT WHEREAS, the Principal has entered into a contract with said HCSAFE for the work of:
CALL BOX MAINTENANCE AND IMPROVEMENTS

NOW, THEREFORE, the condition of this obligation is such that if the above bounded Principal shall in all things stand to abide by, and well and truly keep and perform the covenants, conditions and agreements in the foregoing contract agreed on his/her or their part to be kept and performed at the time and in the manner herein specified, and shall indemnify and save harmless HCSAFE, its officers, agents and employees as therein stipulated, then this obligation shall become null and void; otherwise, it shall remain in full force and virtue to guarantee Contractor's faithful performance of its obligations in the Contract, and Principal and Surety, in the event suit is brought on this bond, will pay to the Obligee such reasonable attorneys' fees as may be fixed by the court.

The Surety herein, for value received, hereby stipulates and agrees that no change, extension of time, alteration, addition or modification to the terms and conditions of said contract, or the specifications accompanying the same shall in any manner affect its obligations on this bond, and said Surety does hereby waive notice of any such change, extension, alteration or addition. Said Surety hereby waives the provisions of Section 2819 and 2845 of the Civil Code of the State of California.

IN WITNESS WHEREOF, the above bounded parties have executed this Instrument under their several seals this _____ day of _____, 20___. The name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

PRINCIPAL

SURETY

SURETY INFORMATION:

Contact Person: _____

Name of Company: _____

Address: _____

Telephone: (_____) _____ Fax no. : (_____) _____

NOTE:

- (1) Signatures of those executing for the Surety must be properly acknowledged.
- (2) This Bond must be in an amount equal to 100% of the amount Bid.

ATTACHMENT E

HUMBOLDT COUNTY ASSOCIATION OF GOVERNMENTS
SERVICE AUTHORITY FOR FREEWAYS AND EMERGENCIES

PAYMENT (LABOR AND MATERIALS) BOND

KNOW ALL MEN/WOMEN BY THESE PRESENTS, that whereas, the Humboldt County Association of Governments Service Authority for Freeways and Emergencies, a municipal corporation of the State of California hereinafter referred to as HCSAFE, has awarded: _____ hereinafter designated as the Principal, a contract for:

CALL BOX MAINTENANCE AND IMPROVEMENTS

AND WHEREAS, said Principal is required to furnish a bond in connection with said contract, provided that if said Contractor, or any of his/her or its subcontractors, shall fail to pay for any materials, provisions, provender or other supplies, or teams, used in, upon, for or about the performance of the work contracted to be done, or any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such labor, the Surety of this bond will pay the same.

NOW, THEREFORE, we, _____

as Principal and _____,

as Surety, are held firmly bound unto HCSAFE, in the penal sum of _____
_____ DOLLARS (\$ _____), and no more, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents, as herein provided.

The condition of this obligation is such that, if said Principal, or his/her or its subcontractors, shall fail to pay for any materials, provisions, provender or other supplies or teams used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, as required by the provisions of Title 15, Part 4, Third Division of the Civil Code of the State of California, commencing with Section 3082, and providing that the persons, companies or corporations so furnishing said materials, provisions, or other supplies, appliances or power used in, for or about the performance of the work contracted to be executed or performed, or any person, company, or corporation, renting, or hiring implements, or machinery, or power, for, or contributing to said work to be done, or any person who performs work or labor upon the same, or any person who supplies both work and materials therefore, shall have complied with the provisions of said Title 15, the Surety, or Sureties, hereon will pay the same in an amount not exceeding the sum specified in his/her or its bond, and also, in case suit is brought upon this bond, a reasonable attorney's fee to be fixed by the Court, then this obligation shall become null and void; otherwise, it shall remain in full force and virtue.

This bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Section 3181 of the Civil Code of the State of California so as to give a right of action to them or their assigns in any suit brought upon this bond.

The Surety herein, for value received, hereby stipulates and agrees that no change, extension of time, alteration, addition or modification to the terms and conditions of said contract, or the specifications accompanying the same, shall in any manner affect its obligation on this bond, and said Surety does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, the above bounden parties have executed this Instrument under several seals this ____ day of _____, 20_____. The name and Corporate Seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representatives, pursuant to authority of its governing body.

PRINCIPAL:

SURETY:

SURETY INFORMATION:

Contact Person: _____

Name of Company: _____

Address: _____

Telephone: (_____) _____ Fax no.: (_____) _____

NOTE:

- (1) Signatures of those executing for the Surety must be properly acknowledged.
- (2) This Bond must be in an amount equal to 100% of the amount Bid.

Contract Attachment F

LEGAL RELATIONS

1. Contract Bonds

The contractor shall furnish corporate surety bonds to the benefit of HCSAFE, issued by a surety company acceptable to HCSAFE and authorized and admitted to do business in the State of California, as follows:

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

Faithful Performance Bond and Payment Bond shall be on the forms provided by HCSAFE.

The surety companies shall familiarize themselves with all provisions and conditions of the contract documents. It is understood and agreed that the surety or sureties waive the right of special notification of any modifications or alterations, omissions or reductions, extra or additional work, extensions of time, or any other act or acts by HCSAFE or its authorized agents under the terms of the contract; and failure to so notify the surety companies of such changes shall in no way relieve the surety or sureties of their obligations under this contract. The surety expressly waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

2. Means and Methods

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

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

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

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

3. Hours of Labor

Eight hours labor constitutes a legal day's work. The contractor or any subcontractor under the contractor shall forfeit, as a penalty to the State of California, \$25 for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which that worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the requirements of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half times the basic rate of pay, as provided in Section 1815 thereof.

4. Prevailing Wage

The contractor and any subcontractor under the contractor shall comply with Labor Code Sections 1774 and 1775. Pursuant to Section 1775, the contractor and any subcontractor under the contractor shall forfeit to HCSAFE or political subdivision on whose behalf the contract is made or awarded a penalty ~~of~~ not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by Department of Industrial Relations for the work or craft in which the worker is employed for any public work done under the contract by the contractor or by any subcontractor under the contractor in violation of the requirements of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the contractor or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the contractor or subcontractor in meeting their respective prevailing wage obligations, or the willful failure by the contractor or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the contractor or subcontractor had knowledge of the obligations under the Labor Code. In addition to the penalty and pursuant to Labor Code Section 1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor. If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, the prime contractor of the project is not liable for the penalties described above unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

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

Pursuant to Section 1775 of the Labor Code, the Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages. If the Division of Labor Standards Enforcement determines that employees of a subcontractor were not paid the general prevailing rate of per diem wages and if HCSAFE did not retain sufficient money under the contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the contractor shall withhold an amount of moneys due the subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by the Division of Labor Standards Enforcement. The contractor shall pay any money retained from and owed to a subcontractor upon receipt of notification by the Division of Labor Standards Enforcement that the wage complaint has been resolved. If notice of the resolution of the wage complaint has not been received by the contractor within 180 days of the filing of a valid notice of completion or acceptance of the public works project, whichever occurs later, the contractor shall pay all moneys retained from the subcontractor to HCSAFE. These moneys shall be retained by HCSAFE pending the final decision of an enforcement action.

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

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

The contractor shall contact the Department of Industrial Relations as indicated in the wage rate determinations to obtain predetermined wage rates and changes. Pursuant to Section 1773.2 of the Labor Code, general prevailing wage rates shall be posted by the contractor at a prominent place at the site of the work. Changes in general prevailing wage determinations which conform to Labor Code Section 1773.6 and Title 8 California Code of Regulations Section 16204 shall apply to the project when issued by Director of Industrial Relations at least 10 days prior to the date of the Notice to contractors for the project. HCSAFE will not recognize any claim for additional compensation because of the payment by the contractor of any wage rate in excess of the prevailing wage rate set forth in the contract. The possibility of wage rate increases is one of the risks to be considered by the contractor in determining its proposal, and will not under any circumstances be considered as the basis of a claim against HCSAFE by contractor.

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

- A. Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 1. The information contained in the payroll record is true and correct
 2. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project

- B. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:
1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
 2. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 3. A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.
- C. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.
- D. A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.
- E. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in a manner so as to prevent disclosure of an individual's name, address and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated.
- F. The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
- G. The contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10 day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section." The penalties specified in subdivision (g) of Labor Code Section 1776 for noncompliance with the requirements in Section 1776 may be deducted from any moneys due or which may become due to the contractor.

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

5. Apprentices

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

- A. Only registered apprentices within a written agreement in an approved apprentice-training program providing no less than 2,000 hours of continuous employment and education are eligible for employment on public works (in compliance with Labor Section 3077).
- B. A contractor is no longer required to submit Form DAS-7, but must submit award information to the local applicable joint apprenticeship committee.

The award information must include:

- 1. an estimate of the journeyman hours;
 - 2. the number of apprentices to be employed; and
 - 3. the approximate dates of apprentice employment.
- C. The minimum statutory 1:5 hourly ratio of work stipulates that no less than one hour of apprentice work for every five hours of journeyman labor on any day of work. (Any journeyman work performed beyond 8 hours per day or 40 hours per week shall not be used to calculate the hourly ratio). This section shall not apply to specialty contractors or general contractors whose contracts involve less than Thirty Thousand Dollars (\$30,000.00) or 20 working days.
 - D. The Division of Apprenticeship Standards may grant a certificate exempting the contractor from the minimum 1:5 hourly ratios under any one of the following:
 - 1. Unemployment exceeds an average of 15% in the area for the previous 3-month period;
 - 2. The number of apprentices in training in such area exceeds a ratio of 1:5;
 - 3. The apprentice able craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either locally or statewide;
 - 4. The specific task would jeopardize the apprentice's life or public safety or no training can be provided to an apprentice by a journeyman for the specific task.
 - E. Apprentices employed on public works projects can only be assigned to perform work of the craft or trade to which the apprentice is registered.
 - F. All contractors with employees in any apprentice able occupation, regardless of the actual employment of journeymen or apprentices for the awarded public work, must either contribute to the local training trust fund or to the California Apprenticeship Council, P.O. Box 603, San Francisco, CA 94101 (as set forth in Section 227).
 - G. All violations of Section 1777.5 shall pay a civil penalty of Fifty Dollars (\$50.00) for each calendar day of noncompliance. All willful violations of Section 1777.5 shall pay the \$50.00 fine for each calendar day of noncompliance and shall be denied the right to bid on, or to receive, any public works contract for a period of up to one year for the first violation and up to three years for any

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

- H. Within five (5) days of a public works contract award, the awarding agency must send a copy of the award to the Division of Apprenticeship Standards under Section 1773.3.
Within five (5) days of finding any discrepancy regarding the hourly ratio of apprentices to journeymen, the awarding agency shall notify the Division of Apprenticeship Standards.
- I. The contractor shall be responsible for compliance for all apprentice able occupations within these sections.

6. Workers' Compensation

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

By signing the contract, contractor certifies: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the code, and I will comply with such provisions before commencing the performance of the work of this contract."

7. Suits to Recover Penalties and Forfeitures

Attention is directed to Sections 1730 to 1733, inclusive, of the Labor Code concerning suits to recover amounts withheld from payment for failure to comply with requirements of the Labor Code or contract provisions based on those laws. Those sections provide that a suit on the contract for alleged breach thereof in not making the payment is the exclusive remedy of the contractor or the contractor's assignees with reference to amounts withheld for those penalties or forfeitures; and that the suit must be commenced and actual notice thereof received by the awarding authority prior to 90 days after completion of the contract and the formal acceptance of the job.

8. Labor Code Section 6109

The contractor is prohibited from performing work with a subcontractor who is ineligible to perform work on the project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

9. Public Contract Code Section 9201

HCSAFE shall promptly notify the contractor of its receipt of any third party claim related to the contract.

10. Contractor's Licensing Laws

Attention is directed to the provisions of Chapter 9 of Division 3 of the Business and Professions Code concerning the licensing of contractors. Contractor shall be properly licensed at all times during the performance of the work and performance of the contract. An "A", "C7" or "C10" license classification is required for the work contemplated herein.

11. Assignment of Antitrust Actions

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

"In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action."

12. Public Safety

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

13. Preservation of Property

Due care shall be exercised to avoid injury to existing highway improvements or facilities, utility facilities, adjacent property, and roadside trees, shrubs and other plants that are not to be removed.

14. Indemnification

Contractor shall defend, indemnify, and save harmless The State of California, Humboldt County Association of Governments, Humboldt County SAFE (including their inspectors, project managers, trustees, officers, agents, members, employees, affiliates, consultants, subconsultants, and representatives) all of whom are hereinafter referred to as "Indemnitees," and each of them, of and from any and all claims, demands, suits, causes of action, damages, costs, expenses, attorneys' fees, losses, or liability, in law or in equity, of every kind and nature whatsoever arising out of, or in connection with, contractor's operations to be performed under this contract, including, but not limited to:

- A. Personal injury (including, but not limited to, bodily injury, emotional injury or distress, sickness, or disease) or death to persons, including, but not limited to, any employees or agents of contractor, Indemnitees, or any subcontractor, or damage to property of anyone including the Work itself (including loss of use thereof), caused or alleged to be caused in whole or in part by any negligent act or omission of contractor, Indemnitees, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable;
- B. Penalties threatened, sought, or imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance, or statute, caused by the action or inaction of contractor;
- C. Alleged infringement of any patent rights which may be brought arising out of contractor's work;
- D. Claims and liens for labor performed or materials used or furnished to be used on the Work, including all incidental or consequential damages from such claims or liens;

- E. Contractor's failure to fulfill any of the covenants set forth in the contract;
- F. Failure of contractor to comply with the provisions of the contract relating to insurance; and,
- G. Any violation or infraction by contractor of any law, order, citation, rule, regulation, standard, ordinance, or statute in any way relating to the occupational, health, or safety of employees.

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

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

15. Insurance

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

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

1. Insurance Services Office form number GL 0002 (Ed. 1/73) covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

1. General Liability: \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

C. Deductibles and Self-Insured Retention

1. Any deductibles or self-insured retention must be declared to and accepted by HCSAFE. At the option of the Humboldt County SAFE, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects HCSAFE, its officers, officials, employees and volunteers; or the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
 2. Contractor's insurance policies shall not condition the insurer's duty to defend or indemnify any insured or additional insured, on any act by the contractor, named insured or additional insured. Contractor shall perform all acts required by it under contractor's insurance policies.
- D. Other Insurance Provisions Retention. The policies are to contain, or be endorsed to contain the following provisions:
1. General Liability and Automobile Liability Coverage
 - a. The State of California, Humboldt County Association of Governments (HCAOG) , Humboldt County SAFE, and their officers, officials, employees, volunteers, consultants and subconsultants, all of whom are collectively refer to hereinafter as "Additional Insureds", are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the contractor, including the insured's general supervision of the contractor; products and completed operations of the contractor, premises owned, occupied or used by the contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.
 - b. The contractor's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be excess of the contractor's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Additional Insureds.
 - d. The contractor's coverage applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 2. Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the Additional Insureds for losses arising from work performed by contractor for HCSAFE.
 3. All Coverage. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the HCSAFE.
- E. Acceptability of Insurers. Insurance is to be placed with admitted insurers with a Best's rating of no less than A:VII.
- F. Verification of Coverage. Contractor shall furnish Humboldt County SAFE with certificates of insurance and with original endorsements effecting coverage required by this section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and accepted by the HCSAFE before work commences. HCSAFE reserves the right to require complete, certified copies of all required insurance policies, at any time.

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

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

All Certificates of Insurance shall be delivered or sent to:

**Humboldt County Service Authority for Freeway Emergencies
Attn: Debbie Egger, Humboldt County SAFE Fiscal Officer
611 I Street, Suite B
Eureka, CA 95501**

16. Miscellaneous Provisions

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

This contract shall bind and inure to the heirs, devisees, assignees, and successors in interest of contractor, and to the successors in interest of HCSAFE, in the same manner as if such parties had been expressly named herein.

This contract shall be governed by the laws of the State of California. If any one or more of the provisions contained in the contract should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

This contract constitutes the full and complete understanding of the parties, and supersedes any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The contract may only be modified by a written instrument signed by both parties. The provisions of the contract shall be included in all subcontracts. Section headings and titles are for convenience only.

17. Public Contract Code Section 20104, Et Seq.

Public Contract Code section 20104, et seq., requires that the following language be set forth in the specifications:

§ 20104. Application of article; provisions included in plans and specifications

- (a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.
- (2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.
- (b) (1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.
- (2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by the local agency.
- (c) The provisions of this article or a summary thereof shall be set forth in the plans or specification for any work which may give rise to a claim under this article.
- (d) This article applies only to contracts entered into on or after January 1, 1991.

§ 20104.2. Claims; requirements; tort claims excluded

For any claim subject to this article, the following requirements apply:

- (a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.
- (b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.
- (2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
- (3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.
- (c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.
- (2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
- (3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.
- (d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- (e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.
- (f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

§ 20104.4. Civil action procedures; mediation and arbitration; trial de novo; witnesses

The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

§ 20104.6. Payment on undisputed portion of claim; interest on arbitration awards or judgments

(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

18. Public Contract Code Section 20104.50

(a) (1) It is the intent of the Legislature in enacting this section to require all local governments to pay their contractors on time so that these contractors can meet their own obligations. In requiring prompt payment by all local governments, the Legislature hereby finds and declares that the prompt payment of outstanding receipts is not merely a municipal affair, but is, instead, a matter of statewide concern.

(2) It is the intent of the Legislature in enacting this article to fully occupy the field of public policy relating to the prompt payment of local governments' outstanding receipts. The Legislature finds and declares that all government officials, including those in local government, must set a standard of prompt payment that any business in the private sector which may contract for services should look towards for guidance.

- (b) Any local agency which fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.
- (c) Upon receipt of a payment request, each local agency shall act in accordance with both of the following:
- (1) Each payment request shall be reviewed by the local agency as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
 - (2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to the contractor as soon as practicable, but not later than seven days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.
- (d) The number of days available to a local agency to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which a local agency exceeds the seven-day return requirement set forth in paragraph (2) of subdivision (c).
- (e) For purposes of this article:
- (1) A "local agency" includes, but is not limited to, a city, including a charter city, a county, and a city and county, and is any public entity subject to this part.
 - (2) A "progress payment" includes all payments due contractors, except that portion of the final payment designated by the contract as retention earnings.
 - (3) A payment request shall be considered properly executed if funds are available for payment of the payment request, and payment is not delayed due to an audit inquiry by the financial officer of the local agency.
- (f) Each local agency shall require that this article, or a summary thereof, be set forth in the terms of any contract subject to this article.
