

1401 INTENT OF CONTRACT

The intent of the Contract is to provide for construction of the Project and compensation for the Work in accordance with the Contract documents.

The titles and headings of the various sections and subsections of the Contract are intended for convenience of reference.

The Contractor shall construct and complete the Project in every detail as described in the Contract. The Department will require the Contractor to perform the Work diligently and vigorously to completion. The Contractor shall consider the public interests and the obligations and rights of all other parties concerned. The Contractor shall assume full responsibility for performance of the Work and shall furnish all labor, materials, equipment, tools, supplies, transportation, and other incidentals necessary or convenient for successful completion of the Project.

The Contract may not fully describe every detail or make specific allowances for all probable exceptions and contingencies. When the Contract is silent or omits a detailed description, the Contractor shall perform in accordance with the best general practice and provide materials and workmanship meeting the quality specified in the Contract. The Department's failure to itemize every allowable exception or condition in the Contract does not mean that the Contract provisions will be enforced equally under all conditions or on all parts of the Work.

In the interest of avoiding repetitious wording in the Specifications, certain words and phrases have been omitted where reference is clearly related by expressions of authority or intention. Where certain words and terms appear, they are to be construed with reference to the definitions, abbreviations, heading, titles, item names, and other pertinent provisions of the Contract documents, as may be implied.

1402 CONTRACT REVISIONS

1402.1 GENERAL

The Department reserves the right to revise the Contract at any time. The Engineer reserves the right to make, in writing, at any time during the progress of the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project or for reasons of public interest. Revisions to the Contract will not add Work beyond the limitations imposed by law or beyond the termini of the proposed construction except as may be necessary to satisfactorily complete the Project. Revisions to the Contract neither invalidate the Contract nor

release the surety, and the Contractor agrees to perform the Work as revised. Either party to the Contract may assert that a Contract revision has occurred.

If the Contractor believes it has encountered a Contract revision as set forth in 1402.2, "Differing Site Conditions," 1402.3, "Significant Change in the Character of Work," 1402.4, "Suspension of Work Ordered by the Engineer," 1402.5, "Extra Work," or 1402.6, "Compensation for Eliminated Items," the Contractor shall provide notice as required by these clauses and as required by 1403, "Notification for Contract Revisions." Failure to provide notice as specified in 1403 constitutes a waiver of the Contractor's entitlement to compensation or a time extension and releases the Department from responsibility for providing compensation or a time extension.

If the Engineer concludes that a Contract revision is necessary, the Department will compensate the Contractor for the revision in accordance with 1904, "Compensation for Contract Revisions." No allowance, except as specifically provided by the payment provisions of the Contract, will be made for any increased expenses, loss of expected reimbursement, or loss of anticipated profits suffered or asserted by the Contractor, whether resulting directly from revisions in the Work or indirectly from unbalanced allocation of expenses among the Contract Items, for any variation between the quantities in the Bid Schedule and the actual quantities ordered and performed, or from any other cause. If necessary, a time extension may be granted in accordance with 1806, "Determination and Extension of Contract Time."

In 1402.2, "Differing Site Conditions," 1402.3, "Significant Changes to the Character of the Work," and 1402.4, "Suspensions of Work Ordered by the Engineer," the term "adjustment" means compensation in accordance with 1904, "Compensation for Contract Revisions," and the granting of a time extension in accordance with 1806, "Determination and Extension of Contract Time."

1402.2 DIFFERING SITE CONDITIONS

During the progress of the work, if one of the following subsurface or latent physical conditions are encountered at the site the party encountering such conditions shall promptly notify the other party in writing of the specific differing conditions before they are disturbed and before the affected work is performed:

- (1) Differ materially from those indicated in the Contract, or
- (2) If unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract.

Upon written notification, the Engineer will investigate the conditions. If the Engineer determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any Work under the

Contract, the Engineer will make an adjustment, excluding loss of anticipated profits, and will modify the Contract in writing accordingly. The Engineer will notify the Contractor of the determination whether or not an adjustment of the Contract is warranted.

The Department will not allow a Contract adjustment that results in a benefit to the Contractor, unless the Contractor has provided the required written notice.

1402.3 SIGNIFICANT CHANGES TO THE CHARACTER OF WORK

The Engineer reserves the right to make, in writing, at any time during the progress of the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the Surety, and the Contractor agrees to perform the work as altered.

If the alterations or changes in quantities significantly change the character of the work under contract, whether those alterations or changes are in themselves significant changes to the character of the work or, by affecting other work, cause such other work to become significantly different in character, an adjustment, excluding loss of anticipated profits, will be made to the contract. The Contractor and Department shall agree on the basis for an adjustment in writing before the performance of the work. If the Contractor and Department cannot agree, the Engineer will make an adjustment either for or against the Contractor in such amount as the Engineer may determine to be fair and equitable.

If the alterations or changes in quantities do not significantly change the character of the work under the contract, the Department will pay for the altered work as provided elsewhere in the contract.

The term "significant change" shall be construed to apply only to the following circumstances:

- (1) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction, or
- (2) When a major contract item of work is increased in excess of 125 percent or decreased below 75 percent of the original Contract quantity.

1402.4 SUSPENSIONS OF WORK ORDERED BY THE ENGINEER

If the performance of all or any portion of the work is suspended or delayed by the Engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation, or contract time, or both are due as a result of such

suspension or delay, the Contractor shall submit to the Engineer in writing a request for adjustment no later than 7 calendar days after receipt of notice to resume work. The request shall set forth the reasons and support for such adjustment.

Upon receipt, the Engineer will evaluate the Contractor's request. If the Engineer agrees that the cost, or time required for the performance of the Contract, or both have increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors approved under 1801, and not caused by weather, the Engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Engineer will notify the Contractor of the determination whether or not an adjustment of the contract is warranted.

The Department will not allow a contract adjustment unless the Contractor has submitted the request for adjustment within the time prescribed.

The Department will not allow a contract adjustment under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this Contract.

1402.5 EXTRA WORK

If the Contractor believes that it has been required to perform Extra Work, the Contractor shall notify the Engineer in accordance with 1403, "Notification for Contract Revisions." Failure to provide notice as specified in 1403 constitutes a waiver of the Contractor's entitlement to compensation or a time extension and releases the Department from responsibility from providing compensation or a time extension. If the Engineer determines that Extra Work is required, the Department will compensate the Contractor for Extra Work in accordance with 1904, "Compensation for Contract Revisions," and determine the appropriate time extension, if any, in accordance with 1806, "Determination and Extension of Contract Time."

The Department and the Contractor shall execute a Supplemental Agreement specifying the location and nature of the work to be performed and the basis of payment before the Contractor is authorized to perform Extra Work. The Contractor shall perform Extra Work in accordance with the specifications unless otherwise specified in the Supplemental Agreement authorizing the Extra Work. The Supplemental Agreement authorizing Extra Work shall not become effective until it has been fully executed and approved as required by law.

An executed Supplemental Agreement is not required prior to the Contractor's performance of Extra Work in the following two instances:

- (1) The Engineer may order Minor Extra Work not to exceed \$25,000 per individual occurrence without the execution of a Supplemental Agreement as long as the Engineer's order is in writing, specifies the location and nature of the minor extra Work, and specifies the basis of payment in accordance with 1904, "Compensation for Contract Revisions."
- (2) The Engineer, with the written approval of the Construction Assistant District Engineer, may order Extra Work in excess of \$25,000 but not exceeding \$50,000 per individual occurrence, as long as the Engineer's order is in writing, specifies the location and nature of the Extra Work, and specifies the basis of payment in accordance with 1904.

If the Contractor performs Extra Work before approval of a Supplemental Agreement or before receipt of the Engineer's written order, the Department may consider this as unauthorized work and as having been done at the Contractor's expense. The Department will compensate the Contractor for this work only if the Engineer determines the work to be acceptable and necessary.

1402.6 ELIMINATED ITEMS

Should the Department eliminate any Contract Items from the Contract, the Department will reimburse the Contractor for all costs incurred before notification that are not the result of unauthorized Work.

The Department will compensate the Contractor in accordance with 1905, "Compensation for Eliminated Items," for approved work the Contractor performs on eliminated items.

1403 NOTIFICATION FOR CONTRACT REVISIONS

1403.1 GENERAL

The following notification requirements apply to all potential Contract revisions including those defined in 1402, "Contract Revisions." The Engineer will consider requests for Contract revisions only if the notification procedures in this section are followed. The specified time limits may only be extended through a written, jointly-signed agreement between the Contractor and the Engineer. The Engineer will address the underlying issue prompting the notification in a timely and satisfactory manner.

1403.2 FIRST NOTICE, BY CONTRACTOR

The Contractor shall notify the Engineer verbally as soon as a Contract revision appears necessary. The Contractor shall not start or continue with an activity or Contract Item for which a Contract revision may be necessary without authorization from the Engineer.

1403.3 WRITTEN NOTICE, BY CONTRACTOR

If the Contractor disagrees with the Engineer's response or the Engineer does not respond to the first notice, the Contractor shall provide a written notice. Provide this written notice within 5 business days of first notice if Engineer has not responded or within 5 business days of receiving the Engineer's response to the first notice. The written notice shall include the following:

- (1) A description of the situation.
- (2) The time and date the situation was first identified.
- (3) The location of the situation, if appropriate.
- (4) A clear explanation of why the situation represents a Contract revision, including appropriate references to the pertinent portions of the Contract.
- (5) A statement of the revisions deemed necessary in the Contract Unit Price(s), delivery schedule(s), phasing, time, etc. Because of its preliminary nature, the Department recognizes that this information may rely on estimates.
- (6) An estimate of the time by which the Engineer must respond to minimize cost or delay.
- (7) Anything else that will help achieve timely resolution.

1403.4 WRITTEN ACKNOWLEDGEMENT, BY ENGINEER

The Engineer will provide a written acknowledgment of receipt of the Contractor's written notice.

1403.5 FINAL WRITTEN RESPONSE, BY ENGINEER

Within 10 business days of receiving the Contractor's written notice, the Engineer will provide a written response that includes one of the following:

- (1) Confirmation of the need for a contract revision. The Contractor shall pursue time extensions in accordance with 1806, "Determination and Extension of Contract Time," and compensation in accordance with 1904, "Compensation for Contract Revisions."
- (2) Denial of the request for a contract revision, in which case the Engineer will make clear, through reference to the Contract, why the issue does not represent a revision to the contract.

- (3) A request for additional information, in which case the Engineer will state clearly what is needed and by when; the Engineer will issue a final response within 10 business days of receiving the additional requested information.

1403.6 CONTRACTOR'S RECOURSE

If the Contractor disagrees with the Engineer's final written response or the Engineer's response is untimely, the Contractor may pursue a claim in accordance with 1517, "Claims for Compensation Adjustment." The Contractor shall give the Engineer written notice of the intent to pursue a claim within 5 business days of receiving the Engineer's final written response.

1404 MAINTENANCE OF TRAFFIC

1404.1 GENERAL

Unless the Contract requires otherwise, the Contractor shall keep Roads undergoing improvements open to traffic at no additional cost to the Department. The Contractor shall direct traffic over a Department-approved Detour route as required by the Contract or as directed by the Engineer.

The Contractor shall maintain the portions of the Project being used by public traffic in a condition that accommodates the public traffic at all times. The Contractor shall provide and maintain temporary approaches, crossings, and intersections with trails, Roads, Streets, businesses, parking lots, residences, garages, farms, and other abutting property in a safe and acceptable condition.

The Department will not require the Contractor to remove snow.

1404.2 PLANNED DETOURS

The Department will maintain Detour Roads established by the Commissioner for through traffic diverted from the Project, if the Plans, Special Provisions, or the Engineer directs Project Road closures.

1404.3 CONTRACTOR'S REQUEST FOR DETOUR

The Contractor may request from the Engineer a Detour for through traffic. The Contractor shall specify the Detour routes and submit justification information with the Detour request. The Department will consider and may, at its sole discretion, approve the Detour request and establish a Detour in accordance with the following:

- (1) The Contractor shall design, provide, install, maintain, and remove traffic control devices on the Detour Roads at no additional cost to the Department. The Contractor shall submit the proposed Detour layout to the Engineer for approval at least 7 calendar days before the Contractor begins to use the Detour.
- (2) The Contractor shall maintain and restore Detour Roads at no additional cost to the Department. The Department will remove snow from Detour Roads at the Department's expense.
- (3) The Contractor shall provide, install, and maintain traffic control devices and other traffic protection measures required to maintain local traffic.

1404.4 TEMPORARY BY-PASSES

The Contractor shall construct, maintain, and remove other Temporary By-pass facilities requested by the Contractor and approved by the Engineer at no additional cost to the Department.

1404.5 MAINTENANCE DIRECTED BY THE ENGINEER

The Contractor shall perform maintenance work or provide dust control for the benefit of the public as directed by the Engineer. The Department will pay for the Engineer-directed work at Contract Unit Prices or as Extra Work in accordance with 1402, "Contract Revisions." The Department will not pay for Contractor Work performed on Contractor requested Detours and Contractor selected haul Roads.

1404.6 CONTRACTOR'S USE OF CROSSOVERS

Unless otherwise prohibited by the Engineer and in accordance with pertinent traffic laws and regulations, the Contractor may use freeway or expressway maintenance crossovers in or near the construction area to change the travel direction of the construction equipment.

1404.7 WINTER SUSPENSION

During periods of winter suspension as directed by the Engineer, the Contractor shall open the Project's Roads to traffic to eliminate the need to maintain Detour Roads during the suspension period.

During periods of authorized winter suspension, the Department will perform routine maintenance on the Project's Roads at the Department's expense. The Department will maintain traffic control devices in accordance with 1710, "Traffic Control Devices." If Contractor-owned traffic control devices are damaged or

destroyed, the Department will pay the Contractor for the value of the traffic control device as determined by the Engineer.

The Contractor shall not suspend operations for the winter until meeting the requirements of 1710, "Traffic Control Devices," and 1803.4, "Temporary Suspensions."

When resuming Work after winter suspension, the Contractor shall remove and replace, or correct Work lost or damaged during the suspension, as directed by the Engineer, and shall remove, to the extent directed by the Engineer, any temporary construction or Materials used in the maintenance thereof by the Department. The Department will pay for this work at the Contract Unit Prices or as Extra Work in accordance with 1402, "Contract Revisions."

1405 USE OF MATERIALS FOUND ON THE PROJECT

The Contractor shall not destroy or use Materials found on the Right of Way or on other land acquired for the Project for any other purposes than those specified in the Contract, unless otherwise approved by the Engineer.

The Engineer may authorize the Contractor to temporarily use Materials salvaged for the Department from existing structures. The Contractor is responsible for all damage to the Materials used temporarily. The Contractor shall repair, replace, or otherwise correct by means acceptable to the Engineer the Materials damaged by the temporary use, or the Department will deduct, from any moneys due or becoming due to the Contractor, an amount equivalent to the reasonable value or replacement cost of the Material.

The Engineer may authorize the Contractor to use acceptable Material found on the Project as a substitute for Material required by the Contract and provided by the Contractor from outside sources. Authorization to remove and use the substitute Material for unspecified purposes to the Contractor's advantage is at the sole discretion of the Engineer, subject to the conditions established by the Engineer and the requirements of the Contract.

The Department will make Material found on the Project available for use on the Project to the best advantage and without charge to the Contractor in the interest of providing maximum utilization of existing Materials. The Contractor shall understand that the Department will not incur additional costs resulting from the use of this Material. If Contractor needs this Material for other construction purposes on the Project, the Contractor shall provide replacement Material acceptable to the Engineer, at no additional cost to the Department.

1406 PRESERVATION OF HISTORICAL OBJECTS

Immediately upon discovery of potential historical objects of an archeological or paleontological nature within the Project Site, the Contractor shall do the following:

- (1) Restrict or suspend operations in the immediate area of the discovery to preserve the potential historical objects, and
- (2) Notify the Engineer of the presence of potential historical objects.

The Engineer will make arrangements for their disposition or record the desired relevant data.

The Contractor shall support the preservation and salvage effort directed by the Engineer. The Contractor shall not perform work related to the preservation and salvage efforts that the Contractor considers Extra Work without the written approval of the Engineer.

The Department may restrict or suspend the Contractor's operations in the immediate area of the historical objects for a period not to exceed 72 h, without a Contractor claim for damages. The Department will not impose restrictions over 72 h, unless agreed by the Contractor and the Department in writing.

1407 FINAL CLEANUP

Before requesting final inspection in accordance with 1516.2, "Project Acceptance," the Contractor shall remove the following from the Project Site and other locations outside of the Project Site used in performing the Work:

- (1) Surplus and discarded Materials,
- (2) Equipment,
- (3) Rubbish,
- (4) Temporary structures, and
- (5) Other items not on the Project Site before execution of the Contract.

The Contractor shall also leave the Project Site, including borrow pits, in a condition acceptable to the Engineer. The cost of final cleanup is included in the Contract Unit Prices of the Contract Items.

1408 VALUE ENGINEERING INCENTIVE

Value engineering provisions provide an incentive to the Contractor to initiate, develop, and present cost reduction proposals involving changes in the Contract requirements to the Department for consideration.

Value engineering provisions only apply if the Contractor specifically submits a proposal for consideration as a value engineering proposal.

The cost reduction proposals shall produce a net savings to the Contract by providing less costly items or methods than those specified in the Contract without impairing essential functions and characteristics.

The Contractor shall submit value engineering proposals to the Department with the following information:

- (1) A statement that the Contractor is submitting a value engineering proposal;
- (2) A description of the proposal;
- (3) An itemization of the proposed changes to the Contract requirements and a recommendation of how to make each change;
- (4) An estimate of the reduction in performance costs that will result from adoption of the proposal;
- (5) A prediction of any effects the proposed changes would have on other costs incurred by the Department;
- (6) A statement of the time by which an agreement for adoption of the proposal must be executed to obtain the maximum cost reduction during the remainder of the Contract, and the reasoning for this time schedule;
- (7) The dates of any previous submissions of the proposal, including Contract numbers and the actions of the Department; and
- (8) A statement as to the effect the proposal would have on the time for completion of the Contract.

The Department will not assume any liability for not meeting the statement of the time described in the Contractor's value engineering proposal. The Contractor may withdraw, in whole or in part, any value engineering proposal not accepted by the Department within the period identified in the proposal. The Department's acceptance or rejection decision on a value engineering proposal shall be final and the provisions of 1517, "Claims for Compensation Adjustment," will not apply.

The Department will notify the Contractor in writing of its decision regarding each value engineering proposal. Until the Department accepts the proposal, the Contractor shall continue to perform Work in accordance with the requirements of the Contract. If the Department accepts the proposal, the Department will execute a Supplemental Agreement setting forth the terms, conditions, and costs of the proposal.

If the Contractor performs any Work performed in accordance with the value engineering proposal before the execution of the Supplemental Agreement, the Department will consider that "unauthorized work" as specified in 1512, "Unacceptable and Unauthorized Work."

The Supplemental Agreement will establish the Contract modifications and the agreed net savings. The Department will calculate the net savings by subtracting the Contractor's value engineering proposal cost from the Contractor's original bid price for the work covered in the value engineering proposal.

A= Contractor's value engineering proposal cost.

B= Contractor's original bid price for the work covered in the value engineering proposal.

B - A= Net Savings.

The department reserves the right to reject any value engineering proposal that does not reflect the reasonable costs to perform the work covered in the value engineering proposal.

The Department will provide a lump sum payment of 50 percent of the net savings from the value engineering proposal to the Contractor as the Contractor's share of the value engineering incentive. The Department will not revise the lump sum payment even if the final accepted quantities vary. The Department may include conditions for consideration, approval, and implementation of the cost reduction proposal in the Supplemental Agreement.

The Contractor shall design and develop the proposal at no additional cost to the Department.

The Department will not include the costs incurred for reviewing, approving, and implementing the proposal in the net savings calculations.

After the Department accepts the cost reduction proposal, any restrictions imposed by the Contractor on its use or disclosure of the information submitted shall be void, and the Department will have the right to use, duplicate, and disclose any data necessary to use the proposal.