

UPDATE LOG FOR GENERAL PROVISIONS DOCUMENT		
Date	Item(s) Changed	Page #
07/17	<p>GENERAL PROVISIONS DOCUMENT</p> <p>The entire general provisions document has been revised. Please replace the entire document dated 03/16 with the attached document dated 07/17</p>	All
07/17	<p>GENERAL PROVISIONS DOCUMENT</p> <p>ARTICLE 8. SHOP DRAWINGS</p> <p>a. Wherever shop drawings are called for in the Contract Documents or on the plans, or where required by the District's Representative, the Contractor shall furnish to the District's Representative for review six (6) four (4) prints of each shop drawing. The term "shop drawing," as used herein, shall be understood to include detail design calculations, fabrication and installation drawings, lists, graphs, operating instructions, etc. Unless otherwise required, said drawings shall be submitted at a time sufficiently early to allow review of same by the District's Representative, and to accommodate the rate of construction progress required under the Contract.</p> <p>d. Within ten (10) working days after receipt of said prints, the District's Representative will return three (3) one (1) prints of each drawing to Contractor with his or her comments noted thereon.</p> <p>It is considered reasonable that the Contractor shall make a complete and acceptable submittal to the District's Representative by the second submission of drawings. The District reserves the right to withhold moneys due the Contractor to cover additional costs of the District's Representative's review beyond the second submission.</p> <p>e. If three (3) prints of the drawing(s) are is returned to the Contractor marked "NO EXCEPTIONS TAKEN," formal revision of said drawing(s) will not be required.</p> <p>f. If three (3) prints of the drawing(s) are is returned to the Contractor marked "MAKE CORRECTIONS NOTED," formal revision of said drawing(s) will not be required.</p>	<p>GP-13</p> <p>GP-13</p> <p>GP-13</p> <p>GP-13</p>

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Date	Item(s) Changed	Page #
07/17	<p>GENERAL PROVISIONS DOCUMENT (Continued)</p> <p>ARTICLE 8. SHOP DRAWINGS (Continued)</p> <p>g. If three (3) prints of the drawing(s) are is returned to the Contractor marked “AMEND - RESUBMIT,” the Contractor shall revise said drawing(s) and shall resubmit six (6) four (4) copies of said revised drawing(s) to the District’s Representative.</p> <p>h. If three (3) prints of the drawing(s) are is returned to the Contractor marked “DISAPPROVED-RESUBMIT,” the Contractor shall resubmit six (6) four (4) new copies of said drawing(s) to the District’s Representative.</p> <p>SHOP DRAWING TRANSMITTAL FORM: Replace in its entirety.</p> <p>ARTICLE 11. CONTRACTOR’S SUPERVISION</p> <p>Contractor shall continuously keep at the each Project site a competent and experienced full-time Project superintendent approved by the District. Superintendent must be able to proficiently speak, read, and write in English. Contractor shall continuously provide efficient supervision of the Project.</p>	<p>GP-13</p> <p>GP-14</p> <p>GP-15</p> <p>GP-17</p>

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07/17	<p>GENERAL PROVISIONS DOCUMENT (Continued)</p> <p>ARTICLE 20. SANITARY FACILITIES/SANITARY CONDITIONS</p> <p>a. <u>Sanitary Facilities</u>. Contractor shall provide sanitary temporary toilet buildings for the use of all workers. All toilets shall comply with all applicable federal, state, and local laws, codes and, ordinances, and regulations. All single-user toilet facilities shall be identified as all-gender toilet facilities by signage that complies with Title 24 of the California Code of Regulations, and designated for use by no more than one occupant at a time or for family or assisted use. “Single-user toilet facility” means a toilet facility with no more than one water closet and one urinal with a locking mechanism controlled by the user. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers, as required by CAL-OSHA regulation. The toilets shall be maintained in a sanitary condition at all times. Use of toilet facilities in The Work under construction shall not be permitted. Any other Sanitary Facilities required by CAL-OSHA shall be the responsibility of the Contractor.</p> <p>ARTICLE 52. RESOLUTION OF CONSTRUCTION CLAIMS</p> <p>a. All public works claims between the Contractor and the District shall be resolved pursuant to the procedures set forth in Public Contract Code section 9204. All public works claims of \$375,000 or less which arise between the Contractor and the District shall be resolved public works claims of \$375,000 or less that arise between the Contractor and the District shall be resolved under the following statutory procedure in accordance with Public Contract Code sections 20104 et seq. and other applicable law, unless the District has elected to resolve the dispute pursuant to Public Contract Code section 10240 et seq.</p>	<p>GP-21</p> <p>GP-43</p>

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07/17	<p>GENERAL PROVISIONS DOCUMENT (Continued)</p> <p>ARTICLE 52. RESOLUTION OF CONSTRUCTION CLAIMS (Continued)</p> <p>b. Contractor shall timely comply with all notices and requests for additional compensation and extensions of time, including, but not limited to, all requirements of Article 48, as a prerequisite to filing any claim governed by this Article. The failure to timely provide any notice or request required by the Contract Documents shall constitute a waiver of the right to these procedures.</p> <p>b.c. <u>All Claims.</u> All claims shall be submitted in writing and accompanied by substantiating documentation. Claims must be filed on or before the date of final payment unless other notice requirements are provided in the Contract Documents. "Claim" means a separate demand by the Contractor for: 1) a time extension, without limitation, relief from damages or penalties for delay assessed by the District 2) payment of money or damages arising from Work done by or on behalf of the Contractor and payment of which is not otherwise expressly provided for or the Contractor is not otherwise entitled, or 3) payment of an amount the payment of which is disputed by the District.</p> <p>e.d. The Contractor will submit the claim justification in the following format:</p> <ol style="list-style-type: none"> 1) Summary of claim merit and price, and Contract clause pursuant to which the claim is made. 2) List of documents relating to claim: <ol style="list-style-type: none"> (a) Specifications (b) Drawings (c) Clarifications (Requests for Information) (d) Schedules (e) Other 3) Chronology of events and correspondence. 4) Analysis of claim merit. 5) Analysis of claim cost. 	<p>GP-43</p> <p>GP-43</p> <p>GP-43</p> <p>GP-44</p>

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07/17	<p>GENERAL PROVISIONS DOCUMENT (Continued)</p> <p>ARTICLE 52. RESOLUTION OF CONSTRUCTION CLAIMS (Continued)</p> <p>6) Analysis of time impact analysis in CPM format.</p> <p>7) Cover letter and certification of validity of the claim, including any claims from subcontractors of any tier, in accordance with the Government Code sections 12650 et seq.</p> <p>e. <u>District Response to Claim.</u> Upon receipt of a Claim pursuant to this Article, the District shall conduct a reasonable review of the Claim and, within a period not to exceed forty-five (45) days of receipt of the claim, or as extended by mutual agreement, shall provide a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within sixty (60) days after the District issues its written response.</p> <p>If the District needs approval from its Board of Directors to provide Contractor a written statement as set forth above, and the Board of Directors does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a Claim, the District shall have up to three (3) days following the next publicly-noticed meeting of the Board of Directors after the 45-day period, or extension, expires to provide Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim.</p>	<p>GP-44</p> <p>GP-44</p>

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07/17	<p>GENERAL PROVISIONS DOCUMENT (Continued)</p> <p>ARTICLE 52. RESOLUTION OF CONSTRUCTION CLAIMS (Continued)</p> <p>Claims Under \$50,000. The District shall respond in writing to the claim within forty-five (45) days of receipt of the claim, or, The District may request, in writing, within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses or claims the District may have. If additional information is needed thereafter, it shall be provided upon mutual agreement of the District and the Contractor claimant. The District's written response shall be submitted fifteen (15) thirty (30) days (15 days if the Claim is less than \$50,000) after receiving the additional documentation, or within the same period of time taken by the Contractor claimant to produce the additional information, whichever is greater.</p> <p>d. Claims over \$50,000 but less than or equal to \$375,000. The District shall respond in writing within sixty (60) days of receipt, or, may request in writing within thirty (30) days of receipt of the claim, any additional documents supporting the claim or relating to defenses or claims the District may have against the Contractor. If additional information is needed thereafter, it shall be provided pursuant to mutual agreement between the District and the Contractor. The District's response shall be submitted within thirty (30) days after receipt of the further documents, or within the same period of time taken by the Contractor to produce the additional information or documents, whichever is greater. The Contractor shall make these records and documents available at all reasonable times, without any direct charge.</p> <p>f. Meet & Confer Conference. If the Contractor disputes the District's response, or if the District fails to respond within the statutory time period(s), the Contractor may so notify the District within fifteen (15) days of the receipt of the response or the failure to respond, and demand an informal conference to meet and confer for settlement. Upon such demand, the District shall schedule a meet and confer conference within thirty (30) days.</p>	<p>GP-44</p> <p>GP-44</p> <p>GP-44</p>

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07/17	<p>GENERAL PROVISIONS DOCUMENT (Continued)</p> <p>ARTICLE 52. RESOLUTION OF CONSTRUCTION CLAIMS (Continued)</p> <p>g. The Contractor must comply with the claims filing procedures set forth in Government Code sections 900 et seq. for any claim or any portion thereof that remains in dispute after the meet and confer conference. For purposes of those provisions, the time within which a claim must be filed shall be tolled from the time the Contractor submits the written claim until the time the claim is denied, including any time utilized for the meet and confer conference.</p> <p>g. Mediation. Within ten (10) business days following the conclusion of the meet and confer conference, if the Claim or any portion thereof remains in dispute, the District shall provide the Contractor with a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any portion of the Claim that remains in dispute shall be submitted to nonbinding mediation. The selection of the mediator shall be in accordance with Public Contract Code section 9204 and the District and the Contractor shall equally share the associated mediator fees. Each party will be responsible for its own attorneys' fees and other costs incurred due to the resolution of any Claim.</p> <p>h. Condition Precedent. Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by the District, is a condition precedent to any action, proceeding, litigation, suit, general conditions claim, or demand for arbitration by Contractor.</p>	<p>GP-44</p> <p>GP-44</p> <p>GP-45</p>

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GENERAL PROVISIONS

ARTICLE 1. DEFINITIONS

- a. Acceptable, Acceptance or words of similar import shall be understood to be the acceptance of the Engineer and/or the District.
- b. Act of God - an Act of God is an earthquake of magnitude 3.5 on the Richter scale and tidal waves.
- c. Approval means written authorization by Engineer and/or District.
- d. Contract Documents includes all documents as stated in the Contract.
- e. District and Contractor are those stated in the Contract. The terms District and Owner may be used interchangeably.
- f. Day shall mean calendar day unless otherwise specifically designated.
- g. Engineer shall mean the General Manager, or his or her designee, of the Rancho California Water District, acting either directly or through properly authorized agents, such as agents acting within the scope of the particular duties entrusted to them. Also sometimes referred to as the "District's Representative" or "Representative" in the Contract Documents.
- h. Equal, Equivalent, Satisfactory, Directed, Designated, Selected, As Required and similar words shall mean the written approval, selection, satisfaction, direction, or similar action of the Engineer and/or District.
- i. Indicated, Shown, Detailed, Noted, Scheduled or words of similar meaning shall mean that reference is made to the drawings, unless otherwise noted. It shall be understood that the direction, designation, selection, or similar import of the Engineer and/or District is intended, unless stated otherwise.
- j. Install means the complete installation of any item, equipment, or material.
- k. Material shall include machinery, equipment, manufactured articles, or construction such as form work, fasteners, etc., and any other classes of material to be furnished in connection with the Contract. All materials shall be new unless specified otherwise.
- l. Perform shall mean that the Contractor, at Contractor's expense, shall take all actions necessary to complete The Work, including furnishing of necessary labor, tools, and equipment, and providing and installing Materials that are indicated, specified, or required to complete such performance.
- m. Project is The Work planned by District as provided in the Contract Documents.

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- n. Provide shall include provide complete in place, that is furnish, install, test, and make ready for use.
- o. Recyclable Waste Materials shall mean materials removed from the Project site which are required to be diverted to a recycling center rather than an area landfill. Recyclable Waste Materials include asphalt, concrete, brick, concrete block, and rock.
- p. Specifications means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work. Except for sections 1-9 of the Standard Specifications for Public Works Construction (“Greenbook”), 2009 Edition or latest edition, which are specifically excluded from incorporation into these Contract Documents, the Work shall be done in accordance with the Greenbook, including all current supplements, addenda, and revisions thereof. Notwithstanding the above, section 7-10.4.4 of the Greenbook as referenced in Article 27 is incorporated in these Contract Documents. In the case of conflict between the Greenbook and the Contract Documents, the Contract Documents shall prevail.
- q. The Work means the entire improvement planned by the District pursuant to the Contract Documents.
- r. Work means labor, equipment, and materials incorporated in, or to be incorporated in, the construction of The Work covered by the Contract Documents.

ARTICLE 2. CONTRACT DOCUMENTS

- a. Contract Documents. The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all.
- b. Interpretations. The Contract Documents are intended to be fully cooperative and to be complementary. If Contractor observes that any documents are in conflict, the Contractor shall promptly notify the Engineer in writing. In case of conflicts between the Contract Documents, the order of precedence shall be as follows:
 - 1) Change Orders or Work Change Directives
 - 2) Addenda
 - 3) Special Provisions
 - 4) Technical Specifications
 - 5) Plans (Contract Drawings)
 - 6) Technical Provisions
 - 7) Contract
 - 8) General Provisions
 - 9) Instructions to Bidders
 - 10) Notice Inviting Bids
 - 11) Contractor’s Bid Forms

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- 12) Greenbook
- 13) Standard Drawings
- 14) Reference Documents

With reference to the Drawings, the order of precedence shall be as follows:

- 1) Figures govern over scaled dimensions.
 - 2) Detail drawings govern over general drawings.
 - 3) Addenda or Change Order drawings govern over Contract Drawings.
 - 4) Contract Drawings govern over Standard Drawings.
 - 5) Contract Drawings govern over Shop Drawings.
- c. Conflicts in Contract Documents. Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard shall always apply.
- d. Organization of Contract Documents. Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Contractor in dividing The Work among subcontractors or in establishing the extent of Work to be performed by any trade.

ARTICLE 3. CONTRACT DOCUMENTS: COPIES AND MAINTENANCE

Contractor will be furnished, free of charge, five (5) copies of the Contract Documents. Additional copies may be obtained at cost of reproduction.

Contractor shall maintain a clean, undamaged set of Contract Documents at the Project site.

ARTICLE 4. DETAIL DRAWINGS AND INSTRUCTIONS

- a. Examination of Contract Documents. The quantities of Work to be done and the materials to be furnished under this Contract are estimated, as herein stated, approximately only, and the District shall not be held responsible for the data or information relative to the Engineer/Architect's estimate of quantities. Before commencing any portion of The Work, Contractor shall again carefully examine all applicable Contract Documents, the Project site, and other information given to Contractor as to materials and methods of construction and other Project requirements, including locality, and local conditions that may in any manner affect the Work to be done. Contractor shall immediately notify the Engineer of any potential error, inconsistency, ambiguity, conflict, or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work that is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall the Contractor or any subcontractor proceed with Work if uncertain as to the applicable requirements.

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- b. Additional Instructions. After notification of any error, inconsistency, ambiguity, conflict, or lack of detail or explanation, the Engineer will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.
- c. Quality of Parts, Construction, and Finish. All parts of The Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish. In no case shall Contractor proceed with The Work without obtaining first from the Engineer such Approval that may be necessary for the proper performance of Work.
- d. Contractor's Variation from Contract Document Requirements. If it is found that the Contractor has varied from the requirements of the Contract Documents, including the requirement to comply with all applicable laws, ordinances, rules, and regulations, the Engineer may at any time, before or after completion of the Work, order the improper Work removed, remade, or replaced by the Contractor at the Contractor's expense.

ARTICLE 5. EXISTENCE OF UTILITIES AT THE WORK SITE

- a. Definitions.
 - 1) As used in this Article, the word "utility" shall be understood to include tracks, overhead or underground wires, cables, pipelines, conduits, ducts, sewers, or storm drains.
 - 2) As used in this Article, the term "construction interference" shall be understood to include any utility or service connection within the limits of excavation or over excavation required for the Work under the Contract, as shown or as ordered by the District, or any utility or service connection located in the space that will be required by any of the Work under the Contract.
- b. Approximate Positions. The District has endeavored to determine the existence of utilities at the Project site from the records of the owners of known utilities in the vicinity of the Project. The plans show the approximate positions of known utilities, as derived from such records, in the immediate vicinity of the Work, but the locations are approximate and may not be complete. The District does not guarantee that all existing utilities are shown.
- c. Service Connections.
 - 1) No excavations were made to verify the locations shown for underground utilities, and the service connections to these utilities are not shown on the plans. It shall be the responsibility of the Contractor to determine the exact location of all service connections.

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- 2) Where underground main conductors or conduits such as water, sewer, gas, telephone, cable television, or electric power are shown on Construction Drawings, Contractor shall assume that a service lateral from each utility facility extends to every parcel or property, whether or not a service lateral is shown.
- d. District Identification.
- 1) Pursuant to section 4215 of the Government Code, the District has the responsibility to identify, with reasonable accuracy, main or trunkline facilities on the Contract Documents. In the event that main or trunkline utility facilities are not identified with reasonable accuracy in the Contract Documents made a part of the invitation for bids, District shall assume the responsibility for their timely removal, relocation, or protection.
 - 2) The District will pay for, as extra work, all costs involved in removing, relocating, protecting, supporting, repairing, maintaining, or replacing a main or trunkline utility facility that actually constitutes a construction interference, when said utility is not shown with reasonable accuracy as an interference or is omitted from the plans; provided, however, that the District's obligation to repair damage to such a facility shall not extend to damage due to the failure of the Contractor to use reasonable care. The District will also compensate the Contractor for equipment on the Project necessarily idled during and by reason of work necessitated by plan ambiguities or omissions, as specified hereinabove (Gov. Code, § 4215.).
 - 3) The costs involved in removing, relocating, protecting, supporting, repairing, maintaining, or replacing any utility or service connection other than those described in this section shall be borne by the Contractor.
- e. Contractor Confirmation.
- 1) The Contractor shall, before commencing Work, make its own investigations, including exploratory excavations, to determine the existence, horizontal and vertical position, and ownership of all existing facilities and service connections that could result in damage to such utilities.
 - 2) Contractor shall excavate, expose, and determine ("pothole") the exact location and depth of each and every potential interference including, but not limited to, all facilities shown specifically (depth and location) on the Construction Drawings, or that have been marked by their respective owners. Changes or delays caused by Contractor's failure to perform "potholing" and interference location work shall not be eligible for extra work compensation or time extension.
 - 3) The Contractor shall immediately notify the District and public utility in writing if the Contractor discovers any utility in the line of the Work that is not shown on the plans. The Contractor shall also immediately notify the District if the Contractor

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discovers any utility in the line of the Work that is shown incorrectly on Construction Drawings, or improperly marked or otherwise indicated, providing full details as to depth, location, size, and function.

- 4) The District will not be liable for any consequences arising as a result of a utility being incorrectly located in the field by the agency having jurisdiction over said utility.
 - 5) The District reserves the right, upon determination of the actual position of existing utilities and service connections, to make changes in alignment or grade of the District's pipelines when, by so doing, the necessity for relocation of existing utilities or service connections will be avoided. Such changes will be ordered in writing by the District. Where applicable, adjustment in the Contract price will be on the basis of the unit prices stated in the bidding schedule. Where unit prices in the bidding schedule are not applicable, adjustment in Contract price will be in accordance with the General Provisions.
 - 6) District has no information about the compaction of the trench backfill for existing utilities. If said trench backfill fails during construction, Contractor shall remove and replace said backfill, compact as specified herein, and remove and replace any asphalt concrete pavement, as required, all at no additional cost to District.
- f. Relocation of Utilities.
- 1) All water meters, water valves, fire hydrants, electrical utility vaults, telephone vaults, gas utility valves, and other subsurface structures shall be relocated or adjusted to final grade by the Contractor. The Contractor shall be responsible for coordinating its Work with all utility companies during the construction of the Work.
 - 2) In all cases, the utility company shall have the sole discretion to perform repairs or relocation work or to permit the Contractor to perform the same at a reasonable price.
 - 3) During the performance of the Work under this Contract, the owner of any utility affected by the Work shall have the right to enter when necessary upon any portion of the Work for the purpose of maintaining service and of making changes in or repairs to said utility.
 - 4) Contractor shall not interrupt or disturb any utility facility without authority from the utility company or order from District. In the event a utility or service connection is required to be disturbed or removed to permit construction of a pipeline or other structure under the Contract, such disturbance or removal shall be done only with the approval of the District, and following notification to and approval from the owner of the interfering utility or service connection.

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- 5) Where protection is required to ensure integrity of utility facilities (including District-owned utilities) located as shown on the Construction Drawings or visible to Contractor, or marked or otherwise indicated as stated herein, Contractor shall, unless otherwise provided, furnish and place all necessary protection at no additional cost to District.
 - 6) Any such utility or service connection removed or otherwise disturbed shall be constructed as promptly as possible in its original or other authorized location in a condition at least as good as prior to such removal or disturbance, subject to the inspection of the owner of same.
 - 7) The Contractor's responsibility under this section to remove or replace utilities or service connections shall apply even in the event such damage or destruction occurs after backfilling or is not discovered until after completion of backfilling. The owner of the utility or service connection shall be notified immediately after damage or destruction occurs or is discovered.
 - 8) The Contractor shall not be assessed liquidated damages for failure to complete the Work on time to the extent that such delay was caused by failure of the District or of the agency having jurisdiction over the utility to authorize or otherwise provide for the removal or relocation of such utility facilities described in this section.
- g. Underground Service Alert.
- 1) At least forty-eight (48) hours before commencing any excavation, Contractor, except in an emergency, shall contact the appropriate regional notification center, Southern California Underground Service Alert at 1-800-227-2600 if the excavation will be performed in an area that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced or carried out by the Contractor unless such an inquiry identification number has been assigned to the Contractor or any subcontractor of the Contractor and the District has been given the identification number by the Contractor.
 - 2) Contractor shall request Underground Service Alert and non-member companies, or utilities, to mark or otherwise indicate the location(s) of their subsurface facilities including, but not limited to, structures including vaults, main conductors or conduits, and service connections.

ARTICLE 6. PROJECT SCHEDULE

- a. Estimated Schedule. Within ten (10) days after the issuance of the Notice to Proceed, Contractor shall prepare a Project schedule and shall submit this to the Engineer for Approval. The receipt or approval of any schedules by the Engineer shall not in any

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way relieve the Contractor of its obligations under the Contract Documents. Contractor is fully responsible to determine and provide for any and all staffing and resources at levels that allow for good quality and timely completion of the Project. Contractor's failure to incorporate all elements of Work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all Work required for a completed Project within the specified Contract time period. If the required schedule is not received by the time the first payment under the Contract is due, Contractor shall not be paid until the schedule is received, reviewed, and accepted by the Engineer.

- 1) Schedule Contents. The schedule shall allow enough time for inclement weather. The schedule shall indicate the beginning and completion dates of all phases of construction; critical path for all critical, sequential time-related activities; and "float time" for all "slack" or "gaps" in the non-critical activities. The schedule shall clearly identify all staffing and other resources that, in the Contractor's judgment, are needed to complete the Project within the time specified for completion. Schedule duration shall match the Contract time. Schedules indicating early completion will be rejected.
 - 2) Schedule Updates. Contractor shall continuously update its construction schedule. Contractor shall submit an updated and accurate construction schedule to the Engineer whenever requested to do so by Engineer and with each progress payment request. The Engineer may withhold progress payments or other amounts due under the Contract Documents if Contractor fails to submit an updated and accurate construction schedule.
- b. Preconstruction Conference. Within ten (10) calendar days after the Notice to Proceed date and before the Work is started, a conference may be held to: 1) review the Project schedule and the schedule of values, 2) establish procedures for handling the required submittals and making progress payments, and 3) establish a working understanding between the parties as to the Work. Present at the conference shall be the Engineer, District's Representative, Contractor, and Contractor's superintendent and major subcontractors.

ARTICLE 7. SUBSTITUTIONS

- a. Pursuant to Public Contract Code section 3400(b), the District may make a finding that is described in the Notice Inviting Bids that designates certain products, things, or services by specific brand or trade name.
- b. Unless specifically designated in the Contract Documents, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name, or by name of manufacturer, such Specifications shall be deemed to be used for the purpose of facilitating the description of the material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise

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stated, offer for substitution any material, process, or article that shall be substantially equal or better in every respect to that so indicated or specified in the Contract Documents. However, the District may have adopted certain uniform standards for certain materials, processes, and articles.

- c. Contractor shall submit requests, together with substantiating data, for substitution of any “or equal” material, process, or article no later than thirty-five (35) days after award of the Contract. To facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract. Provisions regarding submission of “or equal” requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed “or equal” substitution request is rejected, Contractor shall be responsible for providing the specified material, process, or article. The burden of proof as to the equality of any material, process, or article shall rest with the Contractor. The District has the complete and sole discretion to determine if a material, process, or article is an “or equal” material, process, or article that may be substituted.
- d. Data required to substantiate requests for substitutions of an “or equal” material, process, or article shall include a signed affidavit from the Contractor stating that, and describing how, the substituted “or equal” material, process, or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, and other relevant data including catalog information that describes the requested substituted “or equal” material, process, or article, and substantiates that it is an “or equal” to the material, process, or article. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted “or equal” material, process, or article. Failure to submit all the required substantiating data, including the signed affidavit, to the District in a timely fashion will result in the rejection of the proposed substitution.
- e. The Contractor shall bear all of the District’s costs, including any required engineering work, associated with the review of substitution requests, and shall approve the engineering cost prior to the performance of the engineering work using the form entitled “Authorization of Engineering Costs for the Evaluation of Substitution Requests,” set out in the forms following this Article 7. The District will not perform the substitution request review until the authorization is given. If the Contractor does not provide this authorization, the request will be rejected.
- f. The Contractor shall be responsible for all costs related to a substituted “or equal” material, process, or article. Engineering costs associated with redesign of adjoining or related work due to substitution requests shall be approved in writing by the Contractor prior to the performance of the Work. The Contractor shall approve the cost of the engineering work using the form entitled “Authorization of Engineering Costs for Redesign due to Substitution Requests,” set out in the forms following this Article 7. The District will not perform the redesign until the authorization is given. If the Contractor

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does not provide this authorization, the request that created the need for redesign shall be rejected.

- g. Contractor is directed to the Special Provisions (if any) to review any findings made pursuant to Public Contract Code section 3400.

GENERAL PROVISIONS

**AUTHORIZATION OF ENGINEERING COSTS FOR THE
EVALUATION OF SUBSTITUTION REQUESTS**

TO: _____
Contractor Date

PROJECT NAME: _____

We have received a submittal for _____ on _____. The equipment submitted is being submitted as being “equal” to the equipment originally specified. Pursuant to Article 7 of the General Provisions, the Contractor shall pay for Rancho California Water District’s (RCWD) effort in establishing the quality of the submitted equipment and the suitability for the intended purpose. The estimated time to review this submittal is _____ hours at an hourly rate of \$ _____ dollars, for a total of \$ _____ dollars. Before any work can be done on this submittal review, a signed copy of this transmittal authorizing this work by the Contractor must be received by RCWD. The starting date for this submittal review shall be the date that RCWD receives the signed authorization from the Contractor.

Rancho California Water District

APPROVED

Contractor

Date

Distribution of Executed Document:

- RCWD Engineering Manager-CIP & Development
- RCWD Construction Contracts Manager
- RCWD Representative
- Contractor

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AUTHORIZATION OF ENGINEERING COSTS FOR REDESIGN DUE TO SUBSTITUTION REQUESTS

TO: _____
 Contractor _____ Date _____

PROJECT NAME: _____

Due to the Contractor's request to use the substitution (or equal) entitled _____, the following redesign is required to the adjoining and/or related work shown on the plans and referred to in the Specifications as _____. The cost of this engineering work is detailed as follows:

WORK CENTER	HOURS		COST PER HOUR		TOTAL
		X		=	\$
		X		=	\$
		X		=	\$
		X		=	\$
TOTAL:					\$

Before any work can be done on this redesign, a signed copy of this transmittal authorizing the work by the Contractor must be received by RCWD. The starting date for this redesign shall be the date that RCWD receives the signed authorization from the Contractor.

 Rancho California Water District

APPROVED

 Contractor

 Date

Distribution of Executed Document:

- RCWD Engineering Manager-CIP & Development
- RCWD Construction Contracts Manager
- RCWD Representative
- Contractor

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ARTICLE 8. SHOP DRAWINGS

- a. Wherever shop drawings are called for in the Contract Documents or on the plans, or where required by the District's Representative, the Contractor shall furnish to the District's Representative for review four (4) prints of each shop drawing. The term "shop drawing," as used herein, shall be understood to include detail design calculations, fabrication and installation drawings, lists, graphs, operating instructions, etc. Unless otherwise required, said drawings shall be submitted at a time sufficiently early to allow review of same by the District's Representative, and to accommodate the rate of construction progress required under the Contract.
- b. All shop drawing submittals shall be accompanied by a transmittal form using the format bound herein. Any shop drawing submittal not accompanied by such a form, or where all applicable items on the form are not completed, will be returned for resubmittal. Contractor may authorize a material or equipment supplier to deal directly with the District's Representative with regard to shop drawings; provided, however, that the ultimate responsibility for the accuracy and completeness of the information contained in the submittal shall remain with the Contractor.
- c. Separate transmittal forms, as set out following this Article 8, shall be used for each specific item or class of material or equipment for which a submittal is required. Transmittal of shop drawings on various items using a single transmittal form will be permitted only when the items taken together constitute a manufacturer's "package" or are so functionally related that expediency indicates review of the group or package as a whole. At its option, the Contractor or Supplier may obtain from the District's Representative quantities of the shop drawing transmittal form at reproduction cost.
- d. Within ten (10) working days after receipt of said prints, the District's Representative will return one (1) print of each drawing to Contractor with his or her comments noted thereon.

It is considered reasonable that the Contractor shall make a complete and acceptable submittal to the District's Representative by the second submission of drawings. The District reserves the right to withhold moneys due the Contractor to cover additional costs of the District's Representative's review beyond the second submission.

- e. If drawing is returned to the Contractor marked "NO EXCEPTIONS TAKEN," formal revision of said drawing will not be required.
- f. If drawing is returned to the Contractor marked "MAKE CORRECTIONS NOTED," formal revision of said drawing will not be required.
- g. If drawing is returned to the Contractor marked "AMEND - RESUBMIT," the Contractor shall revise said drawing and shall resubmit four (4) copies of said revised drawing to the District's Representative.

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- h. If drawing is returned to the Contractor marked “DISAPPROVED-RESUBMIT,” the Contractor shall resubmit four (4) new copies of said drawing to the District’s Representative.
- i. Fabrication of an item shall not be commenced before the District’s Representative has reviewed the pertinent shop drawings and returned copies to the Contractor marked either “NO EXCEPTIONS TAKEN” or “MAKE CORRECTIONS NOTED.” Revisions indicated on shop drawings shall be considered as changes necessary to meet the requirements of the Contract Documents and shall not be taken as the basis of claims for extra work.

The Contractor shall have no claim for damages or extension of time due to any delay resulting from the Contractor’s having to make the required revisions to shop drawings (unless review by the District’s Representative of said drawings is delayed beyond a reasonable period of time and unless the Contractor can establish that the District’s Representative’s delay in review actually resulted in a delay in the Contractor’s construction schedule). The review of said shop drawings by the District’s Representative will be limited to checking for general agreement with the Contract Documents, and shall in no way: (a) relieve the Contractor of responsibility for errors or omissions contained therein; or (b) operate to waive or modify any provision contained in the plans or Specifications, unless such deviations were specifically called to the attention of the Engineer in the Shop Drawing Transmittal Form. Fabricating dimensions, quantities of material, applicable code requirements, and other contract requirements shall be the Contractor’s responsibility.

- j. Conformance. No Work represented by required shop drawings shall be purchased or commenced until the applicable submittal has been approved. The Work shall conform to the approved shop drawings and all other requirements of the Contract Documents. The Contractor shall not proceed with any related Work that may be affected by the Work covered under shop drawings until the applicable shop drawings have been approved, particularly where piping, machinery and equipment, and the required arrangements and clearances are involved.
- k. Interrelated Shop Drawings. Except where the preparation of a shop drawing is dependent upon the approval of a prior shop drawing, all shop drawings pertaining to the same class or portion of the Work shall be submitted simultaneously.
- l. Identification of Specific Materials. Where manufacturer catalog or data sheets are provided for review, which include multiple products or sizes, specific materials to be furnished for the Work shall be clearly marked.

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SHOP DRAWING TRANSMITTAL FORM

Pursuant to Article 8 of the General Provisions, the Contractor shall use this transmittal form for submittal of shop drawings to the District. The procedure governing shop drawings submittal is contained in the General Provisions. Failure to comply with all requirements specified herein will constitute grounds for return of the shop drawings for proper re-submittal. The Contractor shall sequentially number each submittal.

Date: _____ Submittal No.: _____

From: _____ To: _____
Rancho California Water District

Contract No.: _____

Project Name: _____

(Check One)

- This is:
- An original submittal
 - A second submittal
 - A _____ submittal

Subject of Submittal:	Equipment Designation:	Specification Section(s):
_____	_____	_____

Complete either (a), (b), or (c) following: (Check One)

- (a) We have verified that the material or equipment contained in this submittal meets all the requirements specified as shown and matches material specified (no exceptions).
- (b) We have verified that the material or equipment contained in this submittal is an "or equal" to product specified and meets all the requirements specified or shown (list deviations below).
- (c) We are proposing alternate material or equipment with deviations described below.

Contractor's or Supplier's Authorized Signature: _____

Name: _____

Title: _____

Signature: _____

Address: _____

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ARTICLE 9. SUBMITTALS

- a. Contractor shall furnish to the Engineer for approval, prior to purchasing or commencing any Work, a log of all samples, material lists and certifications, mix designs, schedules, and other submittals, as required in the Specifications. The log shall indicate whether samples will be provided in accordance with other provisions of this Contract.
- b. Contractor will provide samples and submittals, together with catalogs and supporting data required by the Engineer, to the Engineer within a reasonable time period to provide for adequate review and avoid delays in the Work.
- c. These requirements shall not authorize any extension of time for performance of this Contract. Engineer will check and approve such samples, but only for conformance with design concept of work and for compliance with information given in the Contract Documents. Work shall be in accordance with approved samples and submittals.

ARTICLE 10. MATERIALS

- a. Except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract within specified time.
- b. Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality.
- c. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of The Work and shall be stored properly and protected as required by the Contract Documents. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work.
- d. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in The Work and agrees, upon completion of all Work, to deliver the Project to the District free from any claims, liens, or charges.
- e. Materials shall be stored on the Project site in such manner so as not to interfere with any operations of the District or any independent contractor.
- f. Equipment Protective Devices. All equipment furnished or installed shall meet the requirements of all applicable laws and regulations, particularly the regulations of the State of California Division of Industrial Safety and the Williams Steiger Occupational Safety and Health Act of 1970. Mechanical and electrical equipment shall have all

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required protection devices such as belt and shaft guards, heat protection, and similar such applicable protection devices. Such devices shall be indicated on shop drawings.

- g. Use of Asbestos Products. The intent of the Contract Documents is to provide asbestos-free components throughout the Project. Where the Contract Documents or the referenced specifications, standards, codes, or tests refer to products containing asbestos, the Contractor shall provide acceptable alternatives under those documents, or in the absence of such referenced alternatives, he shall submit a proposed substitute to the District's Representative for review and acceptance. Alternative products will not be required for asbestos cement pipe where the use of such pipe is allowed by the utility owner.

The Contractor is solely responsible for and shall take all appropriate precautions for protecting against threats to health and safety of the work force and general public arising out of construction involving asbestos. The Contractor shall comply with all applicable regulations for the handling, shaping, installation, and disposal of asbestos.

ARTICLE 11. CONTRACTOR'S SUPERVISION

Contractor shall continuously keep at each Project site a competent and experienced full-time Project superintendent approved by the District. Superintendent must be able to proficiently speak, read, and write in English. Contractor shall continuously provide efficient supervision of the Project.

ARTICLE 12. WORKERS

- a. Contractor shall at all times enforce strict discipline and good order among its employees. Contractor shall not employ on the Project any unfit person or any one not skilled in the Work assigned to him or her.
- b. Any person in the employ of the Contractor whom the District may deem incompetent or unfit shall be dismissed from The Work and shall not be employed on this Project except with the written Approval of the District.

ARTICLE 13. SUBCONTRACTORS

- a. Contractor agrees to bind every subcontractor to the terms of the Contract Documents as far as such terms are applicable to subcontractor's portion of The Work. Contractor shall be as fully responsible to the District for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by its subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in these Contract Documents shall create any contractual relationship between any subcontractor and the District.
- b. The District reserves the right to approve all subcontractors. The District's Approval of any subcontractor under this Contract shall not in any way relieve Contractor of its obligations in the Contract Documents.

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- c. Prior to substituting any subcontractor listed in the Bid Forms, Contractor must comply with the requirements of the Subletting and Subcontracting Fair Practices Act pursuant to California Public Contract Code section 4100 et seq.

ARTICLE 14. PERMITS AND LICENSES

Permits and licenses necessary for prosecution of The Work shall be secured and paid for by Contractor, unless otherwise specified in the Contract Documents.

- a. Contractor shall obtain and pay for all other permits and licenses required for The Work, including excavation permit and for plumbing, mechanical and electrical work, and for operations in or over public streets or right-of-way under jurisdiction of public agencies other than the District.
- b. The Contractor shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the Specifications, drawings, or by governing authorities, except for such off-site inspections delineated as the District's responsibility pursuant to the Contract Documents.
- c. Before Acceptance of the Project, the Contractor shall submit all licenses, permits, certificates of inspection, and required approvals to the District.

ARTICLE 15. UTILITY USAGE

- a. All temporary utilities including, but not limited to, electricity, gas, and telephone used on The Work shall be furnished and paid for by Contractor. Contractor shall Provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on The Work where the utility is needed. Upon completion of The Work, Contractor shall remove all temporary distribution systems.
 - 1) Construction Water and Power. The Contractor shall provide power needed for construction of all Work under this Contract. The District will provide a reasonable quantity of water free of charge to the Contractor from the existing potable or recycled water system, at the District's choice. Sources of construction water will be existing District fire hydrants within the vicinity of the Project. Construction water will be supplied by the District through a District-provided metering device. The Contractor shall, at its own expense, convey the construction water and power, in each case, to the point of use. The Contractor shall furnish and install backflow prevention devices and all necessary piping and appurtenances including pumps or water trucks as necessary. The Contractor shall comply with all rules and regulations concerning the use of recycled water at no additional cost to the District.
- b. Contractor shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Project.
- c. All permanent meters installed shall be listed in the Contractor's name until Project Acceptance.

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- d. If the Contract is for construction in existing facilities, Contractor may, with prior written Approval of the District, use the District's existing utilities by compensating the District for utilities used by Contractor.

ARTICLE 16. INSPECTION FEES FOR PERMANENT UTILITIES

All inspection fees and other municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation shall be paid for by the District. Contractor shall be responsible for arranging the payment of such fees, but inspection fees and other municipal fees relating to permanent utilities shall be paid by the District. Contractor may either request reimbursement from the District for such fees, or shall be responsible for arranging and coordination with District for the payment of such fees.

ARTICLE 17. TRENCHES

- a. Trenches Five Feet or More in Depth. The Contractor shall submit to the District, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five feet or more in depth. If the plan varies from shoring system standards, the plan shall be prepared by a registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations. Contractor shall designate in writing the "competent person," as defined in Title 8, Chapter 4, Article 2 of the California Administrative Code, whom shall be present at the work site each day that trenching/excavation is in progress. The "competent person" will provide a copy of his daily trenching/excavation inspection reports to the District daily. Nothing in this section shall be deemed to allow the use of a sloping, shoring, bracing, or other protective system less effective than that required by the Construction Safety Orders.
- b. Excavations Deeper than Four Feet. If work under this Contract involves digging trenches or other excavation that extends deeper than four feet below the surface, Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:
 - 1) Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site, in accordance with provisions of existing law.
 - 2) Subsurface or latent physical conditions at the site differing from those indicated.
 - 3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

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The District shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of The Work, shall issue a change order under the procedures described in the Contract Documents.

In the event that a dispute arises between the District and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of The Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. Contractor shall retain any and all rights provided either by contract or by law that pertain to the resolution of disputes and protests between the parties.

- c. Trenches and Excavation Protection. The Contractor is advised that rock or unacceptable backfill material may be encountered during trenching or excavation operations. Where such material is encountered, Contractor shall, at no additional cost to District, excavate said rock or unacceptable material, haul it off-site to a legal disposal site, and furnish and install suitable bedding and backfill material, in accordance with the District requirements.

The Contractor is advised that groundwater may be encountered during trenching or excavation operations. If groundwater is encountered, the Contractor shall procure all permits required for dewatering and to perform all necessary dewatering activity as required to complete the Work at no additional cost to District.

ARTICLE 18. DIVERSION OF RECYCLABLE WASTE MATERIALS/DISPOSAL OF WASTE MATERIAL

- a. Recyclable Waste Materials. In compliance with the applicable District's waste reduction and recycling efforts, Contractor shall divert all recyclable waste materials to appropriate recycling centers. Contractor will be required to submit weight tickets and written proof of diversion with its monthly progress payment requests. Contractor shall complete and execute any certification forms required by District or other applicable agencies to document Contractor's compliance with these diversion requirements. All costs incurred for these waste diversion efforts shall be the responsibility of the Contractor.
- b. Disposal of Waste Material. Unless otherwise designated in the Contract Documents, all cleared and waste material shall become the property of the Contractor and shall be disposed of by the Contractor outside the limits of Work, in accordance with the applicable ordinances and regulations of governmental agencies having jurisdiction. The Contractor shall obtain written permission from property owners before disposing of waste material on private property. A copy of said permission shall be received by the District prior to the Contractor disposing waste material on private or public property.

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ARTICLE 19. REMOVAL OF HAZARDOUS MATERIALS

Should Contractor encounter material reasonably believed to be polychlorinated biphenyl (PCB) or other toxic wastes and hazardous materials that have not been rendered harmless at the Project site, the Contractor shall immediately stop Work at the affected Project site and shall report the condition to the District in writing. The District shall contract for any services required to directly remove and/or abate PCBs and other toxic wastes and hazardous materials, if required by the Project site(s), and shall not require the Contractor to subcontract for such services. The Work in the affected area shall not thereafter be resumed except by written agreement of the District and Contractor.

ARTICLE 20. SANITARY FACILITIES/SANITARY CONDITIONS

- a. Sanitary Facilities. Contractor shall provide sanitary temporary toilet buildings for the use of all workers. All toilets shall comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. All single-user toilet facilities shall be identified as all-gender toilet facilities by signage that complies with Title 24 of the California Code of Regulations, and designated for use by no more than one occupant at a time or for family or assisted use. "Single-user toilet facility" means a toilet facility with no more than one water closet and one urinal with a locking mechanism controlled by the user. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers, as required by CAL-OSHA regulation. The toilets shall be maintained in a sanitary condition at all times. Use of toilet facilities in The Work under construction shall not be permitted. Any other Sanitary Facilities required by CAL-OSHA shall be the responsibility of the Contractor.
- b. Sanitary Conditions. The Contractor shall provide for its employees an adequate supply of clean, potable drinking water, which shall be dispensed through approved sanitary facilities.

The District's Representative may from time to time prescribe rules and regulations for maintaining sanitary conditions at the Work site(s) and the Contractor shall enforce observance of the same by its employees and the employees of the subcontractors, and, if the Contractor fails to enforce these rules and regulations, the District's Representative shall have authority to enforce them.

The Contractor shall obey and enforce such sanitary regulations as may be prescribed by the State Department of Health or other governmental authorities having jurisdiction.

ARTICLE 21. AIR POLLUTION CONTROL

Contractor shall comply with all South Coast Air Quality Management District air pollution control rules, regulations, ordinances, and statutes. All containers of paint, thinner, curing compound, solvent, or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements. The Contractor shall implement all required best management practices from Tables 1, 2, and 3 from Rule 403 (Fugitive Dust).

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ARTICLE 22. COMPLIANCE WITH STATE STORM WATER PERMIT

- a. Contractor shall be required to comply with all conditions of the State Water Resources Control Board (“State Water Board”) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (“Permit”) for all construction activity that results in the disturbance of in excess of one acre of total land area or that is part of a larger common area of development or sale. Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (“SWPPP”) prior to initiating Work. In bidding on this Contract, it shall be Contractor’s responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP, as well as complying with the SWPPP and any necessary revision to the SWPPP. Contractor shall comply with all requirements of the State Water Resources Control Board. Contractor shall include all costs of compliance with specified requirements in the Contract amount.
- b. Contractor shall be responsible for procuring, implementing, and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring, and reporting requirements, as required by the Permit. Contractor shall provide copies of all reports and monitoring information to the Engineer.
- c. Contractor shall comply with the lawful requirements of any applicable municipality, the District, drainage district, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- d. Storm, surface, nuisance, or other waters may be encountered at various times during construction of The Work. Therefore, the Contractor, by submitting a Bid, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.
- e. Failure to comply with the Permit is in violation of federal and state law. Contractor hereby agrees to indemnify and hold harmless District, its officials, officers, agents, employees, and authorized volunteers from and against any and all claims, demands, losses, or liabilities of any kind or nature that the District, its officials, officers, agents, employees, and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct, or active negligence of the District, its officials, officers, agents, employees, or authorized volunteers. District may seek damages from Contractor for delay in completing the Contract in accordance with the Contract Documents, caused by Contractor’s failure to comply with the Permit.

ARTICLE 23. CLEANING UP

- a. Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment. Contractor shall not store debris under, in, or about

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the premises. Upon completion of Work, Contractor shall clean the interior and exterior of the building or improvement including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration. Contractor shall clean and polish all glass, plumbing fixtures, finish hardware and similar finish surfaces, and equipment, and contractor shall also remove temporary fencing, barricades, planking, and construction toilet and similar temporary facilities from site. Contractor shall also clean all buildings, asphalt, and concrete areas to the degree necessary to remove oil, grease, fuel, or other stains caused by Contractor operations or equipment.

- b. Contractor shall fully clean up the site at the completion of The Work. If the Contractor fails to immediately clean up at the completion of The Work, the District may do so and the cost of such clean up shall be charged back to the Contractor.

ARTICLE 24. LAYOUT AND FIELD ENGINEERING

- a. All field engineering required for laying out The Work and establishing grades for earthwork operations shall be furnished by the Contractor at its expense.
- b. Easements. Permanent easements and temporary easements granted to the District are shown on the Construction Drawings. If the Contractor performs Work outside the limits of said easements, the Contractor shall stop all Work immediately and restore all areas to their pre-construction condition to the satisfaction of the District and the property owners. The Contractor shall also provide an indemnification letter to the District regarding any unauthorized Work outside said easements.

ARTICLE 25. EXCESSIVE NOISE

- a. Contractor shall use only such equipment on The Work and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment, as established by CAL-OSHA.
- b. Contractor shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations, and ordinances, and (2) the requirements contained in these Contract Documents, including hours of operation requirements. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job including, but not limited to, trucks, transit mixers, or transit equipment that may or may not be owned by the Contractor.
- c. Noise Control Measures. The Contractor shall incorporate the following noise control measures in the performance of The Work:

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- 1) **Maximum Noise Levels** within 1,000 feet of any Residence, Business, or Other Populated Area: Noise levels for trenchers, pavers, graders, and trucks shall not exceed 90 dBA at 50 feet as measured under the noisiest operating conditions. For all other equipment, noise levels shall not exceed 85 dBA at 50 feet.
- 2) **Equipment:** Jack hammers shall be equipped with exhaust mufflers and steel muffling sleeves. Air compressors should be of a quiet type such as a “whisperized” compressor.
- 3) **Operations:** Keep noisy equipment as far as possible from noise-sensitive site boundaries. Machines should not be left idling. Use electric power in lieu of internal combustion engine power, wherever possible. Maintain equipment properly to reduce noise from excessive vibration, faulty mufflers, or other sources. All engines shall have mufflers.
- 4) **Scheduling:** Schedule noisy operations so as to minimize their duration at any given location.
- 5) **Monitoring:** To determine whether the above noise limits are being met and whether noise barriers are needed, the Contractor shall use a portable sound level meter meeting the requirements of American National Standards Institute Specification S1.4 for Type 2 sound level meters. If non-complying noise levels are found, the Contractor shall be responsible for monitoring and correction of excessive noise levels at no additional cost to the District.

ARTICLE 26. TESTS AND INSPECTIONS

- a. If the Contract Documents, the Engineer, or any instructions, laws, ordinances, or public authority require any part of The Work to be tested or approved, Contractor shall provide the Engineer at least two (2) working days’ notice of its readiness for observation or inspection. If inspection is by a public authority other than the District, Contractor shall promptly inform the District of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Contractor. Costs for District testing and District inspection shall be paid by the District. Costs of tests for Work found not to be in compliance shall be paid by the Contractor.
- b. If any Work is done or covered up without the required testing or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor’s cost, in compliance with the Contract Documents.
- c. Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by the District, and not by Contractor. All tests or

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inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.

- d. In advance of manufacture of materials to be supplied by Contractor that must be tested or inspected, Contractor shall notify the District so that the District may arrange for testing at the source of supply. Any materials that have not satisfactorily passed such testing and inspection shall not be incorporated into The Work.
- e. If the manufacture of materials to be inspected or tested will occur in a plant or location outside the geographic limits of District, the Contractor shall pay for any costs associated with such testing or inspection including, but not limited to, travel time, standby time, and required lodging.
- f. Reexamination of Work may be ordered by the District. If so ordered, Work must be uncovered or deconstructed by Contractor. If Work is found to be in accordance with the Contract Documents, the District shall pay the costs of reexamination and reconstruction. If such work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.

ARTICLE 27. PROTECTION OF WORK AND PROPERTY

- a. The Contractor shall be responsible for all damages to persons or property that occur as a result of The Work. Contractor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final Acceptance by the District. All Work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support, as necessary. Contractor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Project site where Work is being performed. Contractor shall erect and properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction.
- b. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from the Engineer, is hereby permitted to act to prevent such threatened loss or injury; Contractor shall so act, without appeal, if so authorized or instructed by the Engineer or the District. Any compensation claimed by Contractor on account of emergency work shall be determined by and agreed upon by the District and the Contractor.
- c. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.
- d. Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures, and to avoid damage

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thereto, and Contractor shall repair any damage thereto caused by The Work operations. Contractor shall:

- 1) Enclose the working area with a substantial barricade, and arrange Work to cause minimum amount of inconvenience and danger to the public.
- 2) Provide substantial barricades around any shrubs or trees indicated to be preserved.
- 3) Deliver materials to the Project site over a route approved by the Engineer.
- 4) Provide any and all dust control required and follow the applicable air quality regulations, as appropriate. If the Contractor does not comply, the District shall have the immediate authority to provide dust control and deduct the cost from payments to the Contractor.
- 5) Confine Contractor's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or directions of the Engineer. Contractor shall not unreasonably encumber the Project site with its materials. The Contractor shall obtain the permission of the District's Representative, prior to stockpiling and/or storing any material and/or equipment to be used in the Work on the job site. The Contractor shall not store materials or equipment on private or public property without written permission approving such use from the property owner(s). Said permission shall be submitted to the District prior to the Contractor moving materials or equipment onto the site. Such materials and/or equipment stored or kept on the Site shall be the sole responsibility of the Contractor. The Contractor's equipment shall be removed from the public right-of-way and placed in the Contractor's designated storage area at the end of each working day.
- 6) Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved civil engineer or land surveyor, at no cost to the District.
- 7) Ensure that existing facilities, fences, and other structures are all adequately protected and that, upon completion of all Work, all facilities that may have been damaged are restored to a condition acceptable to the District.
- 8) Preserve and protect from injury all buildings, pole lines, and all direction, warning, and mileage signs that have been placed within the right-of-way.
- 9) At the completion of Work each day, leave the Project site in a clean, safe condition.
- 10) Comply with any stage construction and traffic handling plans. Access to residences and businesses shall be maintained at all times.

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These precautionary measures will apply continuously and not be limited to normal working hours. Full compensation for the Work involved in the preservation of life, safety, and property as above specified shall be considered as included in the prices paid for the various Contract items of Work, and no additional allowance will be made therefor.

- e. Should damage to persons or property occur as a result of The Work, Contractor shall be responsible for proper investigation and documentation, including video or photography, to adequately memorialize and make a record of what transpired. The District shall be entitled to inspect and copy any such documentation, video, or photographs. All Work sites including, but not limited to, areas used for travel, parking, and storage of vehicles, equipment, and materials shall be restored to their preconstruction conditions including regrading, paving, and revegetation, if required.
- f. Fire Prevention. The Contractor shall take all necessary steps to prevent fires including, but not limited to, providing spark arrestors on all internal combustion engines, storing and handling flammable liquids in accordance with the flammable and combustible liquids code (NFPA30), and providing fire extinguishers at hazardous locations or operations, such as welding.
- g. Confined Spaces. The Contractor shall perform all work in conformance with section 7 - 10.4.4, Confined Spaces, of the Standard Specifications for Public Works Construction "Green Book" (latest edition) for work in confined spaces. Contractor shall submit to Owner, prior to entering confined space, a copy of Contractor's Confined Space Entry Program (CSEP).
- h. Public Information Signs. The Contractor shall furnish and install public information signs notifying the public of the Project. The signs shall state the name of the Project, as well as the start and completion dates. The signs shall be of the quantity, size, contain a message, and be installed, as shown on the Contract Documents.
- i. Notifications. Contractor shall notify the District, all affected residents, commercial and public establishments, and utility companies of impending work as follows:
 - 1) For the District, Contractor shall notify the District's Construction Contracts Manager at (951) 296-6900 a minimum of two weeks prior to the start of Work.
 - 2) Contractor shall notify residents and commercial and public establishments of impending work. Contractor shall notify each establishment when any of their access driveways will be closed or restricted. Printed notices shall be hand-delivered to all residents and commercial and public establishments in the vicinity of The Work at least ten (10) days in advance of Work.
 - 3) Said notices shall first be approved by District and shall contain a general description of The Work, dates Work will be performed, descriptions of areas where travel and

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parking will be restricted, and names of streets that will be closed to through traffic or where traffic will be restricted.

- 4) If District receives complaints from individuals affected by the Project, Contractor shall take immediate action to correct the situation, as directed by the District and property owners. If Contractor receives complaints directly, it shall report same immediately to District. Thereafter, Contractor shall take immediate action to correct the situation, as directed by District.
- j. Work at Night. When work at night is necessary for the prosecution of the Work, the Contractor shall provide adequate lighting for the safety of the workers and for proper inspection.
- k. Use of Explosives. When the use of explosives is necessary for the prosecution of the Work, the Contractor shall use the utmost care not to endanger life or property. All explosives shall be stored in accordance with the provisions of Division 11, Part 1, Chapter 6 of the Health and Safety Code of the State of California; the same may be amended from time to time.
- l. Archaeological and Paleontological Discoveries. If discovery is made of items of archaeological or paleontological interest, the Contractor shall immediately cease excavation in the area of discovery, protect said discovery, immediately notify the District, and the Contractor shall not continue or resume excavation in the area of discovery until directed by the District.

ARTICLE 28. CONTRACTOR'S MEANS AND METHODS

Contractor is solely responsible for the means and methods utilized to Perform The Work. In no case shall the Contractor's means and methods deviate from commonly used industry standards.

ARTICLE 29. INSPECTOR'S FIELD OFFICE

Unless otherwise described in the Special Provisions, the Contractor shall not be responsible for providing an inspector's field office.

ARTICLE 30. AUTHORIZED REPRESENTATIVES

The District shall designate representatives, who shall have the right to be present at the Project site at all times. The District may designate an inspector who shall have the right to observe all of the Contractor's Work. The inspector is not authorized to make changes in the Contract Documents. The inspector shall not be responsible for the Contractor's failure to carry out The Work, in accordance with the Contract Documents. Contractor shall provide safe and proper facilities for such access.

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ARTICLE 31. HOURS OF WORK

- a. Eight (8) hours of work shall constitute a legal day's work. The Contractor and each subcontractor shall forfeit, as penalty to the District, one hundred dollars (\$100) for each worker employed in the execution of Work by the Contractor or any subcontractor for each day during which such worker is required or permitted to work more than eight (8) hours in any one day and forty (40) hours in any week in violation of the provisions of the Labor Code, and in particular, section 1810 to section 1815, except as provided in Labor Code section 1815.
- b. Work shall be accomplished on a regularly-scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m.
- c. It shall be unlawful for any person to operate, permit, use, or cause to operate any of the following at the Project site, other than between the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, with no Work allowed on District-observed holidays, unless otherwise approved by the Engineer:
 - 1) Powered Vehicles
 - 2) Construction Equipment
 - 3) Loading and Unloading Vehicles
 - 4) Domestic Power Tools

ARTICLE 32. PAYROLL RECORDS

- a. Pursuant to Labor Code section 1776, the Contractor and each subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with The Work. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury.
- b. In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on a weekly basis and in the format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement.
- c. The payroll records described herein shall be certified and submitted by the Contractor at a time designated by the District. The Contractor shall also provide the following:

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- 1) A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - 2) A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.
- d. Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.
 - e. Any copy of records made available for inspection and furnished upon request to the public shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor or any subcontractor shall not be marked or obliterated.
 - f. In the event of noncompliance with the requirements of this section, the Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance with this section. Should noncompliance still be evident after such ten (10) day period, the Contractor shall, as a penalty to the District, forfeit twenty-five dollars (\$25.00) for each day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the DIR, such penalties shall be withheld from contract payments.

ARTICLE 33. PREVAILING RATES OF WAGES

- a. The Contractor is aware of the requirements of Labor Code sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Agreement from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlstr/. In the alternative, the Contractor may view a copy of the prevailing rates of per diem wages at the District. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to perform Work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify, and hold the District, its elected officials, officers, employees, and agents free and harmless from any claims, liabilities, costs, penalties, or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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- b. The Contractor and each subcontractor shall forfeit as a penalty to the District not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.
- c. Contractor shall post, at appropriate, conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

ARTICLE 34. EMPLOYMENT OF APPRENTICES

The Contractor's attention is directed to the provisions of sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the Contractor or any subcontractor. The Contractor shall obtain a certificate of apprenticeship before employing any apprentice pursuant to sections 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

ARTICLE 35. NONDISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

Pursuant to Labor Code section 1735 and other applicable provisions of law, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap on this Project. The Contractor will take affirmative action to insure that employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap.

ARTICLE 36. LABOR/EMPLOYMENT SAFETY

The Contractor shall maintain emergency first aid treatment for his employees that complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4.

ARTICLE 37. WORKERS' COMPENSATION INSURANCE

The Contractor shall Provide, during the life of this Contract, workers' compensation insurance for all of the employees engaged in Work under this Contract, on or at the Project site, and, in case of any sublet Work, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees, as prescribed by state law. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in Work under this Contract, on or at the Project site, is not protected under the Workers' Compensation Statutes, the Contractor

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shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor is required to secure payment of compensation to his employees, in accordance with the provisions of section 3700 of the Labor Code. The Contractor shall file with the District certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to the District, if in the form and coverage, as set forth in the Contract Documents.

ARTICLE 38. EMPLOYER'S LIABILITY INSURANCE

Contractor shall provide during the life of this Contract, Employer's Liability Insurance, including Occupational Disease, in the amount of, at least, one million dollars (\$1,000,000.00) per person, per accident. Contractor shall provide District with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of the District.

ARTICLE 39. COMMERCIAL GENERAL LIABILITY INSURANCE

- a. Contractor shall procure and maintain during the life of this Contract and for such other period as may be required herein, at its sole expense, Commercial General Liability Insurance coverage including, but not limited to, premises liability, contractual liability, products/completed operations if applicable, personal and advertising injury – which may arise from or out of Contractor's operations, use, and management of the Project site, or the performance of its obligations hereunder. Policy limits shall not be less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage, and \$2,000,000 aggregate total bodily injury and property damage.

The contractor shall also procure and maintain during the life of this contract and for such other period as may be required herein, at its sole expense, excess liability coverage. Excess liability limits shall be as follows:

For contracts exceeding \$50,000 -- \$3,000,000 Bodily Injury and Property Damage.

For contracts less than \$50,000 -- \$1,000,000 Bodily Injury and Property Damage.

- b. Such policy shall comply with all the requirements of this Article. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further, the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to the District, and shall not preclude the District from taking such other actions available to the District under other provisions of the Contract Documents or law.

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- c. Contractor shall make certain that any and all subcontractors hired by Contractor are insured, in accordance with this Contract. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold the District harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by the District as a result thereof.
- d. All general liability policies provided pursuant to the provisions of this Article shall comply with the provisions of the Contract Documents.
- e. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in these General Provisions, relating to liability for injury to or death of persons and damage to property. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, the District may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Contract Documents.

ARTICLE 40. AUTOMOBILE LIABILITY INSURANCE

Contractor shall take out and maintain at all times during the term of this Contract Automobile Liability Insurance in the amount of, at least, one million dollars (\$1,000,000). Such insurance shall provide coverage for bodily injury and property damage including coverage for non-owned and hired vehicles, in a form and with insurance companies acceptable to the District. Such insurance shall comply with the provisions of Article 42 below.

ARTICLE 41. BUILDER'S RISK ["ALL RISK"]

- a. It is the Contractor's responsibility to maintain or cause to be maintained Builder's Risk ["All Risk"] extended coverage insurance on all work, material, equipment, appliances, tools, and structures that are a part of the Contract and subject to loss or damage by fire, vandalism, and malicious mischief, in an amount to cover 100% of the replacement cost. The District accepts no responsibility until the Contract is formally accepted by the Governing Board for The Work. The Contractor is required to file with the District a certificate evidencing fire insurance coverage.
- b. Provide insurance coverage on completed value form, all-risk, or special causes of loss coverage.
 - 1) Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.

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- 2) Coverage shall include all materials stored on-site and in transit.
 - 3) Coverage shall include Contractor's tools and equipment.
 - 4) Insurance shall include boiler, machinery, and material hoist coverage.
- c. Such insurance shall comply with the provisions of the Contract Documents.

ARTICLE 42. FORM AND PROOF OF CARRIAGE OF INSURANCE

- a. Any insurance carrier providing insurance coverage required by the Contract Documents must be a California admitted insurer or on California Department of Insurance's List of Approved Surplus Line Insurers (LASLI). Carrier(s) shall have an A.M. Best rating of not less than an A-:VII. Insurance deductibles or self-insured retentions must be declared by the Contractor, and such deductibles and retentions shall have the prior written consent from the District. At the election of the District, the Contractor shall either: 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond that guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- b. Contractor shall cause its insurance carrier(s) to furnish the District with either: 1) a properly executed original Certificate(s) of Insurance and certified original copies of endorsements effecting coverage as required herein, or 2) if requested to do so in writing by the District, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. The District, its directors and officers, employees, and agents or representatives are named as Additional Insureds and Provide a Waiver of Subrogation in favor of those parties. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that shall provide no less than thirty (30) days written notice be given to the District prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, the District may terminate or Stop Work pursuant to the Contract Documents, unless the District receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverages set forth herein and the insurance required herein is in full force and effect. Contractor shall not take possession, or use the Project site, or commence operations under this Agreement until the District has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance, including all endorsements and any and all other attachments, as required in this section.
- c. It is understood and agreed to by the parties hereto and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary, and the District's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

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- d. The District reserves the right to adjust the monetary limits of insurance coverage during the term of this Contract, including any extension thereof, if in the District's reasonable judgment, the amount or type of insurance carried by the Contractor becomes inadequate.
- e. Contractor shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Contract.

ARTICLE 43. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- a. Time for Completion/Liquidated Damages. Work shall be commenced within ten (10) days of the date stated in the District's Notice to Proceed and shall be completed by Contractor in the time specified in the Contract Documents. The District is under no obligation to consider early completion of the Project and the Contract completion date shall not be amended by the District's receipt or acceptance of the Contractor's proposed earlier completion date. Furthermore, Contractor shall not, under any circumstances, receive additional compensation from the District (including, but not limited to, indirect, general, administrative, or other forms of overhead costs) for the period between the time of earlier completion proposed by the Contractor and the Contract completion date. If The Work is not completed as stated in the Contract Documents, it is understood that the District will suffer damage. In accordance with Government Code section 53069.85, being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the District as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract for each day of delay until The Work is fully completed. Contractor and its surety shall be liable for any liquidated damages. Any money due or to become due the Contractor may be retained to cover liquidated damages.
- b. Inclement Weather. Contractor shall abide the Engineer's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the critical path of the Project schedule.
- c. Extension of Time. Contractor shall not be charged liquidated damages because of any delays in completion of The Work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor (or its subcontractors or suppliers). Contractor shall within five (5) days of identifying any such delay notify the District in writing of causes of delay. The District shall ascertain the facts and extent of delay and grant extension of time for completing The Work when, in its judgment, the facts justify such an extension. Time extensions to the Project shall be requested by the Contractor as they occur and without delay. No delay claims shall be permitted unless the event or occurrence delays the completion of the Project beyond the Contract completion date.
- d. No Damages for Reasonable Delay. The District's liability to Contractor for delays for which the District is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall the District be liable for any costs that are borne by the Contractor in the regular course of business

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including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable District delay, including delays caused by items that are the responsibility of the District pursuant to Government Code section 4215, shall be based on actual costs only; no proportions or formulas shall be used to calculate any delay damages.

ARTICLE 44. COST BREAKDOWN AND PERIODIC ESTIMATES

Contractor shall furnish on forms approved by the District:

- a. Schedule of Values. Within ten (10) days of award of the Contract, the Contractor shall submit a detailed estimate giving a complete breakdown of the Contract price. The breakdown of the Contract price shall include a complete schedule of the values of the various portions of the Work, including quantities and unit prices if required by the District, aggregating the Contract price (except in cases and to the extent that accepted unit prices form the basis for payment). The schedule of values shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction and to coordinate with the Project Schedule required under Article 6 (a) above, and shall be supported by such data to substantiate its correctness as the District may require. Each item in the schedule of values shall include its proper share of overhead and profit. An unbalanced breakdown providing for overpayment to the Contractor on items of Work that would be performed first will not be approved.
- b. A monthly itemized estimate of Work done for the purpose of making progress payments. In order for the District to consider and evaluate each progress payment application, the Contractor shall submit a detailed measurement of Work performed and a progress estimate of the value thereof before the twenty-fifth (25th) day of the following month.
- c. Contractor shall submit, with each of its payment requests, an adjusted list of actual quantities, verified by the Engineer, for unit price items listed, if any, in the Bid Form.
- d. Following the District's Acceptance of the Work, the Contractor shall submit to the District a written statement of the final quantities of unit price items for inclusion in the final payment request.
- e. The District shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

Contractor shall certify under penalty of perjury that all cost breakdowns and periodic estimates accurately reflect the Work on the Project.

ARTICLE 45. MOBILIZATION

- a. When a bid item is included in the Bid Form for mobilization, the costs of Work in advance of construction operations and not directly attributable to any specific bid item

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will be included in the progress estimate (“Initial Mobilization”). When no bid item is provided for “Initial Mobilization,” payment for such costs will be deemed to be included in the other items of The Work.

- b. Payment for Initial Mobilization is based on the lump sum provided in the Bid Form, which shall constitute full compensation for all such Work. No payment for Initial Mobilization will be made until all of the listed items have been completed to the satisfaction of the Engineer. The scope of the Work included under Initial Mobilization shall include, but shall not be limited to, the following principal items:
 - 1) Obtaining and paying for all bonds, insurance, and permits.
 - 2) Moving onto the Project site all of the Contractor’s plant and equipment required for the first month’s operations.
 - 3) Installing temporary construction power, wiring, and lighting facilities.
 - 4) Establishing fire protection system.
 - 5) Developing and installing a construction water supply.
 - 6) Providing and maintaining the field office trailers for the Contractor and the Engineer, complete with all specified furnishings and utility services including telephones, telephone appurtenances, computer and printer, and copying machine.
 - 7) Providing on-site communication facilities for the Owner and the Engineer, including telephones, radio pagers, and fax machines.
 - 8) Providing on-site sanitary facilities and potable water facilities, as specified per Cal-OSHA and these Contract Documents.
 - 9) Furnishing, installing, and maintaining all storage buildings or sheds required for temporary storage of products, equipment, or materials that have not yet been installed in the Work. All such storage shall meet manufacturer’s specified storage requirements, and the specific provisions of the specifications, including temperature and humidity control, if recommended by the manufacturer, and for all security.
 - 10) Arranging for and erection of Contractor’s work and storage yard.
 - 11) Posting all OSHA required notices and establishment of safety programs per Cal-OSHA.
 - 12) Full-time presence of Contractor’s superintendent at the job site, as required herein.
 - 13) Submittal of construction schedule, as required by the Contract Documents.

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ARTICLE 46. PAYMENTS

- a. The District shall make monthly progress payments following receipt of undisputed and properly submitted payment requests. Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of Work performed up to the twenty-fifth (25th) day of the previous month, less the aggregate of previous payments.
- b. The Contractor shall, after the full completion of The Work, submit a final payment application. All prior progress estimates shall be subject to correction in the final estimate and payment.
- c. Unless otherwise required by law, the final payment of five percent (5%) of the value of the Work, if unencumbered, shall be paid no later than sixty (60) days after the date of recordation of the Notice of Completion.
- d. Acceptance by Contractor of the final payment shall constitute a waiver of all claims against the District arising from this Contract.
- e. Payments to the Contractor shall not be construed to be an acceptance of any defective Work or improper materials, or to relieve the Contractor of its obligations under the Contract Documents.
- f. The Contractor shall submit with each payment request the Contractor's conditional waiver of lien for the entire amount covered by such payment request, as well as a valid unconditional waiver of lien from the Contractor and all subcontractors and materialmen for all Work and Materials included in any prior invoices. Waivers of lien shall be in the forms prescribed by California Civil Code section 8132. Prior to final payment by the District, the Contractor shall submit a final waiver of lien for the Contractor's Work, together with releases of lien from any subcontractor or materialmen.

ARTICLE 47. PAYMENTS WITHHELD AND BACKCHARGES

In addition to amounts that the District may retain under other provisions of the Contract Documents, the District may withhold payments due to Contractor as may be necessary to cover:

- a. Stop Payment Notice Claims.
- b. Defective Work not remedied.
- c. Failure of Contractor to make proper payments to its subcontractors or suppliers.
- d. Completion of the Contract if there exists a reasonable doubt that the Work can be completed for balance then unpaid.
- e. Damage to another contractor or third party.
- f. Amounts that may be due the District for claims against Contractor.

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- g. Failure of Contractor to keep the record (“as-built”) drawings up to date.
- h. Failure to provide updates on the construction schedule.
- i. Site clean-up.
- j. Failure of the Contractor to comply with requirements of the Contract Documents.
- k. Liquidated damages.
- l. Legally permitted penalties.

Upon completion of the Contract, the District will reduce the final Contract amount to reflect costs charged to the Contractor, backcharges, or payments withheld pursuant to the Contract Documents.

ARTICLE 48. CHANGES AND EXTRA WORK

a. Change Order Work.

- 1) The District, without invalidating the Contract, may order changes in the Work consisting of additions, deletions, or other revisions; the Contract amount and Contract time being adjusted accordingly. All such changes in the Work shall be authorized by change order, and shall be performed under the applicable conditions of the Contract Documents. A change order signed by the Contractor indicates the Contractor’s agreement therewith, including any adjustment in the Contract amount or the Contract time, and the full and final settlement of all costs (direct, indirect, and overhead) related to the Work authorized by the change order.
- 2) All claims for additional compensation to the Contractor shall be presented in writing before the expense is incurred and will be adjusted, as provided herein. No work shall be allowed to lag pending such adjustment, but shall be promptly executed as directed, even if a dispute arises. No claim will be considered after the work in question has been done unless a written contract change order has been issued or a timely written notice of claim has been made by Contractor. Contractor shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions, and provisions of the original Contract.
- 3) Owner-Initiated Change. The Contractor must submit a complete cost proposal, including any change in the Contract time, within seven (7) days after receipt of a scope of a proposed change order, unless the District requests that proposals be submitted in less than seven (7) days.

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- 4) Contractor-Initiated Change. The Contractor must give written notice of a proposed change order required for compliance with the Contract Documents within seven (7) days of discovery of the facts giving rise to the proposed change order.
- 5) Whenever possible, any changes to the Contract amount shall be in a lump sum mutually agreed to by the Contractor and the District.
- 6) Price quotations from the Contractor shall be accompanied by sufficiently detailed supporting documentation to permit verification by the District.
- 7) If the Contractor fails to submit the cost proposal within the seven (7) day period (or as requested), the District has the right to order the Contractor in writing to commence the work immediately on a force account basis and/or issue a lump sum change to the contract price, in accordance with the District's estimate of cost. If the change is issued based on the District estimate, the Contractor will waive its right to dispute the action unless within fifteen (15) days following completion of the added/deleted work, the Contractor presents written proof that the District's estimate was in error.
- 8) Estimates for lump sum quotations and accounting for cost-plus-percentage Work shall be limited to direct expenditures necessitated specifically by the subject extra Work, and shall be segregated as follows:
 - (a) Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the extra Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state, or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification that would increase the extra Work cost will not be permitted unless the contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.
 - (b) Materials. The cost of Materials reported shall be at invoice or lowest current price at which such Materials are locally available in the quantities involved, plus sales tax, freight, and delivery. Materials cost shall be based upon supplier or manufacturer's invoice. If invoices or other satisfactory evidence of cost are not furnished within fifteen (15) days of delivery, then the Engineer shall determine the Materials cost, at its sole discretion.
 - (c) Tool and Equipment Use. No payment will be made for the use of small tools or tools that have a replacement value of \$1,000 or less. Regardless of ownership, the rates to be used in determining equipment use costs shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the Work is performed.

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- (d) Overhead, Profit, and Other Charges. The mark-up for overhead (including supervision) and profit on Work added to the Contract shall be according to the following:
- i. “Net Cost” is defined as consisting of costs of labor, materials, and tools and equipment only, excluding overhead and profit. The costs of applicable insurance and bond premium and equipment rental will be reimbursed to the Contractor at cost only, without mark-up.
 - ii. Overhead and profit shall not exceed fifteen percent (15%) of the Net Cost of the Work performed regardless of the forces used to perform the Work. When extra Work is performed by forces other than the Contractor’s organization, the Contractor shall reach agreement with such other forces as to the distribution of payment made by the District for such Work.
- 9) For added or deducted Work by subcontractors, the Contractor shall furnish to the District the subcontractor’s signed, detailed estimate of the cost of labor, material, and equipment. The same requirement shall apply to sub-subcontractors.
- 10) For added or deducted Work furnished by a vendor or supplier, the Contractor shall furnish to the District a detailed estimate or quotation of the cost to the Contractor, signed by such vendor or supplier.
- 11) Any change in The Work involving both additions and deletions shall indicate a net total cost, including subcontracts and materials. Allowance for overhead and profit, as specified herein, shall be applied if the net total cost is an extra; overhead and profit allowances shall not be applied if the net total cost is a credit. The estimated cost of deductions shall be based on labor and material prices on the date the Contract was executed.
- 12) Contractor shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration, and/or actual acceleration beyond what is stated in the change order for Work. No claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The Contractor may not change or modify the District’s change order form in an attempt to reserve additional rights.
- 13) If the District disagrees with the proposal submitted by Contractor, it will notify the Contractor and the District will provide its opinion of the appropriate price and/or time extension. If the Contractor agrees with the District, a change order will be issued by the District. If no agreement can be reached, the District shall have the right to issue a unilateral change order setting forth its determination of the reasonable additions or savings in costs and time attributable to the extra or deleted Work. Such determination shall become final and binding if the Contractor fails to submit a claim in writing to the District within fifteen (15) days of the issuance of the unilateral change order, disputing the terms of the unilateral change order.

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- 14) No dispute, disagreement, or failure of the parties to reach agreement on the terms of the change order shall relieve the Contractor from the obligation to proceed with performance of The Work, including extra Work, promptly and expeditiously.
- 15) Any alterations, extensions of time, extra Work, or any other changes may be made without securing consent of the Contractor's surety or sureties.

ARTICLE 49. OCCUPANCY

The District reserves the right to occupy or utilize any portion of The Work at any time before completion, and such occupancy or use shall not constitute Acceptance of any part of Work covered by this Contract. This use shall not relieve the Contractor of its responsibilities under the Contract.

ARTICLE 50. INDEMNIFICATION

Contractor shall defend (with Counsel of District's choosing), indemnify, and hold the District, its officials, officers, agents, employees, and representatives free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, to the extent arising out of or incident to any acts, omissions, or willful misconduct of Contractor, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense, and risk, with Counsel of District's choosing, any and all such aforesaid suits, actions, or other legal proceedings of every kind that may be brought or instituted against District, its officials, officers, agents, employees, and representatives. To the extent of its liability, Contractor shall pay and satisfy any judgment, award, or decree that may be rendered against District, its officials, officers, employees, agents, employees, and representatives, in any such suit, action, or other legal proceeding. Contractor shall reimburse District, its officials, officers, agents, employees, and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782.

ARTICLE 51. RECORD ("AS BUILT") DRAWINGS

- a. Contractor shall prepare and maintain a complete set of record drawings (herein referred to as "as-builts") and shall require each trade to prepare its own as-builts. The as-builts must show the entire site for each major trade including, but not limited to, water, sewer, electrical, data, telephone, cable, fire alarm, gas, and plumbing. Contractor shall mark the as-builts to show the actual installation where the installation varies from the Work as originally shown. Contractor shall mark whichever drawings are most capable of showing conditions fully and where shop drawings are used, Contractor must record a cross-reference at the corresponding location on the contract drawings. Contractor shall give particular attention to concealed elements that would

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be difficult to measure and record at a later date. Contractor shall use colors to distinguish variations in separate categories of The Work.

- b. Contractor shall note related change order numbers, where applicable. Contractor shall organize as-builts into manageable sets, bound with durable paper cover sheets, and shall print suitable title, dates, and other identification on the cover of each set. Contractor to also provide an electronic version of the as-builts. The suitability of the as-builts will be determined by the Engineer.

ARTICLE 52. RESOLUTION OF CONSTRUCTION CLAIMS

- a. All public works claims between the Contractor and the District shall be resolved pursuant to the procedures set forth in Public Contract Code section 9204. All public works claims of \$375,000 or less which arise between the Contractor and the District shall be resolved in accordance with Public Contract Code sections 20104 et seq. and other applicable law, unless the District has elected to resolve the dispute pursuant to Public Contract Code section 10240 et seq.
- b. Contractor shall timely comply with all notices and requests for additional compensation and extensions of time, including, but not limited to, all requirements of Article 48, as a prerequisite to filing any claim governed by this Article. The failure to timely provide any notice or request required by the Contract Documents shall constitute a waiver of the right to these procedures.
- c. All Claims. All claims shall be submitted in writing and accompanied by substantiating documentation. Claims must be filed on or before the date of final payment unless other notice requirements are provided in the Contract Documents. "Claim" means a separate demand by the Contractor for: 1) a time extension, without limitation, relief from damages or penalties for delay assessed by the District 2) payment of money or damages arising from Work done by or on behalf of the Contractor and payment of which is not otherwise expressly provided for or the Contractor is not otherwise entitled, or 3) payment of an amount which is disputed by the District.
- d. The Contractor will submit the claim justification in the following format:
 - 1) Summary of claim merit and price, and Contract clause pursuant to which the claim is made.
 - 2) List of documents relating to claim:
 - (a) Specifications
 - (b) Drawings
 - (c) Clarifications (Requests for Information)
 - (d) Schedules
 - (e) Other
 - 3) Chronology of events and correspondence.
 - 4) Analysis of claim merit.

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- 5) Analysis of claim cost.
 - 6) Analysis of time impact analysis in CPM format.
 - 7) Cover letter and certification of validity of the claim, including any claims from subcontractors of any tier, in accordance with the Government Code sections 12650 et seq.
- e. District Response to Claim. Upon receipt of a Claim pursuant to this Article, the District shall conduct a reasonable review of the Claim and, within a period not to exceed forty-five (45) days of receipt of the claim, or as extended by mutual agreement, shall provide a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within sixty (60) days after the District issues its written response.

If the District needs approval from its Board of Directors to provide Contractor a written statement as set forth above, and the Board of Directors does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a Claim, the District shall have up to three (3) days following the next publicly-noticed meeting of the Board of Directors after the 45-day period, or extension, expires to provide Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim.

The District may request, in writing, within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses or claims the District may have. If additional information is needed thereafter, it shall be provided upon mutual agreement of the District and the claimant. The District's written response shall be submitted thirty (30) days (15 days if the Claim is less than \$50,000) after receiving the additional documentation, or within the same period of time taken by the claimant to produce the additional information, whichever is greater.

- f. Meet & Confer Conference. If the Contractor disputes the District's response, or if the District fails to respond within the statutory time period(s), the Contractor may so notify the District within fifteen (15) days of the receipt of the response or the failure to respond, and demand an informal conference to meet and confer for settlement. Upon such demand, the District shall schedule a meet and confer conference within thirty (30) days.
- g. Mediation. Within ten (10) business days following the conclusion of the meet and confer conference, if the Claim or any portion thereof remains in dispute, the District shall provide the Contractor with a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any portion of the Claim that remains in dispute shall be submitted to nonbinding mediation. The selection of the mediator shall be in accordance with Public Contract Code section 9204 and the District and the Contractor shall equally share the associated mediator fees. Each party

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will be responsible for its own attorneys' fees and other costs incurred due to the resolution of any Claim.

- h. Condition Precedent. Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by the District, is a condition precedent to any action, proceeding, litigation, suit, general conditions claim, or demand for arbitration by Contractor.
- i. Government Code Claim. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra Work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the District. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra Work, disputed Work, construction claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the District.

ARTICLE 53. DISTRICT'S RIGHT TO TERMINATE CONTRACT

- a. Termination for Cause. The District may, without prejudice to any other right or remedy, serve written notice upon Contractor of its intention to terminate this Contract if the Contractor: (i) refuses or fails to prosecute The Work or any part thereof with such diligence as will ensure its completion within the time required; (ii) fails to complete The Work within the required time; (iii) should file a bankruptcy petition or be adjudged a bankruptcy; (iv) should make a general assignment for the benefit of its creditors; (v) should have a receiver appointed; (vi) should persistently or repeatedly refuse or fail to supply enough properly skilled workers or proper materials to complete The Work; (vii) should fail to make prompt payment to subcontractors or for material or labor; (viii) persistently disregards laws, ordinances, other requirements, or instructions of the District; or (ix) should violate any of the provisions of the Contract Documents.

The notice of intent to terminate shall contain the reasons for such intention to terminate. Unless within ten (10) days after the service of such notice, such condition shall cease or satisfactory arrangements (acceptable to the District) for the required correction are made, this Contract shall be terminated. In such case, Contractor shall not be entitled to receive any further payment until the Project has been finished. The District may take over and complete The Work by any method it may deem appropriate. Contractor and its surety shall be liable to the District for any excess costs or other damages incurred by the District to complete the Project. If the District takes over The Work, the District may, without liability for so doing, take possession of and utilize in completing The Work such materials, appliances, plant, and other property belonging to the Contractor as may be on the Project site.

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- b. Termination For Convenience. The District may terminate performance of The Work, in whole or in part, if the District determines that a termination is in the District's interest.

The District shall terminate all or any part of The Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience of the District, the extent of termination, and the effective date of such termination.

After receipt of Notice of Termination, and except as directed by the District, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:

- 1) Stop Work as specified in the Notice.
 - 2) Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
 - 3) Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
 - 4) Terminate all subcontracts to the extent that they relate to the portions of The Work terminated.
 - 5) Place no further subcontracts or orders, except as necessary to complete the remaining portion of The Work.
 - 6) Submit to the District, within ten (10) days from the effective date of the Notice of Termination, all of the documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials, and equipment through the Effective Date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the District's exercise of its right to terminate this Contract pursuant to this clause, which costs the Contractor is authorized under the Contract Documents to incur, shall: (i) be submitted to and received by the District no later than thirty (30) days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs Occasioned by the District's Termination for Convenience."
 - 7) These provisions are in addition to and not in limitation of any other rights or remedies available to the District.
- c. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, the

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District may immediately order Contractor to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of the District or the Contract is terminated.

ARTICLE 54. WARRANTY AND GUARANTEE

- a. Contractor warrants that all materials and equipment furnished under this Contract shall be new unless otherwise specified in the Contract Documents and that all Work conforms to the Contract Document requirements and is free of any defect whether performed by the Contractor or any subcontractor or supplier.
- b. Unless otherwise stated, all warranty periods shall begin upon the filing of the Notice of Completion. Unless otherwise stated, the warranty period shall be for one year.
- c. The Contractor shall remedy, at its expense, any damage to District-owned or -controlled real or personal property.
- d. Contractor shall furnish the District with all warranty and guarantee documents prior to final Acceptance of the Project by the District.
- e. The District shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor shall, within ten (10) days after being notified, commence and perform with due diligence all necessary Work. If the Contractor fails to promptly remedy any defect or damage, the District shall have the right to replace, repair, or otherwise remedy the defect or damage at the Contractor's expense.
- f. In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of the Contractor not in accordance with the Contract requirements, the District may undertake at Contractor's expense, and without prior notice, all Work necessary to correct such condition.
- g. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for Work performed and Materials furnished under this Contract, the Contractor shall:
 - 1) Obtain for District all warranties that would be given in normal commercial practice.
 - 2) Require all warranties to be executed, in writing, for the benefit of the District.
 - 3) Enforce all warranties for the benefit of the District, unless otherwise directed in writing by the District.

This Article shall not limit the District's rights under this Contract or with respect to latent defects, gross mistakes, or fraud. The District specifically reserves all rights related to defective Work

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including, but not limited to, the defect claims pursuant to California Code of Civil Procedure section 337.15.

ARTICLE 55. DOCUMENT RETENTION AND EXAMINATION

- a. In accordance with Government Code section 8546.7, records of both the District and the Contractor shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.
- b. Contractor shall make available to the District any of the Contractor's other documents related to the Project immediately upon request of the District.
- c. In addition to the State Auditor General rights above, the District shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data, at no additional cost to the District, for a period of four (4) years after final payment.

ARTICLE 56. SOILS INVESTIGATIONS

When a soils investigation report for the Project site is available, such report shall not be a part of the Contract Documents. Any information obtained from such report as to subsurface soil condition, or to elevations of existing grades or elevations of underlying rock, is approximate only and is not guaranteed. Contractor acknowledges that any soils investigation report (including any borings) was prepared for purposes of design only and Contractor is required to examine the site before submitting its bid and must make whatever tests it deems appropriate to determine the underground condition of the soil.

ARTICLE 57. SEPARATE CONTRACTS

- a. The District reserves the right to let other contracts in connection with this Work on the Project site. Contractor shall permit other contractors reasonable access and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs, at no additional cost to the District. Should conflict arise, the Contractor shall stop the portion of the Work involved, notify the District's Representative and wait for the District's Representative's direction on how to proceed. There will be no monetary damages given to the Contractor for delays incurred by the work of other contractors.
- b. To ensure proper execution of its subsequent Work, Contractor shall immediately inspect work already in place and shall at once report to the Engineer any problems with the Work in place or discrepancies with the Contract Documents.
- c. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by the District in prosecution of the Project to the end that Contractor may perform this Contract in the light of such

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other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, the Engineer shall decide which contractor shall cease Work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. The District shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Project site.

ARTICLE 58. NOTICE AND SERVICE THEREOF

All notices shall be in writing and either served by personal delivery or mailed to the other party, as designated in the Bid Forms. Written notice to the Contractor shall be addressed to Contractor's principal place of business unless Contractor designates another address in writing for service of notice. Notice to District shall be addressed to the District, as designated in the Notice Inviting Bids, unless District designates another address in writing for service of notice. Notice shall be effective upon receipt or five (5) days after being sent by first class mail, whichever is earlier. Notice given by facsimile shall not be effective unless acknowledged in writing by the receiving party.

ARTICLE 59. NOTICE OF THIRD PARTY CLAIMS

Pursuant to Public Contract Code section 9201, the District shall provide Contractor with timely notification of the receipt of any third-party claim relating to the Contract.

ARTICLE 60. STATE LICENSE BOARD NOTICE

Contractors are required by law to be licensed and regulated by the Contractors' State License Board, which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

ARTICLE 61. INTEGRATION

- a. Oral Modifications Ineffective. No oral order, objection, direction, claim, or notice by any party or person shall affect or modify any of the terms or obligations contained in the Contract Documents.
- b. Contract Documents Represent Entire Contract. The Contract Documents represent the entire agreement of the District and Contractor.

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ARTICLE 62. ASSIGNMENT

Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof including any claims, without prior written consent of the District. Any assignment without the written consent of the District shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or Material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure, or the Government Code.

ARTICLE 63. CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY

Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the District in order that proper steps may be taken to have the change reflected on the Contract.

ARTICLE 64. ASSIGNMENT OF ANTITRUST ACTIONS

Pursuant to section 7103.5 of the Public Contract Code, in entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or subcontractor offers and agrees to assign to the District all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. section 15) or under the Cartwright Act (chapter 2 [commencing with section 16700] of part 2 of division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this Contract or any subcontract. This assignment shall be made and become effective at the time the District makes final payment to the Contractor, without further acknowledgment by the parties.

ARTICLE 65. PROHIBITED INTERESTS

No District official or representative who is authorized in such capacity and on behalf of the District to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting, or approving any engineering, inspection, construction, or material supply contract or any subcontract in connection with construction of the Project, shall be or become directly or indirectly interested financially in the Contract.

ARTICLE 66. LAWS AND REGULATIONS

- a. Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on conduct of Work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, he shall promptly notify the Engineer in writing and any necessary changes shall be adjusted, as provided for in this Contract for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice to the Engineer, he shall bear all costs arising therefrom.

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- b. Contractor shall be responsible for familiarity with the Americans with Disabilities Act (“ADA”) (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA regulations.

ARTICLE 67. PATENT FEES OR ROYALTIES

The Contractor shall include in its bid amount the patent fees or royalties on any patented article or process furnished or used in the Work. Contractor shall assume all liability and responsibility arising from the use of any patented or allegedly patented materials, equipment, devices, or processes used in or incorporated with The Work, and shall defend, indemnify, and hold harmless the District, its officials, officers, agents, employees, and representatives from and against any and all liabilities, demands, claims, damages, losses, costs, and expenses, of whatsoever kind or nature, arising from such use.

ARTICLE 68. OWNERSHIP OF DRAWING

All Contract Documents furnished by the District are District property. They are not to be used by Contractor or any subcontractor on other work, nor shall Contractor claim any right to such documents. With exception of one complete set of Contract Documents, all documents shall be returned to the District on request at completion of The Work.

ARTICLE 69. NOTICE OF TAXABLE POSSESSORY INTEREST

In accordance with Revenue and Taxation Code section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Contractor will be responsible.

END OF GENERAL PROVISIONS