

**Yolo County Flood Control &
Water Conservation District**

**Board Meeting
34274 State Highway 16
Woodland, CA 95695
Tuesday, September 5, 2023
7:00 P.M.**

Public documents relating to any open session item listed on this agenda that are distributed to all or a majority of the members of the Board of Directors less than 72 hours before the meeting are available for public inspection by scheduling an appointment with Christina Cobey at (530) 662-0265, ext. 100 or ccobey@ycfcwcd.org.

In compliance with the Americans with Disabilities Act, if you have a disability and need a disability-related modification or accommodation to participate in this meeting please contact Christina Cobey. Requests should be made as early as possible, and at least one full business day before the start of the meeting.

AGENDA

- 7:00 1. Consideration: Adoption of the August 1, 2023 Regular Board Meeting Minutes
- 7:02 2. Open forum (Limited to five minutes): Guest introductions, unscheduled appearances, opportunity for public comment on non-agenda items
- 7:03 3. Consideration: Adding Items to the Posted Agenda
In order to add an item to the agenda, it must fit one of the following categories:
a) A majority determination that an emergency (as defined by the Brown Act) exists; or
b) A 4/5ths determination that the need to take action that arose subsequent to the agenda being posted.
- 7:05 4. Consideration: January 2023 Storm Events Emergency Canal Repairs
- 7:10 5. Consideration: Adopt Resolution 23.10 to Nominate Kristin Sicke to ACWA Region 4 Board
- 7:15 6. Consideration: Declaration of Surplus Assets and Authorization of Disposal

- 7:20 7. Consideration: Approve a Waiver of Competitive Bidding and Award a Public Works Contract to HTE Engineering for the Capay Dam Bladder Replacement Project
- 7:40 8. Presentation: Yolo Subbasin Groundwater Agency (YSGA) Update
- 8:10 9. Director’s Report: Report on meetings and conferences attended during the prior month on behalf of the District
- 8:15 10. Attorney’s Report: Report on legal matters of concern to the District
- 8:20 11. General Manager’s Report: Report regarding current general activities and projects of the District
- a) Operations, Maintenance, and Water Conditions
 - b) Financial Report
 - c) Capital Improvement Program
 - d) General Activities
 - e) Upcoming Events
- 8:30 12. General Discussion: Opportunity for clarification or additional information request
- 8:35 13. Consideration: Consider Approval of Payment of Bills
- 8:40 14. Closed Session: Bay-Delta
 Closed session conference with legal counsel for existing administrative proceeding and anticipated litigation/significant exposure to litigation pursuant to Government Code §54956.9, subsections (d)(1) and (d)(2) – State Water Resources Control Board Bay/Delta Plan update proceeding.
- 8:45 15. Adjourn

The public may address the Board concerning an agenda item either before or during the Board’s consideration of that agenda item. Public comment on items within the Board’s jurisdiction is welcome, subject to reasonable time limits for each speaker. Upon request, agenda items may be moved up to accommodate those in attendance wishing to address that item. Times listed for consideration of agenda items are approximate only. The Board may consider any agenda item at any time during the Board meeting.

I declare that the foregoing agenda was posted at the office of the Yolo County Flood Control & Water Conservation District, 34274 State Highway 16, Woodland, CA on September 1, 2023.

By:

 Christina Cobey, Administrative Assistant

YOLO COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT

AGENDA REPORT

MEETING DATE: September 5, 2023

ITEM #: 1

SUBJECT: Consideration: Adoption of the August 1, 2023 Regular Board Meeting Minutes

INITIATED OR BOARD
REQUESTED BY: STAFF
 OTHER _____

COORDINATED OR
APPROVED BY: Kristin Sicke

ATTACHMENT YES NO
 DIRECTION

INFORMATION
 ACTION: MOTION
 RESOLUTION

BACKGROUND:

Pursuant to Section 54957.5 of the Brown Act, copies of the draft minutes are available to the public on the District's website and at the District office prior to their approval.

In advance of the Board meeting, staff request the Directors notify staff if a correction is needed in the draft minutes to clarify a substantial point or to correct content. Staff will make the appropriate change(s) and submit the revised draft for review to the Board and the public at the meeting.

RECOMMENDATION:

District staff recommend the adoption of the attached minutes with any corrections.



Y O L O C O U N T Y

FLOOD CONTROL &
WATER CONSERVATION
DISTRICT

BOARD MEETING MINUTES
Tuesday, August 1, 2023, 7:00 PM

YCFC&WCD Offices
34274 State Highway 16
Woodland, CA 95695

The regular meeting of the Board of Directors of the Yolo County Flood Control & Water Conservation District (District) was held at 7:00 p.m. on Tuesday, August 1, 2023 at its regular place of business, 34274 State Highway 16, Woodland, California. Chair Barth convened the meeting. The following people were in attendance:

District Board

Tom Barth
Mary Kimball
Shane Tucker
Erik Vink

District Staff

Kristin Sicke, General Manager
Andrew Ramos, Legal Counsel

Members of the Public

Duane Chamberlain

1. CONSIDERATION: Approval of Minutes

M/S/C approved the minutes of the July 11, 2023 Regular Board meeting.

Ayes: Directors Barth, Kimball, Tucker, and Vink

Noes: None

Absent: Director Mayer

Abstain: None

2. OPEN FORUM

There were no comments.

3. CONSIDERATION: Adding Items to the Posted Agenda

There were no changes made to the agenda.

4. CONSIDERATION: January 2023 Storm Events Emergency Canal Repairs

General Manager Sicke reviewed the events at the March 7, 2023 Board meeting, where the Board adopted Resolution No. 23.05 Declaring Emergency Conditions from the December 2022 and January 2023 Storm Events. During the month of May, District staff have continued to work with FEMA to provide documentation for reimbursement of funding expenses related to storm damages. The majority of canal system improvements were completed by May 1, 2023 with a few outstanding mitigation projects still to be completed at the end of the 2023 irrigation season.

Sicke recommended that the Board continue to declare emergency conditions related to the January 2023 Storm Events and Emergency Canal Repairs projects.

M/S/C Continued the Emergency Declaration from damages incurred during the January 2023 Storm Events.

Ayes: Directors Barth, Kimball, Tucker, and Vink

Noes: None

Absent: Director Mayer

Abstain: None

5. CONSIDERATION: Adopt Resolution 23.09 Requesting Collection of Charges on Tax Roll

General Manager Sicke reported that the District places the following Regular Special Assessments on the Yolo County (County) property tax roll annually:

1. East Adams Area Assessment District (Tax Area Code 54620)
2. Hungry Hollow Area Assessment District (Tax Area Code 54621)
3. 2012 Annexation Special Assessment District (Tax Area Code 54623)
4. 2020 Annexation Special Assessment District (Tax Area Code 54624)
5. 2023 Special Benefit Assessment District (Tax Area Code 54625)

As part of the Special Assessments' process, the County is requesting the Board adopt a formal resolution that acknowledges the collection of these charges on the County's property tax roll for 2023/2024.

Director Tucker inquired what the County fee was for collecting charges on the County Tax Roll and Sicke reported that she was currently working with staff to determine that cost while noting that the fee is subtracted prior to the District receiving the assessed funds.

District staff recommend the Board adopt Resolution 23.09 Requesting Collection of Charges on Tax Roll.

M/S/C adopted Resolution 23.09 Requesting Collection of Charges on County Tax Roll.

Ayes: Directors Barth, Kimball, Tucker, and Vink

Noes: None

Absent: Director Mayer

Abstain: None

6. PRESENTATION: Sustainable Groundwater Management Act (SGMA Update)

General Manager Sicke reported on the Drought Update item at the Yolo County Board of Supervisors July 11, 2023 meeting. Sicke also provided an update on YSGA and County staff activities in preparation for the scheduled Drought Update at the Board of Supervisors September meeting. The Directors agreed that there should be continued discussion at the District's September Board meeting regarding the District's representation in the YSGA's process for providing proposed solutions to areas that may be experiencing overdraft conditions, "Areas of Special Concern".

7. DIRECTOR'S REPORT

Director Tucker reported that he had spoken with a few water customers about their experiences with algae issues and their thoughts on the potential for a well moratorium on previously unirrigated lands.

Director Kimball reported on participating in a July Personnel Committee meeting with Director Mayer and General Manager Sicke to review Sicke's goals for the year and discuss metrics for evaluating goal completion.

Director Vink had nothing to report.

Chair Barth reported on participating in the YSGA's Ad Hoc Drought Contingency Planning Committee meeting, which was discussed in the SGMA Update board item.

8. ATTORNEY'S REPORT

Legal Counsel Ramos had nothing to report.

9. GENERAL MANAGER'S REPORT

General Manager Sicke provided reports on the following:

- a) Operations, Maintenance, and Water Conditions – Algae growth continued to result in issues with consistent delivery as growth and accumulation of algae in Cache Creek resulted in the plugging of trash racks and the headworks of Capay Dam.
- b) Financial Report Summary – Highlights from the July 31, 2023 Financial Statements Report were reviewed along with the preliminary projection of the end of FY 2023/2024 Budget. Sicke reported that preliminary July 2023 water sales were approximately 27,000 AF, which was less than 2019 and 2017 irrigation seasons sales. The late spring rains resulted in a slow start to the irrigation season, and the algae issues in June proved to be challenging.

- c) Capital Improvement Program – An update on the planning activities related to capital projects was provided.
- d) General Activities – A list of outreach activities and projects (in-house and coordinated with other agencies) was reviewed.
- e) The following upcoming events were announced:
 1. YSGA/Farm Bureau Coordination Meeting (August 2)
 2. YSGA: Coordination Meeting with Sac County GSA (August 3)
 3. NRCS Ditch Tour (August 4)
 4. YSGA/YCEH Coordination Meeting (August 4, 11, 18, and 25)
 5. NCWA: Bay-Delta Task Force Meeting (August 7 and September 5)
 6. Yolo County Farm Bureau Board Meeting (August 8)
 7. Yolo Priority 2 Basin Discussion with NCWA (August 11)
 8. ACWA SGMA Implementation Meeting (August 16)
 9. EDF / Water Data Consortium: Cross-Pilot Water Accounting Platform Coordination (August 17)
 10. Butte County Brown Bag Webinar: Recharge (August 23)
 11. NCWA: Bay-Delta Task Force Meeting (September 5)
 12. NCWA Groundwater Management Task Force Meeting (September 11)
 13. Drought/Groundwater Update to Board of Supervisors (September 12)
 14. YSGA: Board of Directors Meeting (September 18)
 15. Yolo Land Trust's A Day in the Country (October 1)
 16. Tentative: *Southeast Geysers Effluent Pipeline Tour – 25 Years of Success (November 2 at 9:30 a.m.)*

10. GENERAL DISCUSSION

There was no general discussion.

11. CONSIDERATION: Payment of Bills

M/S/C approved the following claims for payment – Yolo County Flood Control & Water Conservation District Checks # 62531-62541.

Ayes: Directors Barth, Kimball, Tucker, and Vink

Noes: None

Absent: Director Mayer

Abstain: None

12. CLOSED SESSION

Closed Session conference with legal counsel for existing administrative proceeding and anticipated litigation/significant exposure to litigation pursuant to Government Code 54956.9, subsections (d)(1) and (d)(2) – State Water Resources Control Board Bay-Delta Plan update proceeding.

Closed Session Report: Chair Barth reported that the Directors, General Manager Sicke, and Legal Counsel Ramos participated in the closed session item and that there was nothing to report.

13. ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned.

Tom Barth, Chair

ATTEST:

Kristin Sicke, Secretary

YOLO COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT
AGENDA REPORT

MEETING DATE: September 5, 2023

ITEM #: 4

SUBJECT: Consideration: January 2023 Storm Events Emergency Canal Repairs

INITIATED OR BOARD
REQUESTED BY: STAFF
 OTHER _____

COORDINATED OR
PREPARED BY: Kristin Sicke
APPROVED BY: Kristin Sicke

ATTACHMENT YES NO
 DIRECTION

INFORMATION
 ACTION: MOTION
 RESOLUTION

BACKGROUND:

At the August 1, 2023 Board meeting, the Board continued to declare emergency conditions related to the January 2023 Storm Events and Emergency Canal Repairs projects.

District staff will provide an update on emergency repair projects and the Cal OES/FEMA reimbursement process.

RECOMMENDATION:

District staff recommend the Board declare continuation of the emergency conditions related to the January 2023 Storm Events and Emergency Canal Repairs projects for September 2023.

YOLO COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT
AGENDA REPORT

MEETING DATE: September 5, 2023

ITEM #: 5

SUBJECT: Consideration: Adopt Resolution 23.10 to Nominate Kristin Sicke to ACWA Region 4 Board

INITIATED OR BOARD
REQUESTED BY: STAFF
 OTHER _____

COORDINATED OR
PREPARED BY: Kristin Sicke
APPROVED BY: Kristin Sicke

ATTACHMENT YES NO
 DIRECTION

INFORMATION
 ACTION: MOTION
 RESOLUTION

BACKGROUND:

The Association of California Water Agencies (ACWA) Region 4 is comprised of five counties – Yolo, Solano, Sacramento, San Joaquin, and Stanislaus. The Region 4 Nominating Committee is looking for ACWA members who are interested in leading the direction of ACWA Region 4 for the 2024-2025 term. The Board is comprised of Chair, Vice Chair, and up to five Board Member positions.

General Manager Sicke is currently serving and is interested in continuing to serve on the ACWA Region 4 Board.

RECOMMENDATION:

District staff recommend Board adoption of Resolution 23.10 Placing in Nomination Kristin Sicke as a Member of the Association of California Water Agencies Region 4 Board.

RESOLUTION NO. 23.10

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
YOLO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT PLACING
IN NOMINATION KRISTIN SICKE AS A MEMBER OF THE
ASSOCIATION OF CALIFORNIA WATER AGENCIES REGION 4 BOARD**

WHEREAS the Board of Directors (“Board”) of the Yolo County Flood Control and Water Conservation District (“District”) does encourage and support the participation of its members in the affairs of the Association of California Water Agencies (“ACWA”); and

WHEREAS District General Manager Kristin Sicke has indicated a desire to continue to serve as a Board Member of ACWA Region 4.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of Yolo County Flood Control and Water Conservation District does 1) place its full and unreserved support in the nomination of Kristin Sicke for the Board Member position of ACWA Region 4; and 2) hereby determine that the expenses associated with the service of Kristin Sicke in ACWA Region 4 be allowed by the Yolo County Flood Control and Water Conservation District.

The foregoing resolution was duly passed and adopted by the Board of Directors of the Yolo County Flood Control and Water Conservation District at a meeting thereof held on September 5, 2023 by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Signed by me after its passage this 5th day of September 2023.

Tom Barth, Chair

ATTEST:

Kristin Sicke, Secretary

CERTIFICATION

I, Kristin Sicke, Secretary to the Board of Directors of Yolo County Flood Control and Water Conservation District, hereby certify that the foregoing Resolution was introduced at a regular meeting of the Board of Directors of said District, held on the 5th day of September 2023, and was adopted at that meeting by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Kristin Sicke, Secretary to the Board of Directors
Yolo County Flood Control and Water Conservation District



THE ROLE OF THE REGIONS

Mission: *ACWA Regions will provide the grassroots support to advance ACWA's legislative and regulatory agenda.*

Background

As a result of ACWA's 1993 strategic planning process, known as Vision 2000, ACWA modified its governance structure from one that was based on sections to a regional-based configuration. Ten regions were established to provide geographic balance and to group agencies with similar interests.

The primary charge of regions:

- I. To provide a structure where agencies can come together and discuss / resolve issues of mutual concern and interest and based on that interaction, provide representative input to the ACWA board.
- II. To provide the local outreach organization (grassroots support) necessary to advance ACWA's legislative and regulatory priorities as determined by ACWA policy through the Board, State Legislative, Federal Affairs, or other policy committees.
- III. To provide a forum to educate region members on ACWA's priorities and issues of local and statewide concern.
- IV. To assist with association membership recruitment at the regional level.
- V. To take positions recommending specific action to the ACWA Board on local, regional, state and federal issues as well as to recommend endorsement for various government offices and positions. ***Individual region boards CANNOT take positions, action or disseminate communication on issues and endorsements without going through the ACWA Board structure.***

Region chairs and vice chairs, with support from their region boards, provide the regional leadership to fulfill this charge.

GENERAL DUTIES / RESPONSIBILITIES FOR REGION OFFICERS

Region Chair:

- Serves as Region representative to the ACWA Board of Directors at six meetings per year, and periodic chair, vice chair meetings.

- Is a member of ACWA's Outreach Program, and encourages involvement.
 - ⇒ Appoints Outreach Contact to help lead outreach effort within the region.
- Presides over all Region activities and ensures that such activities promote and support accomplishment of ACWA's Goals.
- Makes joint recommendations to the ACWA president regarding regional appointment to all ACWA committees.
- Selects representatives to serve on the region's nominating committee.
- Facilitates communication from the regional board and region members to the ACWA Board and staff.

Region Vice Chair:

- Serves as Region representative to the ACWA Board of Directors at six meetings per year, and periodic chair, vice chair meetings.
- In the absence of the chair and in partnership with the chair, exercises the powers and performs duties of the region between region activities.
- Is a member of ACWA's Outreach Program, and encourages involvement.
- Makes joint recommendations to the ACWA president regarding regional appointment to all ACWA committees.

Region Board Member:

- Serves as alternate for the chair and/or vice chair in their absence (if appointed) to represent the region to the ACWA Board.
- Supports program planning and activities for the region.
- Actively participates and encourages region involvement in ACWA's Outreach Program.

ACWA REGION 4 RULES & REGULATIONS

Region Board Composition:

The region shall elect its chair and vice chair to the Association's Board of Directors as provided in Article IV, Section 1(b) of ACWA's Bylaws, and elect five (5) region board members.

The Chair shall be authorized to appoint a secretary.

Board Responsibility:

The Region 4 Board shall have coordination and planning responsibility and can make specific policy recommendations to the Region as a whole.

Candidate Eligibility:

All ACWA public agency members are eligible to serve in region officer and board member positions based on the condition that they meet the following criteria:

- a) All candidates must represent an ACWA agency member in accordance with Article II, Section 1 (a-c) of ACWA's Bylaws on membership voting rights.
- b) All candidates must have a resolution of support signed by their agency.

Only one person from an agency can hold an elected position within the Region at the same time.

Term of Service:

Region officers and board members shall hold office for two (2) years, or until successors are elected and take office.

The newly-elected region board members take office effective January 1 of the calendar year following the election.

The term for the Chair and Vice Chair shall be limited to one full two-year term.

An elected Chair or Vice Chair shall not be permitted to succeed himself / herself to that office.

Alternates:

The region board shall appoint alternates for both the region officer positions (chair and vice chair) from among the elected board members. Alternates will represent the region at meetings of the Association's Board of Directors when the chair or vice chair is unable to attend

Vacancies:

Should a vacancy occur on the region board before the end of the term, the region board shall appoint a new region board member, pending support from his/her agency.

Voting Eligibility:

In accordance with ACWA's Bylaws, only ACWA public agency members are entitled to vote during a region board election and at all region meetings.

Each agency is entitled to one vote.

Elections:

The region shall conduct its election either by mail ballot or at an in-person region meeting before September 30 of odd-numbered years. ***Please see the current region election timeline for specific dates.***

Mail ballots will be sent to the board president of each ACWA member agency and will require the Board President's signature for approval. Agency general managers will be sent copies of the ballot mailing.

In-person elections will require one designated voter for each agency, whose name must be identified in writing on the ballot.

Nominating Committee:

All nominations received for the positions of chair, vice chair and Region board members for each region shall be accompanied by a resolution of support from each sponsoring member agency, signed by an authorized representative of the board of directors. This policy applies to nominations received in the ACWA office prior to the region election and to all nominations received from the floor at the region election.

The region chair shall appoint a nominating committee of three (3) and no more than five (5) persons to:

- a) Pursue qualified members from within the region to run for election to the region board.
- b) Review eligible nomination requests and select a slate of candidates for consideration by the voting ACWA region membership.
- c) Consider geographic diversity, agency size and focus in selecting a recommended slate of candidates.

- d) Only one individual may be nominated from a given agency to run for election to a region board.
- e) Agencies with representatives serving on region nominating committees should strive not to submit nominations for the region board from their agency.

Nominating Committee members must represent ACWA public agency members.

The nominating committee appointments shall be announced during ACWA's spring conference of the calendar year of an election.

REGION ACTIVITIES:

Region 4 will meet at least quarterly; two of those meetings to be held at the ACWA conferences.

The Region 4 Board will determine when or if nonmembers are invited to regional activities or events.

Endorsements:

- ACWA, as a statewide organization, encourages the endorsement of candidates on boards or commissions who have the potential for impacting on member agencies or the way they do business.
- For local positions, endorsement recommendations should be sent to the region in which the local board or commission is located. The region board will make its recommendation for endorsement to the ACWA Board.
- For regional positions, endorsement recommendations should be sent to each region that has a position of the territory covered within its geographic boundaries. The region boards will make their recommendations for endorsement to the ACWA Board.
- For statewide positions, endorsement recommendations should be sent to regions from which the individual being recommended resides and to all other ACWA regions. Relevant committees will be notified regarding an endorsement that pertains to its assigned areas of responsibility. Committees need to make their thoughts known to the recommending region in a timely manner. The region board will make its recommendation for endorsement to the ACWA Board.
- ACWA region boards are recommending bodies to the ACWA Board. The ACWA Board will take action for endorsement of candidates for various local, regional, or statewide boards or commissions.

Committee Recommendations and Representation:

- All regions will be given equal opportunity to recommend representatives of the region for appointment to standing and regular committees of the Association. If a region fails to provide full representation on all ACWA committees for their respective region, those committee slots will be left open for the remainder of the term or until such time as the region designates a representative to complete the remainder of the term.
- At the first region board / membership meeting of the new term, regions shall designate a representative serving on each of the standing and regular committees to serve as the official reporter to and from the committee on behalf of the region to facilitate input and communication.
- **Finance Committee Service by Region Chairs / Vice Chairs:**
Regions at the first board meeting / membership meeting of the new term will designate either the chair or the vice chair to serve as the official representative of the region to ACWA's Finance Committee.

Attendance:

- **ACWA Board of Directors**
Regular attendance by ACWA Board members is expected and necessary to assure proper governance of the Association. If a region chair or vice chair misses three consecutive ACWA Board meetings, the region board shall appoint from among the existing region board a new region officer. If the region chair or vice chair misses three consecutive region board / membership meetings, the same process shall be used to backfill the region officer position.
- **ACWA Committees**
If a committee chair of a standing committee misses three consecutive ACWA Board meetings, the ACWA president shall appoint a new committee chair. If any committee chair misses three consecutive committee meetings, the ACWA president shall also move to appoint a new committee chair.

YOLO COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT

AGENDA REPORT

MEETING DATE: September 5, 2023

ITEM #: 6

SUBJECT: Consideration: Declaration of Surplus Assets and Authorization of Disposal

INITIATED OR BOARD
REQUESTED BY: STAFF
 OTHER _____

COORDINATED OR
PREPARED BY: Anthony Lopez
APPROVED BY: Kristin Sicke

ATTACHMENT YES NO
 DIRECTION

INFORMATION
 ACTION: MOTION
 RESOLUTION

BACKGROUND:

The District has several assets that staff believe are no longer viable for operations. Prior to disposing of assets that are listed on the District's Depreciation Schedule, the item must be declared surplus to the needs of the District by the Board of Directors. Below is a summary table of surplus assets for Board consideration.

RECOMMENDATION:

District staff recommend the Board declare the proposed list of items as surplus to the needs of the District and authorize the General Manager to dispose of them as appropriate.

**Proposed Surplus Property
September 2023 Summary List**

<u>No.</u>	<u>Item</u>	<u>Mileage</u>	<u>Unit</u>
1	2006 Ford F150 (1/2-ton)	153,892	5266
2	2007 Ford F150 (1/2-ton)	174,636	5269
3	2013 Ford F150 (1/2-ton 4x4)	136,298	5278

YOLO COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT

AGENDA REPORT

MEETING DATE: September 5, 2023

ITEM #: 7

SUBJECT: Consideration: Approve a Waiver of Competitive Bidding and Award a Public Works Contract to HTE Engineering for the Capay Dam Bladder Replacement Project

INITIATED OR BOARD
REQUESTED BY: STAFF
 OTHER _____

COORDINATED OR
PREPARED BY: Kristin Sicke
APPROVED BY: Kristin Sicke

ATTACHMENT YES NO
 DIRECTION

INFORMATION
 ACTION: MOTION
 RESOLUTION

BACKGROUND:

Constructed in 1914, the Capay Diversion Dam (Dam) has been in constant use by the District. In 1994, the District retrofitted the Dam and installed a 474-foot-long by 5-foot-high inflatable rubber bladder (bladder) to allow manual or remote control of the outflow gates elevation and diversion of irrigation flows. The rubber bladder has surpassed its operational life and the District desires to proceed with replacing the bladder as a turn-key, in-kind replacement.

District staff have met with the District’s Infrastructure Committee and legal counsel to discuss the process for proceeding with bladder replacement at the Capay Diversion Dam. Legal counsel Andrew Ramos and Gavin Ralphs developed the attached Memorandum to discuss legal counsel’s opinion of recommending the Directors authorize a waiver of the District’s competitive bidding requirements. Additionally, a draft public works contract is attached for review.

District staff will provide a review of the process for soliciting the appropriate contractor proposals to replace the bladder, will review the Infrastructure Committee meeting discussions, and update the Board of legal counsel’s assistance and opinion for proceeding with award of a public works contract to HTE Engineering for the Capay Dam Bladder Replacement Project.

RECOMMENDATION:

District staff recommend Board approval of a waiver of competitive bidding and awarding a public works contract to HTE Engineering for the Capay Dam Bladder Replacement Project. District staff also recommend the Board authorize the General Manager to officially enter into the public works contract with HTE Engineering.

MEMORANDUM

To: Board of Directors, Yolo County Flood Control and Water Conservation District

From: Kristin Sicke, PE

CC: Andrew Ramos and Gavin Ralphs

Date: August 31, 2023

Re: Capay Rubber Dam Bladder Removal and Replacement – Waiver of Bidding Requirements

The Capay Rubber Dam Replacement Project (“Project”) is intended to restore the Capay Dam’s ability to divert water released from Clear Lake and the Indian Valley Reservoir into the West Adams and the Winters canals. As the dam’s inflatable rubber dam bladder has experienced regular wear and tear, the dam’s ability to divert water has diminished. The use of an inflatable dam bladder is crucial to the safety of the customers of the Yolo County Flood Control & Water Conservation District’s (“District”) and the District’s ability to deliver water to local farms, recharge ground water sources, and maintain riparian habitat. The Project has been planned for many months and the District has determined that the reinstallation of a rubber dam will lead to considerable savings to the District when compared to conventional gate options. As a result, it is imperative that the District complete this necessary work promptly.

HTE Engineering, LLC (“HTE”) is experienced in the design and production of high-quality inflatable rubber dam systems. As HTE has been identified as the only service provider interested in and capable of completing the Project, the District and HTE are currently in the process of drafting a contract to complete the Project. The District gauged interest of other providers of similar components and determined that no service provider but HTE was willing to complete the Project. In completing Project duties, HTE will team with Leonida Builders Inc. (“Contractor”), a California corporation, who will remove the current inflatable dam bladder and install a state-of-the-art dam bladder to HTE’s specifications. HTE’s expertise in the operation and construction of inflatable dam bladders makes HTE the preferred service provider for the Project. Furthermore, as HTE works exclusively with high-quality inflatable rubber dam systems, HTE will be accustomed to the needs and requirements of the Project. Given these findings, the District has determined that the best and only option available is to award a contract to HTE for the full scope of the Project activities.

The construction of improvements and routine maintenance and repairs undertaken or paid for by the Agency generally are subject to state-law competitive bidding requirements.

However, the California Courts have recognized an exception to the general public bidding requirements in limited circumstances. In *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631, the court explained that there is a well-recognized exception to the public bidding requirements when the nature of the subject of the contract is such that competitive proposals would be unavailing or would not provide an advantage, and the advertisement for competitive bid would therefore be undesirable, impractical or impossible. The court reasoned that the competitive bid requirement for public contracts should be construed fairly and reasonably with reference to the public interest and in light of the purposes to be accomplished by the project. Therefore, competitive bidding is not applicable in situations where soliciting competitive proposals would work a hardship and defeat the purposes for which the public bidding laws were enacted, where competitive proposals do not produce any advantage, or where it is practically impossible to obtain the result that is required. (*Id.*, pp. 635-636.)

Based on the exception to public bidding requirements described in the *Graydon* case, I have determined that the District will not comply with the competitive bidding process for the Project as it would be impractical to move forward with the process as no other service provider has expressed interest in the Project. If the District were to proceed forward with the competitive bidding process, then (1) the completion of the Project would be delayed by a period of no less than 8 weeks, and (2) the District could potentially lose out on the services of HTE and Contractor as their services, which are in high demand, could be booked elsewhere. HTE has also extended a 10-year warranty for the amount of \$1.00. HTE has never offered a 10-year warranty for such a rate and it would be practically impossible for the District to receive such an offer from another engineering firm based on the District's research of other firms' capabilities and willingness to complete the Project. Such effects and potential impacts would cause an undesirable and disadvantageous result and lead to far greater costs and impacts to the District's customers and the public as compared to any cost savings or efficiencies that might be obtained by putting the Project out to bid.

The application of the *Graydon* exception to this situation is supported by the following facts:

1. The Project will restore the water supplies to the West Adams and the Winters canals and provide riparian habitat to local species.
2. As HTE is knowledgeable in the design and production of inflatable dam bladders, it would be impossible to find another service provider that is as experienced and regularly performs this type of work.
3. Contracting directly with HTE will avoid the significant cost and time associated with the preparation of detailed plans and specifications and bid documents.
4. District staff and consultants have reviewed the proposed action and determined that the estimated cost of the Project is more advantageous to the District than

costs of similar projects previously procured by competitive bidding/proposals. Therefore, the District and public are receiving fair value for the services to be performed.

Based on the foregoing, I recommend that you authorize a waiver of the District's competitive bidding requirements and award a contract to HTE to complete the Project.

PUBLIC WORKS BID AND CONTRACT DOCUMENTS

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BIDDING REQUIREMENTS

Intentionally omitted.

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CONTRACT FORMS

CONTRACT

THIS CONTRACT is made as of [date], in Woodland, California, by and between Yolo County Flood Control & Water Conservation District, a public agency, ("District") and the HTE Engineering, Inc., a California corporation ("Contractor"), who agree as follows:

The Contractor agrees to furnish all labor, materials, supplies, tools and equipment and to perform all the work required to construct and complete in a good and workmanlike manner, and in strict accordance with the Contract Documents, those certain improvements entitled:

Capay Rubber Dam Bladder Replacement Project

The Contractor agrees to utilize Leonida Builders, Inc., a California corporation to provide installation services for the Capay Dam Bladder Replacement Project ("Subcontractor").

Contract Documents for this project have been prepared by the District's Engineer, hereinafter called the Engineer. All Contract Documents, and each and every provision thereof, relating to this Contract are hereby made a part of and incorporated by reference into this Contract. The following are the applicable Contract Documents: Instructions to Bidders, Contract, Faithful Performance Bond, Contractor's Certificate Regarding Workers' Compensation, the Insurance Certificates and Endorsements, Abbreviations and Definitions, General Conditions, Technical Specifications and Plans (Drawings), the Quotation dated June 15, 2023, and [any additional documents], applicable to this work, and all Addenda and Change Orders, as well as all written modifications of the Contract Documents agreed to by the parties. Any work called for in one Contract Document and not mentioned in others is to be performed and executed as if mentioned in all Contract Documents.

The District agrees to pay the Contractor for the performance of the Contract, subject to additions and deductions provided therein, the following prices, and the Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials, labor, supplies, tools and equipment, and for doing all the work contemplated and embraced in this Contract, and for all risks of every description connected with the work and for all expenses incurred by or in consequence of the suspension or discontinuance of the work, and for well and faithfully completing the work and the whole thereof in the manner and according to the Contract Documents and the requirements of the Engineer under them, namely:

Schedule of Items				
Item #	Item Description	Qty.	Unit Price	Item Total
1	Removal and Replacement	1	\$460,530.00	\$460,530.00
2	Mobilization/Demobilization	1	\$100,000.00	\$100,000.00
3	Labor Charge for Dam Removal and Replacement	1	\$259,000.00	\$259,000.00
4	Performance and Payment Bonds	1	\$23,000.00	\$23,000.00
5	10-Year Warranty	1	\$1.00	\$1.00
Contract Total				\$842,531

The District shall make payments on the account of the Contract as specified in the General Conditions of the Contract.

The Contractor shall diligently prosecute the work to completion in accordance with the following schedule:

Tentative Installation Start Date Timeframe (to avoid weather-related complications):

September 1-October 1, 2024

Project Completion No Later than October 31, 2024

The Contractor acknowledges that it has examined the prevailing rate of per diem wages as established and published by the California Director of Industrial Relations, copies of which are available for inspection at the office of the District. The Contractor agrees to pay all workers employed on the work not less than the applicable prevailing rate of per diem wages, as the same may be amended from time to time. The Contractor shall post at each job site a copy of the determination of the Director of Industrial Relations of the prevailing rate of per diem wages. The Contractor also shall ensure that all subcontractors on the work are notified of and comply with their obligations in regard to the payment of prevailing wages to all of their workers employed on the Project.

Intentionally omitted.

IN WITNESS WHEREOF, the parties execute this Contract as follows:

For District:

Name: _____

Title: General Manager

For Contractor:

Name: _____

Title: _____

FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS,

THAT, WHEREAS, Yolo County Flood Control & Water Conservation District, hereinafter designated as the "District," entered into a Contract with HTE Engineering hereinafter designated as the "Contractor" and Leonida Builders, Inc., providing installation services hereinafter designated as the "Subcontractor" for the work described as follows:

Capay Rubber Dam Bladder Replacement Project

WHEREAS, the Contractor is required under terms of the Contract to furnish a bond for the faithful performance of the Contract;

WHEREAS, the Contract is by reference made a part hereof;

NOW, THEREFORE, we, the undersigned Contractor, as Principal, and _____, a corporation organized and existing under the laws of the State of _____, and duly authorized and in good standing to transact business under the laws of the State of California, as an admitted Surety, are held and firmly bound unto the District in the penal sum of \$ _____, the sum being not less than one hundred percent (100%) of the total Contract amount, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, THAT, if the above bounden Contractor, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alterations thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the District, its directors, officers, employees and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the said Contract, the above obligation in above-stated amount shall hold good for a period of one (1) year after the recording of the notice of completion, during which time if the Contractor, its heirs, executors, administrators, successors or assigns shall fail to make full, complete, and satisfactory repair and replacements or totally protect the District from loss or damage made evident during the period of one (1) year from the date of recording of the notice of completion, and resulting from or caused by defective materials or faulty workmanship in the prosecution of the work done, the above obligation in the above-stated amount shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligation of the Surety hereunder shall continue so long as any obligation of the Contractor remains.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder

or the specifications accompanying the same shall, in any way, affect its obligations on this bond and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or to the specifications. The Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

In the event suit is brought upon this bond by the District and judgment is recovered, the Surety shall pay all costs incurred by the District in such suit, including, but not limited to, administrative and consultant costs, and reasonable attorneys' fees to be fixed by the Court.

The address or addresses at which the principal and surety(ies) may be served with notices, papers and other documents under the California Bond and Undertaking Law (Code of Civil Procedure section 995.010 et seq.) is the following:

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

For Contractor as Principal:

Name: _____

Title: _____

For Surety:

Name: _____

Title: _____

(Seal)

(NOTE: The date of this bond must not be prior to date of Contract. If Contractor is a partnership, all partners should execute bond.)

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS,

THAT, WHEREAS, the Yolo County Flood Control & Water Conservation District, hereinafter designated as the "District," has awarded to HTE Engineering, hereinafter designated as the "Contractor", with Leonida Builders, Inc. providing installation services, hereinafter designated as the "Subcontractor" a Contract for the work described as follows:

Capay Rubber Dam Bladder Replacement Project

WHEREAS, the Contractor is required by the Contract and by the provisions of Division 4, Part 6 of the Civil Code to furnish a bond in connection with the Contract, as hereinafter set forth.

WHEREAS, the Contract by this reference is made a part hereof;

NOW, THEREFORE, we, the undersigned Contractor, as Principal, and _____, as Surety, a corporation organized and existing under the laws of the State of _____, duly authorized and in good standing to transact business under the laws of the State of California, as an admitted Surety, are held and firmly bound unto the District in the sum of \$ _____, the sum being not less than one hundred percent (100%) of the total Contract amount payable by the District, under the terms of the Contract, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, THAT, if the Contractor, its heirs, executors, administrators, successors, assigns or subcontractors shall fail to pay for any materials, provisions, provender or other supplies or teams, implements or machinery used in, upon, for or about the performance of the work contracted to be done, or shall fail to pay for any work or labor thereon of any kind, or shall fail to pay any of the persons named in Civil Code Section 9100, or shall fail to pay for amounts due under the Unemployment Insurance Code with respect to such work or labor as required by the provisions of Division 4, Part 6 of the Civil Code, or shall fail to pay for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work or labor, and provided that the claimant shall have complied with the provisions of that Code, the Surety or Sureties hereon will pay for the same in amount not exceeding the sum specified in the Contract, otherwise the above obligation shall be void. In case suit is brought upon this bond, the Surety will pay a reasonable attorney's fee to the prevailing party to be fixed by the court. This bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Section 9100 of the Civil Code, so as to give a right of action to them or to their assigns in any suit brought upon this bond. And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any

way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the specifications.

The address or addresses at which the principal and surety(ies) may be served with notices, papers and other documents under the California Bond and Undertaking Law (Code of Civil Procedure section 995.010 et seq.) is the following:

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

For Contractor as Principal:

Name: _____

Title: _____

For Surety:

Name: _____

Title: _____

(Seal)

(NOTE: The date of this bond must not be prior to date of Contract. If Contractor is a partnership, all partners should execute bond.)

**CONTRACTOR'S WORKERS' COMPENSATION CERTIFICATE
(LABOR CODE SECTION 1861)**

To: Yolo County Flood Control & Water Conservation District

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

Company Name: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____

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ABBREVIATIONS AND DEFINITIONS

ABBREVIATIONS

The following abbreviations may be used in the Contract Documents:

AA	Aluminum Association
AASHO	American Association of State Highway Officials
ABMA	American Boiler Manufacturer's Association
ACI	The American Concrete Institute
AGA	American Gas Association
AGC	Associated General Contractors
AGMA	American Gear Manufacturer's Association
AI	The Asphalt Institute
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute, Inc.
API	American Petroleum Institute
APWA	American Public Works Association
AREA	American Railway Engineering Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWPA	American Wood Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
BGHMA	Builders Hardware Manufacturers Association

CCMTC	California Concrete Masonry Technical Committee
CRSI	Concrete Reinforcement Steel Institute
DFPA	Douglas Fir Plywood Association
ETL	Electrical Testing Laboratory
FS	Federal Specification
ICBO	International Conference of Building Officials
IEEE	The Institute of Electrical and Electronics Engineers
IES	Illuminating Engineering Society
IPCEA	Insulated Power Cable Engineers Association
MBMA	Metal Building Manufacturer's Association
MSS	Manufacturers Standardization Society of Valve and Fitting Industry
Standards	
NBFU	National Board of Fire Underwriters
NBS	National Building Standards
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Association
OSHA	Occupational Safety and Health Act of 1970
PCA	Portland Cement Association
SMACNA	Sheet Metal and Air Conditioning Contractor's National Association
SSPC	Steel Structures Painting Council
SSPWC	Standard Specifications for Public Works Construction
UBC	Uniform Building Code
UHPHS	United States Public Health Service
UL	Underwriter's Laboratory

UMC	Uniform Mechanical Code
UPC	Uniform Plumbing Code
USAS	The United States of America Standard Institute
USBR	United States Bureau of Reclamation
WCLIB	West Coast Lumber Inspection Bureau
WIC	Woodwork Institute of California

DEFINITIONS

For purposes of the Contract Documents, these words and phrases shall be defined as follows:

District means the Yolo County Flood Control & Water Conservation District, also referred to as the Owner.

As Approved shall be understood to be followed by the words "by the Engineer," unless otherwise qualified.

As Shown and As Indicated shall be understood to be followed by the words "on the Plans."

Bid means the approved Quotation and Scope of Work included as part of the Contract Documents.

Intentionally omitted.

Bidder shall mean the Contractor.

Board of Directors or Board means the Board of Directors of the District.

Contract means the written agreement covering the performance of the work and the furnishing of labor, materials, tools and equipment in the construction of the work. The Contract shall include all Contract Documents and supplemental agreements amending or extending the work contemplated which may be required to complete the work in a substantial and acceptable manner. Supplemental agreements are written agreements covering alterations, amendments or extensions to the Contract, and include Addenda and Contract Change Orders.

Contract Documents means any or all of the documents listed in section 2.1.2 of the Contract.

Contractor means the person or persons, firm, partnership or corporation or other entity who has entered into the Contract with the District to perform the work.

County means County of Yolo, California.

Date of the Contract means the date on which the Contract is signed by the District's authorized representative.

Days mean calendar days unless otherwise designated.

Engineer means HTE Engineering, LLC, the Engineer retained by the District. Engineer may act either directly or through properly authorized agents, such agents acting within the scope of the particular duties delegated to them.

He shall include "she" and "it" and his shall include "her" and "its."

Or Equal means the term "or equal" shall be understood to indicate that the "equal" product be the same or better than the product named in function, performance, reliability, quality, and general configuration. Determination of equality in reference to the project design requirements will be made by the Engineer.

Plans or Drawings mean the term "Plans" or "Drawings" refers to the official plans, drawings, profiles, cross sections, elevations, details, and other working drawings and supplementary drawings, or reproductions thereof, signed by the Engineer, which show the location, character, dimensions, and details of the work to be performed, and identified at section 2.1.2. Plans may either be bound in the same book as the balance of the Contract Documents or bound in separate sets, and are a part of the Contract Documents, regardless of the method of binding.

Specifications mean the terms, provisions, and requirements contained in the Contract Documents and identified in section 2.1.2 and is synonymous with "Technical Specifications." Where standard specifications, such as those of "ASTM", "AASHTO", etc. have been referred to, the applicable portions of such standard specifications shall become a part of these Contract Documents.

State means State of California.

State Standard Specifications mean the edition in effect as of the Date of Execution of the Contract of the Standard Specifications issued by the State of California Business and Transportation Agency, Department of Transportation, unless a specific edition is referenced.

Subcontractor means only those persons, firms or entities having a direct contract with the Contractor, and it includes one who furnishes material worked to a special design according to the Plans or Specifications of this work, but does not include one who merely furnishes material not so worked and would be considered a supplier only.

Time Limits mean all time limits stated in the Contract Documents are of the essence of the Contract.

Work means all the work specified, indicated, shown or contemplated in the Contract Documents to construct the improvements, including all alterations, amendments or extensions thereto made by Contract Change Order or other written orders of the Engineer.

Whenever in the Contract Documents or upon the Drawings the words DIRECTED, REQUIRED, PERMITTED, ORDERED, DESIGNATED, PRESCRIBED, or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation or prescription of the Engineer is intended, and similarly the words APPROVED, ACCEPTABLE, SATISFACTORY, or words of like import, shall mean approved or acceptable to, or satisfactory to the Engineer, unless otherwise expressly stated.

INSTRUCTIONS TO BIDDERS

Sections 4.1 to 4.14, 4.16 to 4.18, and 4.22 to 4.25 are intentionally omitted.

1.15 CONTRACT BONDS

The successful Bidder shall furnish both a Performance Bond and a Payment Bond in the type, form and amount specified in the forms included with the Contract Documents. These bonds shall be furnished on such forms or on substantially similar forms acceptable to the District. The Payment Bond shall comply with California Civil Code sections 9550 and 9554 and applicable provisions of the California Bond and Undertaking Law (California Code of Civil Procedure section 995.010 et seq.). The bonds shall be obtained from a responsible corporate surety (or sureties) acceptable to the District, who is (or are) in good standing with and duly admitted by the Insurance Commissioner of the State of California to act as surety upon bonds and undertakings. The surety (or sureties) shall furnish reports as to its financial condition from time to time as requested by the District. The premiums for the bonds shall be paid by the successful Bidder.

If any surety becomes unacceptable to the District, is deemed insolvent, is no longer an admitted surety in California, or fails to furnish reports as to its financial condition as requested by the District, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the District and of persons supplying labor or materials in the prosecution of the work contemplated by this Contract.

In the event of any conflict between the terms of the Contract and the terms of the bonds, the terms of the Contract shall control and the bonds shall be deemed to be amended thereby. Without limiting the foregoing, the District shall be entitled to exercise all rights granted to it by the Contract in the event of default, without control thereof by the surety, provided that the District gives the surety notice of such default at the time or before the exercise of any such right by the District, and, regardless of the terms of the bonds, the exercise of any such right by the District shall in no manner affect the liability of the surety under the bonds.

1.19 TIME OF COMPLETION

The time of completion of the work to be performed under this Contract is the essence of the Contract. Delays and extensions of time may be allowed in accordance with the provisions of the General Conditions. The time allowed for the completion of the work is stated in the Contract.

LICENSING REQUIREMENTS FOR CONTRACTORS

The Contractor shall hold such licenses as may be required by the laws of the State of California for the performance of the work specified in the Contract Documents, and shall have the following classification or type of license for the work issued by the California Contractors State License Board: [required license classifications].

PREVAILING WAGES

Copies of the prevailing rate of per diem wages are on file at the District's office, and will be made available to any interested party on request. The Contractor shall post at each job site a copy of the determination of the Director of Industrial Relations of the prevailing rate of per diem wages. Furthermore, Contractor must post job site notices, as required by Section 1771.4(a)(2) of the Labor Code and prescribed by regulation.

GENERAL CONDITIONS

INTENT OF CONTRACT DOCUMENTS/MEANS AND METHODS

The intent of the Contract Documents is to prescribe the details for the construction and completion of the work which the Contractor undertakes to perform in accordance with the terms of the Contract. Where the Specifications and Plans describe portions of the work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be used. Unless otherwise specified, the Contractor shall furnish all labor, materials, tools, equipment and incidentals and do all the work involved in performing the Contract in a satisfactory and workmanlike manner.

The technical specifications are presented in sections for convenience. However, this presentation does not necessarily delineate trades or limits of responsibility. All sections of the Specifications and Plans are interdependent and applicable to the project as a whole.

The Contract Documents are complementary, and what is called for in any one shall be as binding as if called for in all.

It is expressly stipulated that the drawings, specifications and other Contract Documents set forth the requirements as to the nature of the completed work and do not purport to control the method of performing work except in those instances where the nature of the completed work is dependent on the method of performance.

Except as provided elsewhere in the Contract Documents, neither the District nor the Engineer will be responsible for or have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work. Except as provided elsewhere in the Contract Documents, neither the District nor the Engineer will be responsible for or have control or charge over the acts or omissions of the Contractor, or any of their subcontractors, agents or employees, or any other persons performing any of the work. Any general control of the work exercised by the District or its authorized representatives shall not make the Contractor an agent of the District, and the liability

of the Contractor for all damages to persons and/or to public or private property arising from the Contractor's execution of the work shall not be lessened because of such general control.

CONTRACTOR'S UNDERSTANDING

It is understood and agreed that the Contractor has, by careful examination, satisfied itself as to the nature and location of the work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and all other matters which can in any way affect the work under this Contract. No verbal agreement or conversation with any officer, agent or employee of the District, either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

CHANGES IN THE WORK

The District reserves the right to make such alterations, deviations, additions to, deletions or omissions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of the work, as may be deemed by the Engineer to be necessary or advisable and to require such extra work as may be determined by the Engineer to be required for the proper completion or construction of the whole work contemplated. Such changes, no matter how many, shall be within the contemplation of this Contract and shall not be the basis for a compensable delay or a claim for lost profits.

The Engineer shall have the authority to order minor changes in the work not involving any increase or decrease in the Contractor's cost of, or time required for, performance of the Contract. Such minor changes shall be effected by written order of the Engineer, and the Contractor shall carry out such written orders promptly. If the Contractor disagrees with the Engineer's determination that the minor change does not involve any increase or decrease in the Contractor's cost of, or time required for, performance of the Contract, then the Contractor may file and pursue a claim pursuant to section 5.4. The written claim must be submitted to the Engineer within 15 days after the date of the Engineer's written order. If the Contractor believes that any such work is beyond the scope of the contract documents, the Contractor shall provide a written "Daily Extra Work Report" documenting the alleged extra work, which will be submitted to and verified by the Engineer or the District's representative at the end of the day the work was performed.

If any change in the work ordered by the Engineer causes an increase or decrease in the Contractor's cost of, or time required for, performance of the Contract, an adjustment and modification of the Contract will be made in the form of a Change Order which will set forth (a) the changes, additions and/or deductions in the work to be done, (b) the increase or decrease in compensation due the Contractor, if any, or the method by which the increase or decrease, if any, will be calculated, and (c) the adjustment in the time of completion of the work, if applicable. A Change Order may be issued to the Contractor at any time.

The compensation to be paid for any work addressed in a Change Order shall be determined in one or more of the following ways as shown in the Change Order:

- a. By unit prices;

- b. By an agreed-upon lump sum; or
- c. By the cost-plus basis determined pursuant to section 5.3.9.

Contractor shall keep full and complete records of the cost of any work addressed in a Change Order in the form and manner prescribed by the Engineer and shall permit the Engineer to have access to such records as may be necessary to assist in the determination of the compensation payable for such work.

With respect to a Change Order involving the deletion or reduction of work, the Engineer shall determine the appropriate reduction in the Contract price based on the lump sum and/or per unit prices in the bid schedule for the items of work deleted or reduced by the Change Order. The Contractor shall not be entitled to claim damages for anticipated profits on any portion of the work that may be deleted.

Upon receipt of a Change Order signed by the Engineer, the Contractor shall forthwith proceed with the ordered work, unless otherwise directed by the Engineer. If the Contractor agrees with the terms and conditions of the Change Order, then it shall sign the Change Order.

Should the Contractor disagree with any terms or conditions set forth in a proposed Change Order, it shall submit a written protest to the Engineer within 15 days after the receipt of the proposed Change Order. The protest shall state the points of disagreement, addressing, if applicable, the quantities and cost involved and the adjustment of time for completion.

If a written protest is not timely submitted by the Contractor, then the proposed Change Order, including all cost and time adjustment provisions, if any, that was submitted to the Contractor shall be deemed final and acceptable to the Contractor even if not signed by the Contractor. Any payment under an unprotested Change Order's cost adjustment provisions shall constitute full compensation for all work included in or required by the Change Order.

If the Contractor timely protests a proposed Change Order, it shall nevertheless proceed with the ordered work pending resolution of the protest.

If the Contractor timely protests a proposed Change Order, the Engineer shall render in writing its determination of the protest. If the Contractor disputes the determination, then the Contractor may file and pursue a claim pursuant to section 5.4. The written claim must be submitted to the Engineer within 15 days after the date of the Engineer's written determination on the protest. If the Contractor does not timely file a claim, then the proposed Change Order (as may have been revised by the Engineer's determination on the protest), including all cost and time adjustment provisions, if any, shall be deemed final and acceptable to the Contractor even if not signed by the Contractor. Any payment under such a Change Order's cost adjustment provisions shall constitute full compensation for all work included in or required by the Change Order.

If the Contractor refuses to accept a Change Order, the District may issue it unilaterally. The Contractor shall comply with the requirements of the Change Order. The District shall provide for an equitable adjustment to the Contract, and compensate the Contractor accordingly. If the Contractor does not agree that the adjustment is equitable, it may submit a claim in accordance with section 5.4.

The following shall constitute the cost-plus basis of payment:

Charges for all of the labor furnished and used by the Contractor shall be made for manual classifications up to and including general foreman. It will not include charges for assistant superintendents, superintendents, office personnel, timekeepers and maintenance mechanics. The time charged to work shall be subject to the daily approval of the Engineer and evidence of such approval shown on approved Daily Extra Work Reports shall be submitted with the billing. (See sample Extra Daily Work Report **attached to Specification [specification number].**) Labor rates used to calculate the costs shall be those basic wages including current employer contributions for fringe benefits and federal and state surcharges and including applicable subsistence and travel allowances, all as actually paid to workers under collective bargaining agreements or as a regular practice of the employer. No time or charges will be allowed except when the workers are actually engaged in the proper, efficient and diligent performance or completion of the work as authorized. Overtime shall not be worked without prior approval of the Engineer.

Charges for the rental and operation of the equipment furnished and used by the Contractor shall be made for all prime construction and automotive equipment. It shall not include charges for listed equipment or major tools with a new cost of \$500 or less. Equipment time charges shall be itemized on a Daily Extra Work Report, subject to the daily approval of the Engineer and evidence of such daily approval shall be submitted with the billing. The equipment rental and operation rates used shall be those agreed upon by the Engineer and the Contractor prior to commencement of the work and shall include an approved allowance for depreciation. The cost for each type of approved equipment (active or standby) shall be no greater than the amount allowed in the latest edition of the Caltrans Standard Equipment Rates. Time and charges shall be allowed only when equipment is actually being used for the proper and efficient performance or completion of the work as authorized.

Charges for the cost of materials furnished by the Contractor shall be made, provided such furnishing was specifically authorized in the work order and the actual use verified by the Engineer. Charges shall be net cost to the Contractor delivered at the job, including all applicable sales taxes; and a vendor's invoice must accompany the billing along with verification of use of such materials by the Engineer.

A charge for major tools, supplies, overhead, supervision and profit will be allowed in the amount of 15% of the total direct labor costs, equipment costs, and material costs, as defined in sections 5.3.9.1 to 5.3.9.3.

When all or any part of work is performed by any of the Contractor's subcontractors, the markup percentage established in section 5.3.9.4 shall be applied to the

subcontractor's actual cost of such work (as determined in sections 5.3.9.1 to 5.3.9.3), to which a markup of 5% on the subcontracted portion of the extra work may be added by the Contractor.

Lump sum change orders shall include all work and costs associated with the change work item(s) and shall be agreed to and signed by both the Contractor and the District prior to commencing the work.

A charge for major tools, supplies, overhead, supervision and profit will be allowed an amount no greater than 15% of the total direct labor, equipment, and material costs.

When all or any part of work is performed by any of the Contractor's subcontractors, the markup percentage established in section 5.3.10.1 shall be applied to the subcontractor's actual cost of such work, to which a markup of no greater than 5% on the subcontracted portion of the extra work may be added by the Contractor.

The consent of the Contractor's bond sureties shall not be required as to any change or extra work ordered by the District, and the liability of the Contractor's bonds and sureties shall be increased or decreased accordingly without notice to the sureties.

The District reserves the right to contract with any person or firm other than the Contractor for any or all extra work.

If the total pay quantity of any item of work required under the Contract to be paid at a unit price exceeds the item as bid by more than 25 percent, then in the absence of an executed contract change order specifying the compensation to be paid, the work in excess of 125 percent of such estimate may, at the District's discretion, be paid for by a cost plus basis of payment as described at section 5.3.9, instead of at the unit price.

Any extra work related to differing site conditions pursuant to Public Contract Code section 7104 shall be addressed in accordance with section 5.45.7.5 of these General Conditions. No claim of the Contractor under this clause shall be allowed unless the Contractor has promptly given the notice required before any such claimed conditions are disturbed.

CLAIMS AND RESOLUTION OF DISPUTES

General. The parties intend by this section 5.4 that differences between the parties, arising under the Contract, be brought to the attention of the Engineer at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The parties agree to initially strive to resolve all disputes amicably and in an informal manner. Any dispute resolved informally shall be documented by the Engineer, and if the dispute resolution involves a change in the contract work, increase or decrease in the compensation due the contractor, or adjustment in the time of completion of the Work, then the informal dispute resolution shall be confirmed by a Change Order pursuant to section 5.3. Informal discussions or negotiations with the Engineer or other District representatives concerning informal resolution of a dispute shall not toll or suspend the claim filing and other deadlines provided below, unless so provided by the Engineer in writing. The willingness of the Engineer to engage in any

such discussions is not a waiver of the District's right to deny a claim or dispute it based on lack of merit, or procedural deficiency, or both.

Compliance Required. Contractor shall not be entitled to any additional time to complete Work or to the payment of any additional compensation for claimed extra work (or otherwise on account of any claim, cause, act, failure to act, or happening of any event or occurrence) unless either District has issued a Change Order pursuant to section 5.3 or a claim has been timely filed and approved pursuant to this section 5.4. If the Contractor fails to file a written claim within the claim deadline of section 5.4.4, then the Contractor agrees that it has waived any right or remedy to thereafter pursue the claim against the District in any administrative, arbitration or litigation proceeding, and the District may elect to document this waiver.

Scope of Claims. A claim for purposes of this section 5.4 means a separate demand by the Contractor for (a) a time extension (including a demand for relief from damages or penalties for delay assessed by the District under the Contract), (b) payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the Contractor is not otherwise entitled to, or (c) an amount the payment of which is disputed by the District.

Filing of Contract Claim; Contents; Filing Deadline

The Contractor shall file any "Contract Claim" with the Engineer. A Contract Claim must (a) be in writing, (b) be labeled or clearly indicated as a claim under the Contract, (c) set forth in detail the reasons why the Contractor believes additional compensation or a time extension is or may be due, the nature of the costs involved, and, insofar as possible, the amount of the claim, and (d) include (or reference earlier provided) documents that support and substantiate the claim as to both entitlement and quantification of time, money, or both.

A Contract Claim must be submitted to the Engineer within the following claim filing deadlines: (a) if a deadline is set forth in the Contract Documents for filing of the particular claim, then the claim must be filed by the specified time; (b) if the claim relates to extra, additional or unforeseen work for which the Contractor intends to demand additional compensation, a time extension, or both, notice shall be given to the Engineer prior to the time that the Contractor commences performance of the work giving rise to the potential claim for additional compensation or time extension, and Contractor shall not proceed with that work until so directed by the Engineer; and (c) for all other claims not included within (a) or (b), the claim must be filed on or before 15 days after the date of the occurrence, event or circumstance giving rise to the claim. In no event shall a Contract Claim be filed later than the date of final payment.

Processing of Claims, Generally. This Contract provides for three types of Contract Claims, which will be processed and resolved under different subsections. Any claim for money or damages of \$375,000 or less or for a time extension (i.e., any claim subject to Public Contract Code section 20104) shall be processed and resolved in accordance with section 5.4.6. Any claim for money or damages of more than \$375,000 (i.e., any claim not subject to Public Contract Code section 9204 or 20104) shall be processed and resolved in accordance with section 5.4.7. Any Contract Claim sent to District by registered mail or certified mail with return receipt

requested (i.e., any claim subject to Public Contract Code section 9204) shall be processed and resolved pursuant to section 5.4.8.

Claims for \$375,000 or Less or for Time Extension

Application. This section applies to all claims for \$375,000 or less in value, including any claim for a time extension or for a time extension that includes claimed delay damages of \$375,000 or less.

District Response to Contract Claim. The Engineer shall respond in writing to the Contract Claim within 60 days of receipt of the claim (or within 45 days of receipt for claims of less than \$50,000), or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the District may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subsection, upon mutual agreement of the Engineer and the Contractor. The Engineer's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days after receipt (or 15 days after receipt for claims of less than \$50,000) of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater. The District shall not fail to pay money as to any portion of a Contract Claim that is undisputed except as otherwise provided in the Contract Documents.

Meet and Confer. If the Contractor disputes the Engineer's written response, or the Engineer fails to respond within the time prescribed, the Contractor may notify the District, in writing, either within 15 days of receipt of the Engineer's response or within 15 days of the Engineer's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon such a demand, the District shall schedule a meet and confer conference within 30 days for the parties to consider settlement of the dispute. If the Contractor fails to timely demand a meet and confer conference within the applicable 15-day period, then the Contractor shall be deemed not to dispute the Engineer's written response to the Contract Claim and the Engineer's decision on the Contract Claim shall be final, conclusive and binding, and the Contractor shall be deemed to have waived all its rights to further protest, judicial or otherwise.

Government Code Claim. Following the meet and confer conference, if the Contract Claim or any portion remains in dispute, the Contractor may file a Government Code Claim as provided in Government Code title 1, division 3.6, part 3, chapters 1 (commencing with section 900) and 2 (commencing with section 910). The running of the period of time within which Contractor must file a Government Code Claim shall be tolled from the time the Contractor submits a timely Contract Claim pursuant to section 5.4.4 until the time that the Contract Claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process. The District shall respond to any Government Code Claim in accordance with the Government Claims Act.

Lawsuit. If the claim is not resolved pursuant to section 5.4.6.4, the Contractor may file a lawsuit on the claim within the limitations period provided by the Government Claims Act. If the Contractor fails to timely file a lawsuit within the limitations

period of the Government Claims Act, then the District's response to the Government Code Claim shall be final, conclusive and binding on the Contractor, and the Contractor thereafter shall be barred from filing a lawsuit on the claim.

Mediation. If the Contractor timely files a lawsuit, then within 60 days, but no earlier than 30 days, following the filing of responsive pleadings, the court shall submit the matter to non-binding mediation (unless waived by mutual stipulation of both parties). The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator. The mediator's fees and expenses shall be split and paid equally between the parties. The court may, upon request by any party, order any witnesses to participate in the mediation process.

Arbitration. If the matter remains in dispute following the mediation or if the parties waive the mediation, then the case shall be submitted to judicial arbitration pursuant to Code of Civil Procedure part 3, title 3, chapter 2.5 (commencing with section 1141.10), notwithstanding section 1141.11 of that code. The Civil Discovery Act of 1986 (Code of Civil Procedure part 4, title 3, chapter 3, article 3 (commencing with section 2016)) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. The arbitrator shall be experienced in public works construction law. The arbitrator's fees and expenses shall be split and paid equally by the parties, except where the arbitrator, for good cause, determines a different division. The court may, upon request by any party, order any witnesses to participate in the arbitration process. Any party who, after receiving an arbitration award, requests a trial de novo but does not obtain a more favorable judgment shall (in addition to payment of any costs and fees under Code of Civil Procedure part 3, title 3, chapter 2.5 (commencing with section 1141.10)) pay the attorney's fees of the other party arising out of the trial de novo.

Interest. In any lawsuit filed under this subsection, District shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the lawsuit is filed in court.

Claims for More Than \$375,000

Application. This section applies to all claims that exceed \$375,000 in value, including any claim for time extension that includes claimed delay damages exceeding \$375,000.

District Response to Contract Claim. The Engineer shall respond in writing to the Contract Claim within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim that the District may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subsection, upon mutual agreement of the Engineer and the Contractor. The Engineer's written response to the

claim, as further documented, shall be submitted to the Contractor within 30 days after receipt of the further documentation. If the Contractor fails to timely dispute the Engineer's decision on the matter in accordance with section 5.4.7.3, then the Contractor shall be deemed not to dispute the Engineer's written response to the Contract Claim and the Engineer's decision shall be final, conclusive and binding, and the Contractor shall be deemed to have waived all its rights to further protest, judicial or otherwise.

Government Code Claim. If the Contractor disputes the Engineer's written response to the Contract Claim, the Contractor may file a Government Code Claim as provided in Government Code title 1, division 3.6, part 3, chapters 1 (commencing with section 900) and 2 (commencing with section 910). District shall respond to any Government Code Claim in accordance with the California Government Claims Act.

Lawsuit. If the claim is not resolved pursuant to section 5.4.7.3, the Contractor may file a lawsuit on the claim within the limitations period provided by the Government Claims Act. If the Contractor fails to timely file a lawsuit within the limitations period of the Government Claims Act, then the District's response to the Government Code Claim shall be final, conclusive and binding on the Contractor, and the Contractor thereafter shall be barred from filing a lawsuit on the claim.

Judicial Reference. If the Contractor timely files a lawsuit, the case shall be submitted to judicial reference pursuant to California Code of Civil Procedure sections 638 and 640 through 645.1 (or any successor statute) and California Rules of Court title 3, division 9 (commencing with section 3.900). As authorized by Code of Civil Procedure section 638, a referee will consider and decide all factual and legal issues in the action. Each party acknowledges that it will not have any right to a jury trial or to have any judicial officer besides the referee hear or decide the action. When Contractor initiates the superior court lawsuit, it will, at the same time it files the complaint in the action, also file a motion for appointment of a single referee.

- (a) Appointment of a referee shall be by mutual agreement within 30 days between the parties, and if unsuccessful, then by the court and will be governed by Code of Civil Procedure section 640, and subject to objection by either party as provided by Code of Civil Procedure section 641. The referee must be a retired judge or a licensed attorney with at least ten years substantive experience in public works construction matters.
- (b) The parties shall be entitled to discovery and the referee shall oversee discovery and may enforce all discovery orders in the same manner as a superior court judge. The referee shall have the authority to consider and rule on appropriate pre-hearing and post-hearing motions in the same manner as a superior court judge. The referee will have the authority to set a briefing and hearing schedule for any such motion or for a hearing on the merits.
- (c) The referee's statement of decision shall include findings of fact and conclusions of law. The statement of decision will stand as the decision of the superior court and, upon filing of the statement with the clerk of the court, judgment may be

entered pursuant to Code of Civil Procedure section 644, subsection (a). The parties will have rights to appeal the final judgment so entered.

- (d) Each Party will pay half of the costs of the referee and the administrative fees of the reference proceeding, and each party will bear its own costs, expenses and attorney fees for the reference proceeding.

Claims Subject to Public Contract Code section 9204

The Contract Claim will be processed and resolved pursuant to Public Contract Code section 9204, which is summarized here:

- (a) **District Review of Claim.** Within 45 days after receiving a complete Contract Claim, District shall review the claim and provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. District will pay any undisputed portion of the claim within 60 days from the date of the written statement. If District fails to timely issue a written statement, the claim shall be deemed rejected in its entirety.
- (b) **Meet and Confer Conference.** If the Contractor disputes the District's written statement or if the Contract Claim is deemed rejected, the Contractor may demand and the parties will conduct an informal conference to meet and confer regarding settlement in accordance with section 9204, subsection (d)(2). Within 10 business days following the conclusion of the meet and confer conference, District shall provide Contractor a written statement identifying the portion (if any) of the claim remaining in dispute and any undisputed portion will be paid by District within 60 days after this written statement.
- (c) **Non-Binding Mediation.** Any remaining disputed portion of the claim shall be submitted to nonbinding mediation in accordance with section 9204, subsection (d)(2).
- (d) **Interest.** Any amount not paid in a timely manner as required by this subsection shall bear interest at a rate of 7 percent per annum until paid.

The foregoing is a summary of section 9204. In the event of any conflict between the summary and section 9204, the statute will govern.

Lawsuit and Reference. If mediation is unsuccessful and all or parts of the Contract Claim remain in dispute, then the Contractor may pursue a lawsuit (with judicial reference) in accordance with the procedures set forth at sections 5.4.7.4 through 5.4.7.5.

Contract Work Pending Claim Resolution. Unless otherwise directed in writing by the Engineer, pending resolution of a claim under this section 5.4, the Contractor shall continue to diligently prosecute the Contract work in accordance with the Contract Documents and the instructions of the Engineer.

Tort Claims. The provisions of this section 5.4 apply only to contract-based claims and they shall not apply to tort claims, and nothing in this section 5.4 is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Government Code title 1, division 3.6, part 3, chapters 1 (commencing with section 900) and 2 (commencing with section 910).

GUARANTEE

In addition to warranties, representations and guarantees stated elsewhere in the Contract Documents, or implied-in-fact or in-law, the Contractor unconditionally guarantees all materials and workmanship furnished hereunder, and agrees to repair or replace or both at its sole cost and expense, and to the satisfaction of the Engineer and the District, any and all materials which may be defective or improperly installed.

The Contractor shall repair or replace to the satisfaction of the Engineer any or all such work that may prove defective in workmanship or materials, ordinary wear and tear excepted, together with any other work which may be damaged or displaced in so doing. Contractor shall leave the site of any such repair or replacement work in satisfactory working order and condition.

In the event of failure to comply with the above stated conditions within a reasonable time, the District is authorized to have the defect repaired and made good at the expense of the Contractor who will pay the costs and charges therefor immediately upon demand, including any reasonable management and administrative costs, and engineering, legal and other consultant fees incurred to enforce this section.

The signing of the Contract by the Contractor shall constitute execution of the above guarantees. Except as otherwise provided in this Contract, the guarantees and warranties shall remain in effect for one year from the date of recording a notice of completion. The District shall have the right to call for such inspection or inspections of the work before the end of the one-year guarantee period and Contractor shall attend and participate in such inspection(s) upon request of the District. This guarantee does not excuse the Contractor from breaches of contract causing defects that occur or are discovered more than one year after the notice of completion. In addition, the warranty and guaranty period for repaired or replaced work or part shall be one year from the date of acceptance of said repaired or replaced work or part, but not less than the remaining warranty period of the original work.

AUTHORITY OF THE ENGINEER

The Engineer is the representative of the District and has full authority to interpret the Contract Documents, to conduct the construction review and inspection of the Contractor's performance, and to decide questions which arise during the course of the work; and its decisions on these matters shall be final and conclusive. The Engineer has the authority to reject all work and materials that do not conform to the Contract Documents, and has the authority to stop the work whenever such stoppage may be necessary to insure the proper execution of the Contract.

If at any time the Contractor's work force, tools, plant or equipment appear to the Engineer to be insufficient or inappropriate to secure the required quality of work or the proper rate of progress, the Engineer may order the Contractor to increase their efficiency, improve their character, to augment their number or to substitute other personnel, new tools, plant or equipment, as the case may be, and the Contractor shall comply with such order. Neither the failure of the Engineer to demand such increase of efficiency, number, or improvement, nor the compliance by the Contractor with the demand, shall relieve the Contractor of its obligation to provide quality work at the rate of progress necessary to complete the work within the specified time.

The Engineer shall have the authority to make minor changes in the work, not involving extra costs, and not inconsistent with the purposes of the work.

Any order given by the Engineer, not otherwise required by the Contract Documents to be in writing shall, on request of the Contractor, be given or confirmed by the Engineer in writing.

Whenever work, methods of procedure, or any other matters are made subject to direction or approval, such direction or approval will be given by the Engineer.

DRAWINGS

Drawings furnished herewith are for bidding purposes. The Engineer will furnish the Contractor, free of charge, copies of full-size Drawings which are reasonably necessary for the execution of the work. The Contractor shall have no claim for excusable delay on account of the failure of the Engineer to deliver such Drawings unless the Engineer shall have failed to deliver the same within two weeks after receipt of written demand therefor from the Contractor. If the Contractor, in the course of the work, finds any discrepancy between the Drawings and the physical condition of the locality, or any errors or omissions in the Drawings, or in the layout as given by points and instructions, it shall be its duty to inform the Engineer in writing, and the Engineer will promptly verify the same. Any work done after such discovery, until authorized, will be done at the Contractor's risk. All Drawings, Specifications, and copies thereof furnished by the Engineer are the property of the Engineer and shall not be reused on other work and, with the exception of the signed Contract sets, are to be returned to it, on request, at the completion of the work. All models are the property of the District.

The Contractor shall maintain at the site of work one record copy of the Drawings, in good order, and available to the Engineer. The Contractor shall mark the Drawings to record all changes and corrections made during construction. The Contractor shall make all corrections and changes on the Drawings as necessary to produce accurate and complete record Drawings showing the "as built" work. Marked Drawings shall be updated at least weekly. The Contractor shall submit to the Engineer a final, complete and accurate set of record Drawings prior to or simultaneously with the Contractor's request for final payment.

The Drawings shall be supplemented by such shop drawings prepared by the Contractor as are necessary to adequately control the work. Contractor shall not make any changes in any shop drawings after they have been reviewed by the Engineer.

Shop drawings for any structure shall include, but not be limited to: stress sheets, anchor bolt layouts, shop details, and erection plans, which shall be reviewed and approved by the Engineer before any such work is performed.

Shop drawings will be required for cribs, cofferdams, falsework, centering and form work and for other temporary work and methods of construction the Contractor proposes to use. Such drawings shall be subject to the review and approval of the Engineer insofar as the details affect the character of the finished work, but details of design will be left to the Contractor who shall be responsible for the successful construction of the work.

Contractor agrees that shop drawings processed by the Engineer are not Contract Change Orders, and that the purpose of shop drawings submitted by the Contractor is to demonstrate to the Engineer that the Contractor understands the design concept, and to demonstrate its understanding by indicating which equipment and material it intends to furnish and by detailing the fabrication methods it intends to use.

It is expressly understood, however, that favorable review of the Contractor's shop drawings shall not relieve the Contractor of any responsibility for accuracy of dimensions and details, or for mutual agreements of dimensions and details. It is mutually agreed that the Contractor shall be responsible for agreement and conformity of its shop drawings with the Specifications. Contractor further agrees that if deviations, discrepancies or conflicts between shop drawings and Specifications are discovered either prior to or after shop drawings are processed by the Engineer, the Specifications shall control and shall be followed.

Unless otherwise stated, the Engineer shall have 30 days from the date of receipt of shop drawings for review.

Full compensation for furnishing all shop drawings shall be considered as included in the prices paid for the Contract items of work to which such drawings relate and no additional compensation will be allowed therefor. Any cost related to the Engineer's review of any particular set of shop drawings more than twice, due to incompleteness or unacceptability, shall be borne by the Contractor, and the District reserves the right to withhold such costs from payments due the Contractor.

CONSTRUCTION STAKING AND SURVEYS

[Choose the appropriate Alternate A (By District) or Alternate B (By Contractor)]

[Alternate A (by District)]

The District will provide one set of construction stakes and benchmarks as it deems necessary to establish lines and grades required for the completion of the site work specified in the Contract Documents. The Contractor shall notify the Engineer at least two working days in advance of required staking. The Contractor shall make all other surveys necessary for the completion of the work.

Stakes and marks set by the District or Engineer shall be carefully preserved by the Contractor. The Contractor shall be charged for the cost of replacing or restoring the stakes and

marks that are destroyed or damaged by its operation. This charge will be deducted from any monies due or to become due to the Contractor under the Contract.

[Alternate B (by Contractor)]

The Engineer will provide the Contractor with drawings showing benchmarks and reference points as it deems necessary to establish lines and grades required for the completion of the site work specified in the Contract Documents. The Contractor shall make or furnish all surveys and set all construction stakes necessary for the completion of the work.

Stakes and marks set by the District or Engineer, if any, shall be carefully preserved by the Contractor. The Contractor shall be charged for the cost of replacing or restoring the stakes and marks that are destroyed or damaged by its operation. This charge will be deducted from any monies due or to become due to the Contractor under the Contract.

PERMITS AND REGULATIONS

Permits and licenses, of a temporary nature, necessary for the prosecution of the work shall be secured and paid for by the Contractor. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the District unless otherwise specified.

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as shown on the plans and described in the Specifications. The Contractor shall promptly notify the Engineer in writing of any specification at variance therewith and any necessary changes shall be adjusted as provided in the Contract for changes in the work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations and without such notice to the Engineer, it shall bear all costs arising therefrom.

CONFORMITY WITH CONTRACT DOCUMENTS

Work and materials shall conform to the lines, grades, cross sections, dimensions and material requirements, including tolerances, shown on Contract Documents. Although measurement, sampling, and testing may be considered evidence as to such conformity, the Engineer shall be the sole judge as to whether the work or materials deviate from the Specifications and plans, and his decision as to any allowable deviations therefrom shall be final and conclusive.

COORDINATION & INTERPRETATION OF CONTRACT DOCUMENTS

The Contract Documents are complementary and a requirement occurring in one is as binding as though occurring in all.

In the event of conflict between the Plans and the Specifications, the Specifications shall govern, except that, where items are shown on the Plans and are not specifically included in the Specifications, the Plans shall govern.

Should it appear that the work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Specifications and Plans, the Contractor shall apply to the Engineer for such further explanations as may be necessary and shall conform to them as part of the Contract. In the event of any doubt or question arising respecting the true meaning of the Specifications and Plans, reference shall be made to the Engineer, whose decision thereon shall be final and conclusive.

In the event of any discrepancy between any Plans and the figures written thereon, the figures shall be taken as correct. Detailed drawings shall prevail over general drawings.

Any reference made in the Specifications or on the Plans to any specification, standard, method, or publication of any scientific or technical society or other organization shall, in the absence of a specific designation to the contrary, be understood to refer to the Specification, standard, method, or publication in effect as of the date that the work is advertised for Bids.

SUBCONTRACTS

The attention of the Contractor is directed to California Public Contract Code section 4100, et seq., regarding subcontracting and said provisions are by this reference incorporated herein and made a part hereof.

Each subcontract shall contain a suitable provision for the suspension or termination thereof should the work be suspended or terminated or should the subcontractor neglect or fail to conform to every provision of the Contract Documents insofar as such provisions are relevant. No subcontractor or supplier will be recognized as such, and all persons engaged in work will be considered as employees of the Contractor, and the Contractor will be held responsible for their work, which shall be subject to the provisions of the Contract Documents. The Contractor shall be fully responsible to the District for the acts or omissions of its subcontractors and of the persons either directly or indirectly employed by them. Nothing contained in the Contract Documents shall create any contractual relationship between any subcontractor and the District. If a legal action, including arbitration and litigation, against the District is initiated by a subcontractor or supplier, the Contractor shall reimburse the District for the amount of legal, engineering and all other expenses incurred by the District in defending itself in said action.

The District and the Engineer reserve the right to approve all subcontractors. Such approval shall be a consideration to the awarding of the Contract and unless notification to the contrary is given to the Contractor prior to the signing of the Contract, the list of subcontractors that is submitted with its proposal will be deemed to be acceptable.

COOPERATION OF CONTRACTORS

Should construction be under way by other forces or by other contractors within or adjacent to the limits of the work specified or should work of any other nature be under way by other forces within or adjacent to said limits, the Contractor shall cooperate with all such other contractors or other forces to the end that any delay or hindrance to their work will be

avoided. The right is reserved by the District to perform other or additional work at or near the site (including material sources) at any time, by the use of other forces.

When two or more contractors are employed on related or adjacent work, each shall conduct its operation in such a manner as not to cause any unnecessary delay or hindrance to the other. Each contractor shall be responsible to the other for all damage to work, to persons or property caused to the other by its operations, and for loss caused the other due to its unnecessary delays or failure to finish the work within the time specified for completion.

SUPERINTENDENCE

The Contractor shall designate in writing before starting work an individual as authorized representative who shall have the authority to represent and act for the Contractor. This authorized representative shall be present at the site of the work at all times while work is actually in progress on the Contract. When work is not in progress and during periods when work is suspended, arrangements acceptable to the Engineer shall be made for any emergency work that may be required.

The Contractor is solely responsible, at all times, for the superintendence of the work and for its safety and progress.

Whenever the Contractor or its authorized representative is not present on any particular part of the work where it may be desired to give direction, orders will be given by the Engineer, which shall be received and obeyed by the superintendent or foreman who may have charge of the particular work in reference to which the orders are given.

Any order given by the Engineer, not otherwise required by the Contract Documents to be in writing, will on request of the Contractor, be given or confirmed by the Engineer in writing.

INSPECTION OF WORK

Unless otherwise provided, all equipment, materials, and work shall be subject to inspection and testing by the Engineer. The Engineer will observe the progress and quality of the work and determine, in general, if the work is proceeding in accordance with the intent of the Contract Documents. He shall not be required to make comprehensive or continuous inspections to check the quality of the work, and he shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work. Visits and observations made by the Engineer shall not relieve the Contractor of its obligation to conduct comprehensive inspections of the work and to furnish proper materials, labor, equipment and tools, and perform acceptable work, and to provide adequate safety precautions, in conformance with the intent of the Contract.

Whenever the Contractor varies the period during which work is carried on each day, it shall give due notice to the Engineer so that proper inspection may be provided. Any work done in the absence of the Engineer shall be subject to rejection. Proper facilities for safe access for inspection to all parts of the work shall at all times be maintained for the necessary use of the Engineer and other agents of the District, and agents of the Federal, State, or local

governments at all reasonable hours for inspection by such agencies to ascertain compliance with laws and regulations.

One or more inspectors may be assigned to observe the work and to act in matters of construction under this Contract. It is understood that inspectors shall have the power to issue instructions and make decisions within the limitations of the authority of the Engineer. Such inspection shall not relieve the Contractor of its obligation to conduct comprehensive inspections of the work, to furnish proper materials, labor, equipment and tools, and perform acceptable work, and to provide adequate safety precautions in conformance with the intent of the Contract.

The Engineer and his representatives shall at all times have access to the work wherever it is in preparation or progress; and the Contractor shall provide safe and convenient facilities for such access and for inspection. If the Specifications, the Engineer's instructions, laws, ordinances, or any public authority require any material, equipment or work to be specifically tested or approved, the Contractor shall give the Engineer timely notice of its readiness for inspection, and if the inspection is by an authority other than the District, of the time fixed for inspection. Inspections by the Engineer will be made promptly and, where practicable, at the source of supply.

Work performed without inspection may be required to be removed and replaced under proper inspection and the entire cost of removal and replacing, including the cost of District-furnished materials used in the work, shall be borne by the Contractor, regardless of whether or not the work exposed is found to be defective. Examination of questioned work, other than that installed without inspection, may be ordered by the Engineer and, if so ordered, the work must be uncovered by Contractor. If such work is found to be in accordance with the Contract Documents, the District will pay the cost of reexamination and replacement. If such work is found to be not in accordance with the Contract Documents, the Contractor shall pay such cost unless it can show that the defect in the work was caused by another contractor, and in that event the District will pay such costs.

The inspection of the work shall not relieve the Contractor of its obligation to fulfill the Contract as herein prescribed, or in any way alter the standard of performance provided by the Contractor; and defective work shall be made good and unusable materials may be rejected, notwithstanding that such work and materials have been previously overlooked by the Engineer and accepted or estimated for payment. If the work or any part thereof shall be found defective, Contractor shall, within ten (10) calendar days, make good such defect in a manner satisfactory to the Engineer. If the Contractor shall fail or neglect to make ordered repairs of defective work or to remove the condemned materials from the work within ten (10) calendar days after direction by the Engineer in writing, the District may make the ordered repairs, or remove the condemned materials, and deduct the cost thereof from any monies due the Contractor.

The Contractor shall furnish promptly without additional charge all facilities, labor and materials reasonably needed by the Engineer for performing all inspection and tests. Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time specified by the Contractor for its inspection.

Where any part of the work is being done under an encroachment permit or building permit, or is subject to Federal, State, County or City codes, laws, ordinances, rules or regulations, representatives of the government agency shall have full access to the work and shall be allowed to make any inspection or tests in accordance with such permits, codes, laws, ordinances, rules, or regulations. If advance notice of the readiness of the work for inspection by the governing agency is required, the Contractor shall furnish such notice to the appropriate agency.

The Engineer may inspect the production of material, or the manufacture of products at the source of supply. Plant inspection, however, will not be undertaken until the Engineer is assured of the cooperation and assistance of both the Contractor and the material producer. The Engineer or his authorized representative shall have free entry at all times to such parts of the plant as concerns the manufacture or production of the materials. Adequate facilities shall be furnished free of charge to make the necessary inspection. The District assumes no obligation to inspect materials at the source of supply.

TESTS

The Contractor shall perform at its expense all tests specified or required by the Specifications. The Engineer will perform such tests as he deems necessary to determine the quality of work or compliance with Contract Documents. The Contractor shall furnish promptly without additional charge all facilities, labor, and material reasonably required for performing safe and convenient tests as may be required by the Engineer. All tests by the Engineer will be performed in such a manner as will not unnecessarily delay the work. The Contractor shall not be required to reimburse the District for tests performed by the District or Engineer. If samples of materials are submitted which fail to pass the specified tests, the Contractor shall pay for all subsequent tests.

REMOVAL OF REJECTED/UNAUTHORIZED WORK AND MATERIALS

All work or materials which have been rejected shall be remedied, or removed and replaced by the Contractor in an acceptable manner and no compensation will be allowed it for such removal, replacement, or remedial work.

Any work done beyond the lines and grades shown on the Plans or established by the Engineer or any extra work done without written authority will be considered as unauthorized work and will not be paid for. Upon order of the Engineer, unauthorized work shall be remedied, removed, or replaced at the Contractor's expense.

Upon failure of the Contractor to comply with any order of the Engineer made under this section, the District may cause rejected or unauthorized work to be remedied, removed, or replaced, and may deduct the costs therefor from any monies due or to become due the Contractor.

DEDUCTIONS FOR UNCORRECTED WORK.

If the Engineer deems it inexpedient to correct work damaged or not done in accordance with the Contract Documents, an equitable deduction from the Contract price shall be made therefor; and such sum may be withheld by the District from Contractor's payment.

EQUIPMENT AND PLANTS

Only equipment and plants suitable to produce the quality of work and materials required will be permitted to operate on the project.

Plants will be designed and constructed in accordance with general practice for such equipment and shall be of sufficient capacity to ensure the production of sufficient material to carry the work to completion within the time limit.

The Contractor shall provide adequate and suitable equipment and plants to meet the above requirements, and when ordered by the Engineer, shall remove unsuitable equipment from the work and discontinue the operation of unsatisfactory plants.

The Contractor shall identify each piece of its equipment, other than hand tools, by means of an identifying number plainly stenciled or stamped on the equipment at a conspicuous location, and shall furnish to the Engineer a list giving the description of each piece of equipment and its identifying number. In addition, the make, model number and empty gross weight of each unit of compacting equipment shall be plainly stamped or stenciled in a conspicuous place on the unit. The gross weight shall be either the manufacturer's rated weight or the scale weight.

In the case of termination of this Contract before completion from any cause whatever, the Contractor, if notified to do so by the District, shall promptly remove any part or all of its equipment and supplies from the property of the District. If the Contractor fails to do so, the District shall have the right to remove such equipment and supplies at the expense of the Contractor.

CHARACTER OF WORKER

If any subcontractor or person employed by the Contractor or any subcontractor shall be incompetent or act in a disorderly or improper manner, that subcontractor or person shall be removed from the work immediately, and such subcontractor or person shall not again be employed on the work. Such discharge shall not be the basis for any claim for compensation or damages against the District, the Engineer or any of their officers, directors, employees or agents.

SEPARATE CONTRACTS

The District reserves the right to let other contracts in connection with this work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate its work with the other contractor's work.

If any part of the Contractor's work depends for proper execution or results upon the work of any other contractor, the Contractor shall inspect and promptly report to the Engineer any defects in such work that render it unsuitable for such proper execution and results. The Contractor's failure to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of the Contractor's work, except as to defects that may develop in the other contractor's work after the execution of its work. To ensure the proper execution of its subsequent work, the Contractor shall measure work already in place and shall at once report to the Engineer any discrepancy between the executed work and the drawings.

MATERIALS

Unless otherwise specifically stated in the Specifications, the Contractor shall furnish all materials necessary for the execution and completion of the work. Unless otherwise specified, all materials shall be new and shall be manufactured, handled, and installed in a workmanlike manner to insure completion of the work in accordance with the Contract Documents. The Contractor shall, upon request of the Engineer, furnish satisfactory evidence as to the kind and quality of materials.

Where materials are to be furnished by the District, the type, size, quantity and location at which they are available will be stated in the Contract Documents.

Manufacturers' and suppliers' warranties, guarantees, operating manuals, instruction sheets and parts listed, which are furnished with certain articles or materials incorporated in the work, shall be delivered to the Engineer before final acceptance of the Contract work.

STORAGE OF MATERIALS; STORAGE AREAS

Articles or materials to be incorporated in the work shall be stored in such a manner as to ensure the preservation of their quality and fitness for the work, and to facilitate inspection.

The Contractor's work and storage areas are limited by the right-of-way lines as indicated on the Plans. The plant facilities are to be installed in property or easements owned by the District as shown on the Plans. The District shall be specifically exempted in any agreement from any liability incurred from the use of private property for construction purposes. The Contractor shall make arrangements and pay for property off-site as required for storage, offices, work assembly areas, etc. The Contractor shall take all responsibility for storage of materials. No equipment for incorporation in the project may be stored in an area subject to flooding.

TRADE NAMES AND ALTERNATIVES

For convenience in designation in the Specifications and Plans, certain articles or materials to be incorporated in the work may be designated under a trade name or the name of a manufacturer and its catalog information. The use of an alternative article or material that is of equal quality and of the required characteristics for the purpose intended will be permitted, subject to the following requirements:

The burden of proof as to the quality and suitability of alternatives shall be upon the Contractor and it shall furnish all information necessary as required by the Engineer. The Engineer shall be the sole judge as to the quality and suitability of alternative articles or materials and his decision shall be final.

Whenever the Specifications and Plans permit the substitution of a similar or equivalent material or article, no tests or action relating to the approval of such substitute material or article will be made until the request for substitution is made in writing by the Contractor accompanied by complete data as to the equality of the material or article proposed. Such request by the Contractor must be made within thirty-five (35) days after award of Contract.

CERTIFICATES OF COMPLIANCE

A Certificate of Compliance shall be furnished prior to the use of any materials for which the Specifications require that such a certificate be furnished. In addition, when so authorized in the Specifications, the Engineer may permit the use of certain materials or assemblies prior to sampling and testing if accompanied by a Certificate of Compliance. The Certificate shall be signed by the manufacturer of the material or the manufacturer of assembled materials and shall state that the materials involved comply in all respects with the requirements of the Contract. A Certificate of Compliance shall be furnished with each lot of material delivered to the work and the lot so certified shall be clearly identified in the Certificate.

All materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material in the work which conforms to the requirements of the Contract Documents and any such material not conforming to such requirements will be subject to rejection whether in place or not.

The District reserves the right to refuse to permit the use of material on the basis of a Certificate of Compliance.

The form of the Certificate of Compliance and its disposition shall be as directed by the Engineer.

ASSIGNMENT

The Contractor shall not assign the Contract or sublet it as a whole or in part without the written consent of the District, nor shall the Contractor assign any monies due, or to become due to it hereafter, without the prior written consent of the District.

DISTRICT ENTRY ON WORK SITE; RIGHT TO OPERATE UNSATISFACTORY EQUIPMENT OR FACILITIES

The District may, at any time, and from time to time, during the performance of the work, enter the work site for the purpose of installing any necessary work by District labor or other contracts, and for any other purpose in connection with the installation of

facilities. In doing so, the District shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other work being done by or on behalf of the District.

The District reserves the right, prior to completion and final acceptance, to occupy, or use, any completed part or parts of the work, providing these areas have been approved for occupancy by the District. The exercise of this right shall in no way constitute an acceptance of such parts, or any part of the work, nor shall it in any way affect the dates and times when progress payments shall become due from the District to the Contractor or in any way prejudice the District's rights in the Contract, or any bonds guaranteeing the same. The Contract shall be deemed completed only when all the work contracted has been duly and properly performed and accepted by the District.

Prior to such occupancy or use, the District and Contractor shall agree in writing regarding the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the work, insurance, the period for correction of the work, and the commencement of warranties required by the Contract Documents.

In exercising the right to occupy or use completed parts of the work prior to the completion thereof, the District shall not make any use which will materially increase the cost to the Contractor, without increasing the Contract Amount, nor materially delay the completion of the Contract, without extending the time for completion.

If, following installation of any equipment or facilities furnished by the Contractor, defects requiring correction by the Contractor are found, the District shall have the right to operate such unsatisfactory equipment or facilities and make reasonable use thereof until the equipment or facilities can be shut down for correction of defects without injury to the District.

LANDS FOR WORK; RIGHTS OF WAY; CONSTRUCTION ROADS; TEMPORARY UTILITY SERVICES

The District will provide the lands, easements, rights of way, and/or encroachment permits necessary or other rights to enter and work on lands necessary for the performance of the work. Other permits and licenses are addressed by section 5.9. Should the Contractor find it advantageous to use any additional land for any purpose whatever, the Contractor shall provide for the use of such land at its expense. The Engineer shall be furnished with a copy of written agreements or otherwise be notified in writing of additional working space which is acquired. Nothing herein contained and nothing marked on the Plans shall be interpreted as giving the Contractor exclusive occupancy of the territory provided by the District. When two or more contracts are being executed at one time on the same or adjacent land in such a manner that work on one contract may interfere with that on another, the Engineer shall decide which contractor shall cease work, and which shall continue, or whether the work on both contracts shall progress at the same time and in what manner; and the decision of the Engineer shall be final and binding. When the territory of one contract is the necessary or convenient means of access for the performance of another contract, such privilege of access or any other reasonable privilege may be granted by the Engineer to the contractor so desiring, to the extent, amount, in the manner, and at the time permitted. No such decision as to the method or time of conducting the work or the use of territory shall be the basis of any claim for delay or damage.

Lands, easements or rights of way to be furnished by the District for construction operations will be specifically shown on the Plans.

The Contractor shall construct and maintain all roads necessary to reach the various parts of the work and for the transportation thereto of construction material and personnel. The cost of constructing and maintaining such roads shall be borne by the Contractor.

The Contractor shall make its own arrangements for any utility services it may require during the life of this project. The Contractor shall make its own arrangements for telephone service which it will require for its field office.

PROGRESS SCHEDULE

The Contractor shall submit within 10 days after Date of the Contract a schedule or schedules which shall show the dates at which the Contractor will start and complete the several parts of the work. This schedule shall conform to the completion time specified in the Contract. The Contractor shall review and, if necessary, revise the progress schedule at least once per month, and in any event shall submit a current schedule to the Engineer at his request at any time during the contract period.

The Contractor's timely submittal of complete and accurate initial and updated project schedules is a material requirement of this Contract, and Contractor's failure to comply with this requirement would be a material breach of this Contract that could subject Contractor to all applicable penalties, up to and including termination.

The Engineer shall be advised in advance by the Contractor when any part of the work is scheduled and the days when no work will take place. If the Contractor fails to notify the Engineer in advance of the day or days when no work will be done, the Contractor will be charged the cost of inspection for that day or days and such charges may be deducted from any payment due the Contractor.

When, in the judgment of the Engineer, it is necessary to accelerate any part of the work ahead of schedule, the Contractor shall, when directed, concentrate its efforts on such part of the work.

COMMENCEMENT AND PROGRESS OF THE WORK AND TIME OF COMPLETION; CONSTRUCTION SEQUENCE; DELAYS

The Contractor shall commence the work covered by this Contract within fifteen (15) days after date of issuance of Notice to Proceed from the District to proceed with the work. Work will be considered to have commenced when the Contractor begins ordering materials and equipment or starts site work. The Contractor shall not commence work or incur any expenses in connection therewith, before it is notified to proceed with the work. Work on the total project shall be completed by October 31, 2024. The time allowed for completion includes an allowance for working time lost due to normal inclement weather. A Pre-Construction conference will be scheduled by the Engineer prior to the Contractor starting work.

The Contractor shall give the Engineer written notice not less than two (2) working days in advance of the actual date on which the work will be started. The Contractor shall be entirely responsible for any delay in the work that may be caused by this failure to give such notice. The Engineer shall have the right to specify the locations where the Contractor shall start and proceed with the work.

The Contractor shall diligently pursue the work and complete the work as specified within the time limits as set forth in the Contract Documents.

When the Contractor foresees a delay in the prosecution of the work and, in any event, immediately upon the occurrence of a delay, the Contractor shall notify the Engineer in writing of the probability of the occurrence and the estimated extent of the delay, and its cause. The Contractor shall take immediate steps to prevent, if possible, the occurrence or continuance of the delay. The Contractor agrees that no claim shall be made for delays that are not called to the attention of the Engineer at the time of their occurrence.

Non-excusable delays in the prosecution of the work shall include delays which could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its subcontractors, at any tier level, or suppliers.

Excusable delays in the prosecution or completion of the work shall include delays which result from causes beyond the control of the Contractor and District and which could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its subcontractors, at any tier level, or suppliers.

Delays caused by acts of god, fire, unusual storms, floods, tidal waves, earthquakes, epidemics and pandemics, strikes, labor disputes, and freight embargoes, shall be considered as excusable delays insofar as they prevent the Contractor from proceeding with at least seventy-five (75) percent of the normal labor and equipment force for at least five (5) hours per day toward completion of the current critical activity item(s) on the latest favorably reviewed progress schedule. Such delays may entitle the Contractor to an adjustment in the Project schedule as its sole and exclusive remedy.

Should inclement weather conditions or the conditions resulting from weather prevent the Contractor from proceeding with seventy-five (75) percent of the normal labor and equipment force engaged in the current critical activity item for a period of at least five (5) hours per day toward completion of such operation or operations, and the crew is dismissed as a result thereof, it shall be a weather delay day.

Upon the submission of satisfactory proof to the Engineer by the Contractor, shortages of material may be acceptable as grounds for granting a time extension. In order that such proof may be satisfactory and acceptable to the Engineer, it must be demonstrated by the Contractor that the Contractor has made every effort to obtain such materials, or obtain acceptable substitute materials, from all known sources within reasonable reach of the proposed work. Only the physical shortage of material, caused by unusual circumstances, will be considered under these provisions as a cause for extension of time, and no consideration will be given to any claim that material could not be obtained at a reasonable, practical, or economical cost or price, unless it is

shown to the satisfaction of the Engineer that such material could have been obtained only at exorbitant prices entirely out of line with current rates, taking into account the quantities involved and usual practices in obtaining such quantities. A time extension for shortage of material will not be considered for material ordered or delivered late or whose availability is affected by virtue of the mishandling of procurement. The above provisions apply equally to equipment to be installed in the work.

Compensable delays in the prosecution or completion of the work shall include delays that occur through no fault of the Contractor and prevent the Contractor from proceeding with at least seventy-five (75) percent of the normal labor and equipment force for at least five (5) hours per day toward completion of the current critical activity item(s) on the latest favorably reviewed progress schedule due to one or more of the following cause(s):

- a. Delays due solely to the actions and/or inactions of the District.
- b. Delays due to differing site conditions as addressed in sections 5.3.14 and 5.45.7.5.
- c. Delays due to other Contractors employed by the District who interfere with the Contractor's prosecution of the work as defined above.

No delay shall be compensable unless the claimed event or occurrence delays completion of the work beyond the contractual completion date or the completion date shown in the accepted initial or updated schedules, and the delay affects a critical activity while such activity is on the critical path.

Concurrent delays are those delay periods when the prosecution of the work is delayed during the same period of time due to causes from a combination of the delays defined in sections 5.30.5 (Non-excusable delays) 5.30.6 (Excusable delays) or 5.30.10 (Compensable delays) During such concurrent delay periods, time extensions will be granted in accordance with the sections below in this section 5.30; however, the Contractor shall not be compensated for its delay damages as defined in section 5.30.14, or for any other damages, and the District shall not assess its actual costs as defined in section 5.30.12 (non-excusable delays).

Non-excusable Delays - The District may in its sole discretion grant an extension of time for non-excusable delays if the District deems it is in its best interest. If the District grants an extension of time for non-excusable delays, the Contractor agrees to pay the District's actual costs, including charges for engineering, inspection and administration incurred during the extension.

Excusable or Compensable Delays - If the Contractor is delayed in the performance of its work as defined in section 5.30.6 (excusable delays), or section 5.30.10 (compensable delays), then the Contract completion date may be extended by the District for such time that, in the District's and Engineer's determination, the Contractor's completion date will be delayed, provided that the Contractor strictly fulfills the following:

- a. The Contractor shall provide notification, in accordance with section 5.30.4 and as otherwise provided by this Contract, and may submit in writing a request for an extension of time to the Engineer stating at a minimum the probable cause of the

delay and the number of days being requested. Any Contractor time extension request shall be submitted as a change order request in accordance with the requirements of section 5.3.

- b. If requested by the Engineer, the Contractor shall promptly provide sufficient information to the Engineer to assess the cause or effect of the alleged delay, or to determine if other concurrent delays affected the work.
- c. Weather Delays. The Contractor will be granted a non-compensable time extension for weather caused delays, pursuant to section 5.30.8 (weather delays), over and above any allowance provided for in this Agreement for weather days or weather delays.

Should the Contractor fail to fulfill any of the foregoing, which are conditions precedent to the right to receive a time extension, the Contractor waives the right to receive a time extension.

During such extension of time, neither extra compensation for engineering, inspection and administration nor damages for delay will be charged to the Contractor. It is understood and agreed by the Contractor and District that time extensions due to excusable or compensable delays will be granted only if such delays involve controlling operations which would prevent completion of the whole work within the specified Contract time.

Should the Contractor fail to complete the work within the time specified in the Contract, as extended in accordance with this clause if appropriate, the Contractor shall pay to the District liquidated damages in accordance with section 5.34.

Delay Damages

Indirect Overhead - The Contractor shall be reimbursed for indirect overhead expenses for periods of time when the work is delayed as defined in section 5.30.10 (Compensable delays). However, no reimbursement for indirect overhead or any other costs or damages shall be made for compensable delays which occur during a concurrent delay as defined in section 5.30.11 (Concurrent delays). No reimbursement for indirect overhead as covered in this section shall be made for any time extensions granted for Contract change orders as provided in section 5.4. As a condition precedent to any reimbursement, the Contractor must fulfill all conditions as provided in section 5.30.13 (Excusable or Compensable delays). No additional markup for overhead or profit shall be provided for such indirect overhead expenses.

Payment to the Contractor for indirect overhead expenses will be made only if the extended Contract period granted for the compensable delay(s) is required to complete the work following the depletion of the original contract period and any time extensions granted other than compensable time extensions. Except as provided herein, the Contractor shall have no claim for damage or compensation for any delay including not limited to extended field costs, extended home office overhead costs, impact, inefficiency, unabsorbed home office overhead, under-absorbed home office overhead, hindrance, disruption, or any other damage arising from delay, no matter how characterized, including delay claims of its subcontractors/suppliers of every tier.

Indirect Field Overhead - For those allowable delay periods as defined in section 5.30.14.1 (Indirect Overhead), the Contractor shall be reimbursed for its indirect field overhead based on:

- a. Invoices for all field office equipment.
- b. Actual salary for field office staff.
- c. Fair rental values acceptable to the Engineer for construction equipment idled due to the delay.

Indirect Home Office Overhead - For those allowable delay periods as defined in section 5.30.14.1 (Indirect Overhead), the Contractor shall be reimbursed for its daily home office overhead based on the following formula:

$$\text{Contract Bid Price (\$)} \div \text{Contract Period (Days)} \times (0.04) = \text{Daily Home Office Overhead (\$/Day)}.$$

As it is impractical to determine the actual home office overhead, such reimbursement shall be mutually agreed between the District and Contractor to encompass full payment for any home office overhead expenses for such periods of time for the Contractor and all subcontractors. The Contractor agrees to indemnify, defend and hold the District harmless for any indirect overhead claims from its subcontractors.

SUSPENSION OF WORK

The Engineer may at any time, by notice in writing to the Contractor, suspend any part of the work for such period of time with or without cause, and the Contractor shall have no claim for damages or additional compensation on account of any such suspension.

Upon receipt of a written notice to suspend any portion of the work issued by the Engineer, the Contractor shall thereupon discontinue all work suspended except for all operations necessary to prevent loss or damage to work already executed as may be directed by the Engineer. In the event a part of the work is suspended, the Contractor, if the suspension is not through its fault or the fault of its subcontractors or agents, shall be paid in accordance with section 5.3.9 for costs of work performed in accordance with such orders of the Engineer during such suspension, provided that this shall not include any cost pertaining to work not suspended by the notice to suspend work. Work shall be resumed by the Contractor after such suspension on subsequent written notice to resume work from the District. In the event of suspension of the entire work by the District, the Contractor, if the suspension is not through the fault of the Contractor or the fault of its subcontractors or agents, shall be paid the sum of \$50 for each calendar day during which the entire work shall have been suspended. Said sum is hereby mutually agreed upon as fixed and liquidated damages in full settlement of all costs and expenses, losses and damages resulting to the Contractor from such suspension.

In the event of any suspension of the work in whole or in part under subsection 5.31.2, if the suspension is not through the fault of the Contractor or the fault of its subcontractors or agents, the Contractor shall be entitled to an extension of time wherein to

complete the work to the extent of the delay caused the Contractor thereby. If no agreement can be reached as to the time for extension, the Contractor shall submit a claim to the District within fifteen (15) days of a notice from the District that no agreement can be reached. The claim shall be processed in accordance with section 5.4.

In the event the entire work shall be suspended by order of the District, and shall remain so suspended for a period of ninety (90) consecutive days, through no fault of the Contractor or its subcontractors or agents, and notice to resume the work shall not have been served on the Contractor, Contractor may, at its option, by written notice to the District, terminate the Contract in the same manner and on the same terms as if the termination had been initiated by the District pursuant to section 5.32, and the District shall have no claim for damages because of such termination of the Contract.

TERMINATION FOR DEFAULT; DAMAGES FOR DELAY; TIMELY EXTENSION

Subject to prior notice from the District and the Contractor's cure rights set forth in this section, the District will have the right to terminate the Contract for cause and/or the Contractor's right to proceed with the work upon the occurrence of any of the following:

- a. Contractor becomes insolvent or files for relief under the bankruptcy laws of the United States.
- b. Contractor makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.
- c. A receiver is appointed to take charge of Contractor's property.
- d. The work is not completed within the applicable Contract time, as such Contract time may be adjusted in accordance with this Contract, and Contractor is not diligently prosecuting the completion or correction of the work.
- e. Contractor persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the work in accordance with the Contract Documents.
- f. Contractor fails to make prompt payment of amounts properly due subcontractors after receiving payment from District.
- g. Contractor disregards applicable laws, regulations or other governmental requirements.
- h. Contractor persistently or materially fails to execute the work in accordance with the Contract Documents.
- i. Contractor persistently or materially fails to comply with applicable safety requirements.

- j. Contractor abandons the work.
- k. Contractor is in default of any other material obligation under the Contract Documents.

Upon the occurrence of any of the preceding events, District will have the right to terminate the Contract for cause and/or the Contractor's right to proceed with the work if Contractor fails to promptly commence to cure such default and diligently prosecutes such cure within 5 days after notice from District, or within such longer period of time as is reasonably necessary to complete such cure.

The rights and remedies of the District provided in this section are in addition to any of the rights and remedies provided by law or under this Contract.

In addition to the District's rights under this section, if at any time before completion of the work under the Contract, it shall be determined by the District that it is advisable for it, for whatever reason, to terminate the work, it may do so upon ten (10) days written notice to the Contractor. Upon service of such notice of termination, the Contractor shall discontinue the work in such manner, sequence, and at such times as the Engineer may direct. The Contractor shall have no claim for damages for such discontinuance or termination, nor any claim for anticipated profits on the work thus dispensed with or uncompleted, nor any other claim except for the work actually performed up to the time of termination, including any extra work ordered by the Engineer to be done, nor for any claim for liquidated damages in accordance with the provisions of section 5.31.

Upon receipt of notice of termination of the Contract and/or the Contractor's right to proceed with the work under this section 5.32, the Contractor shall, unless the notice directs otherwise, do the following:

- a. Immediately discontinue the work to the extent specified in the notice.
- b. Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the work as is not discontinued.
- c. Promptly cancel, on the most favorable terms reasonably possible, all orders and subcontracts to the extent they relate to the performance of the discontinued portion of the work.
- d. Thereafter do only such work as may be necessary to preserve and protect work already in progress and to protect materials, plants, and equipment on the project site or in transit thereto.

Upon termination of the Contract, the obligations of the Contract shall continue as to portions of the work already performed and, subject to the Contractor's obligations under this section 5.32, as to bona fide obligations assumed by the Contractor prior to the date of termination.

Upon termination of the Contract or the Contractor's right to proceed with the work, the District shall pay to the Contractor the sum of the following:

- a. The amount of the Contract price allocable to the portion of the work properly performed by the Contractor as of the date of termination, less sums previously paid to the Contractor.
- b. Plus previously unpaid costs of any items delivered to the project site that were fabricated for subsequent incorporation into the work.
- c. Plus any proven losses with respect to materials and equipment directly resulting from such termination.
- d. Plus reasonable demobilization costs.
- e. Plus reasonable costs of preparing a statement of the aforesaid costs, expenses, and losses in connection with such termination.

The above payment shall be the sole and exclusive remedy to which the Contractor is entitled in the event of termination of the Contract by the District and/or the Contractor's right to proceed with the work pursuant to this section 5.32; and the Contractor will be entitled to no other compensation or damages and expressly waives same. The District shall have the right to subtract from the above payment such sums as may be deducted consistent with the terms of the Contract Documents.

RIGHTS OF DISTRICT UPON TERMINATION

In the event the right of the Contractor to proceed with the work, or any portion thereof, has been terminated because of the fault of the Contractor and the Contractor has been given five (5) days' notice to cure such fault and has not done so, the District may take over the work and prosecute the same to completion by contract or any other method the District deems expedient, and may take possession of and utilize in completing the work such materials, appliances, and equipment as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, it and its sureties shall be liable for all damages, including but not limited to, costs of managerial and administrative services, engineering, legal and other consultant fees, sustained or incurred by the District in enforcing the provisions of section 5.32 and in completing or causing to complete the Contract work.

Upon termination, the Contractor shall not be entitled to receive any further payment until the work is finished. If upon completion of the work the total cost to the District, including, but not limited to, engineering, legal and other consultant fees, costs of managerial and administrative services, construction costs and liquidated damages, shall be less than the amount which would have been paid if the work had been completed by the Contractor in accordance with the terms of the Contract, then the difference shall be paid to the Contractor in the same manner as the final payment under the Contract. If the total cost incurred by the District on account of termination of the Contractor and subsequent completion of the work by the District by whatever method the District may deem expedient shall exceed said amount which the Contractor would

otherwise have been paid, the Contractor and its sureties shall be liable to the District for the full amount of such excess expense.

The rights and remedies of the District provided in this section are in addition to any of the rights and remedies provided by law or under this Contract.

FAILURE TO COMPLETE THE WORK IN THE TIME AGREED UPON; LIQUIDATED DAMAGES

It is agreed by the parties to the Contract that time is of the essence; and that in case all the work is not completed before or upon the expiration of the time limit as set in the Contract and/or Progress Schedule as designated by the District (Generally the date of final completion), or as revised by any time extensions that may have been granted, damage will be sustained by the District; and that it may be impracticable to determine the actual amount of damage by reason of such delay; and it is, therefore, agreed that the Contractor shall pay to the District as damages the amount of \$[] liquidated damages amount] per day for each and every day's delay in finishing the work in excess of the number of days specified. The parties expressly agree that this liquidated damage clause is reasonable under the circumstances existing at the time the Contract was made. The District shall have the right to deduct the amount of liquidated damages from any money due or to become due the Contractor.

Notwithstanding the above, the parties expressly agree that the liquidated damages specified above do not include the District's legal, engineering, inspection, superintendence and other similar expenses. Accordingly, the District shall have the right to charge to the Contractor and to deduct from the final or progress payments for the work the actual cost to the District of legal, engineering, inspection, superintendence, loss of revenue due to water delivery interruptions, and other expenses, which are directly chargeable to the Contract and which accrue during the period of such delay, except that the cost of final inspection and preparation of the final estimate shall not be included in the charges.

Notwithstanding the provisions of section 5.34.1, the Contractor shall not be liable for liquidated damages or delays caused by the removal or relocation of utilities when such removal or relocation is the responsibility of the District or the owner of the utility under California Government Code section 4215.

CLEAN UP

During the progress of the work, the Contractor shall maintain the site and related structures and equipment in a clean, orderly condition and free from unsightly accumulation of rubbish. Upon completion of work and before the final estimate is submitted, the Contractor shall at its own cost and expense remove from the vicinity of the work all plants, buildings, rubbish, unused work materials, concrete forms, and temporary bridging and other like materials, belonging to it or used under its direction during the construction; and in the event of its failure to do so, the same may be removed by the District after ten (10) calendar days' notice to the Contractor, such removal to be at the expense of the Contractor. Where the construction has crossed yards or driveways, they shall be restored by the Contractor to the complete satisfaction of the Engineer, at the Contractor's expense.

The Contractor shall dispose of all testing or disinfection water without damage to property, and all in accordance with applicable regulations. All chlorinated water shall be dechlorinated prior to discharge.

COMPLIANCE WITH LAWS; PERMITS; TAXES

Contractor is an independent contractor and shall at its sole cost and expense do the following: comply with all laws, rules, ordinances and regulations of all federal, state and local agencies having jurisdiction over the work; procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the lawful prosecution of the work; pay all federal, state and local taxes, including manufacturers' taxes, sales taxes, use taxes, processing taxes, and payroll, wage, insurance, social security, and unemployment taxes on wages, salaries or any remuneration paid to Contractor's employees, whether levied under existing or subsequently enacted laws, rules or regulations; and pay all property tax assessments on materials or equipment used until acceptance by the District. If any discrepancy or inconsistency is discovered in the Plans or Specifications, or in this Contract in relation to any such law, rule, ordinance, regulation, order or decree, the Contractor shall forthwith report the same to the Engineer in writing. The Contractor shall also protect, defend, hold harmless and indemnify the District, the Engineer, and all of the District's officers, directors, agents, and employees against any claim or liability arising from or based upon the violation of any such law, rule, ordinance, regulation, order or decree, whether by the Contractor itself or by its employees. Particular attention is called to the following:

Contractor is responsible for the safety of its workers and Contractor shall comply with, and require its workers to comply with, all applicable federal and state worker and job site safety-related laws and regulations, including, but not limited to, applicable federal Department of Labor, Occupational Safety and Health Administration ("OSHA") regulations and California Department of Industrial Relations (including the Division of Occupational Safety and Health and Occupational Safety and Health Standards Board ("Cal/OSHA")) regulations and safety orders.

The Contractor, upon request, shall furnish evidence satisfactory to the District and Engineer that any or all of the foregoing obligations have been or are being fulfilled. The Contractor warrants to the District that it is licensed by all applicable federal, state and local governmental bodies to perform this Contract and will remain so licensed throughout the progress of the work, and that it has, and will have, throughout the progress of the work, the necessary experience, skill and financial resources to enable it to perform this Contract.

The Contractor shall comply in all respects with the requirements of AB 5 (Labor Code sections 2750.3 and 3351 and Unemployment Insurance Code sections 606.5 and 621), and is solely responsible for such compliance and the costs thereof. The Contractor shall indemnify, hold harmless and defend the Agency against any claims, demands or damages of any workers or entity arising out of Contractor's failure to comply in all respects with the requirements of AB 5.

PREVAILING WAGE PENALTIES; WAGE CLAIMS PROHIBITED

The Contractor shall forfeit as penalty to the District not more than the sum of two hundred dollars (\$200) and not less than forty dollars (\$40) for each calendar day or portion thereof for each worker (whether employed by the Contractor or subcontractor) paid less than the stipulated prevailing rates for any work done under the Contract in violation of the provisions of the California Labor Code and in particular, sections 1772 to 1780. The amount of this penalty shall be determined by the Labor Commissioner and shall be based on consideration of the contractor's mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, the previous record of the contractor in meeting its prevailing wage obligations, and a contractor's willful failure to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the contractor had knowledge of its obligations under Labor Code sections 1720, et seq. In addition to the aforementioned penalty, each worker shall be paid the difference between the prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which said worker was paid less than the prevailing wage.

The District will not recognize any claims for additional compensation because of the payment of the wages set forth in the Contract Documents. The possibility of wage increases is one of the elements to be considered by the Contractor in determining its Bid, and will not under any circumstances be considered as the basis of a claim against the District or the Engineer.

LABOR DISCRIMINATION

Attention is directed to California Labor Code section 1735 which is applicable to the work under this Contract and which reads as follows: "A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of section 12940 of the Government Code, as those bases are defined in sections 12926 and 12926.1 of the Government Code, except as otherwise provided in section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter."

EIGHT HOUR DAY LIMITATION; CERTIFIED PAYROLL REPORTS

In accordance with the provisions of the California Labor Code, and in particular, sections 1810 to 1815, eight hours labor shall constitute a day's work, and no worker, in the employ of the Contractor, or any subcontractor, doing or contracting to do any part of the work contemplated by this Contract, shall be required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of those provisions; provided that subject to Labor Code section 1815, a worker may perform work in excess of either eight (8) hours per day or forty (40) hours during any one week upon compensation for all hours worked in excess of eight (8) hours per day or forty (40) hours during any one week at not less than one and one half times the basic rate of pay. Except as just provided, the Contractor shall forfeit as a penalty to the District the sum of twenty-five dollars (\$25) for each worker employed in the performance of this Contract by it or by any subcontractor under it for each calendar day during which such worker is required or permitted to labor more than eight (8) hours

in any one calendar day and forty (40) hours in any one calendar week in violation of sections 1810 through 1815.

The Contractor shall comply in all respects with the provisions of Labor Code section 1776, whose provisions are incorporated herein by this reference. In accordance with section 1776, the Contractor and each subcontractor shall keep an accurate record showing the names, addresses, social security numbers, work classifications, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by it in connection with the work specified therein, which record shall be open at all reasonable hours at the principal office of the Contractor to the inspection of the District, State and Federal officers and agents. Certified copies of the payroll records shall be furnished or made available for inspection to others as provided in section 1776. These payroll records shall be certified and shall be on forms provided by the State Division of Labor Standards Enforcement, or shall contain the same information as the forms provided by the Division. The Contractor shall file a certified copy of the payroll records with the entity that requested the records within 10 days after receipt of a written request. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in a manner so as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor shall not be marked or obliterated. The Contractor shall inform the District of the location of the payroll records, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address. The Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this section. In the event that the Contractor fails to comply with the 10-day period, he or she shall, as a penalty to the District, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

EMPLOYMENT OF APPRENTICES

The Contractor's attention is directed to California Labor Code sections 1777.5, 1777.6 and 1777.7 pertaining to employment of indentured apprentices, which are hereby incorporated by reference into this Contract. As applicable, the Contractor or any subcontractor employed by it in the performance of the Contract work shall take such actions as necessary to comply with the provisions of sections 1777.5, 1777.6 and 1777.7.

WATER POLLUTION

The Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, and canals from pollution with fuels, oils, bitumens, calcium chloride, and other harmful materials and shall conduct and schedule its operations so as to avoid or minimize muddying and silting of said streams, lakes, reservoirs, and canals. Care shall be exercised to preserve vegetation beyond the limits of construction. The Contractor shall comply with California Fish and Game Code section 5650 and all other applicable statutes and regulations relating to the prevention and abatement of water pollution.

[Delete this section if the project is exempt from NPDES general permit for stormwater discharges from construction activities.] For projects that are subject to the NPDES general permit for stormwater discharges from construction activities, including the following provisions: State Water Resources Control Board (“SWRCB”) Order No. 2009-0009-DWQ (NPDES No. CAS000002), National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (the “NPDES Permit”) requires the District to implement a the Storm Water Pollution Prevention Plan for the Project (“SWPPP”). The Contractor will have day-to-day responsibility for implementing the SWPPP and for ensuring compliance with all of its requirements. This section and its subdivisions outline the responsibilities of the District and the Contractor to comply with the NPDES Permit and to implement the SWPPP, and allocate liability for violations of the permit and the SWPPP. The Contractor also is referred to the Specifications for a copy of the SWPPP for the work and any more specific requirements concerning its implementation.

The District will designate a Legally Responsible Person (“LRP”), who shall prepare and file all required documents with the SWRCB and the applicable regional water quality control board regarding the NPDES Permit and SWPPP, including the permit registration documents and any required annual or other reports. The Contractor and its subcontractors, suppliers, agents and affiliates will cooperate with and respond immediately to any inquiry or request for information from the District’s LRP, timely turn in all reports required by the SWPPP, and cooperate with the LRP in the preparation and filing of all relevant documents and reports related to NPDES Permit and SWPPP compliance.

The District will designate a Qualified SWPPP Developer (“QSD”), who will be employed by the District or the Engineer to develop a SWPPP for the work that complies with the requirements of the NPDES Permit. The District will provide the SWPPP to the Contractor by no later than the date the notice to proceed is issued. The Contractor shall review the SWPPP and certify that it has reviewed and will implement and comply with it while performing the work. Such certification will be completed and signed as part of the package the Contractor executes and returns to the District accepting the award of the Contract.

The District or the Engineer has a Qualified SWPPP Practitioner (“QSP”) on staff that is authorized to act on behalf of the District. At all times during the Contract period, the Contractor also will have at least one person assigned to the work who is a certified QSP who is familiar with the SWPPP for the work and the general requirements of the NPDES Permit. The District’s QSP will oversee the implementation of the SWPPP and be available to consult with the Contractor’s QSP on any issues that arise in regard to SWPPP implementation and compliance. The Contractor’s designated QSP will have day-to-day responsibility the Contractor’s implementation of the SWPPP and for ensuring compliance with all of its requirements by Contractor’s personnel, subcontractors, suppliers, agents and affiliates.

In performing the work, it shall be the Contractor’s responsibility to timely and completely implement and comply with all requirements of the SWPPP, including without limitation, control of all pollutants and their sources, implementation of all site and stabilization BMPs, and preparation of all information and documentation required by the District and the NPDES Permit to fully comply with all obligations under the SWPPP. To the extent necessary, the Contractor shall ensure that all subcontractors, suppliers, agents and affiliates

involved in any portion of the work affected by the SWPPP also comply with its provisions and requirements.

The Contractor will keep at least one copy of the SWPPP on the work site at all times and shall make it readily available for review and use by Contractor's personnel, subcontractors, suppliers, agents and affiliates. The Contractor also will make the work site copy of the SWPPP immediately available for inspection by the District, the Engineer and any state or local inspector that has jurisdiction over the work and/or the SWPPP.

To the extent permitted by law, the Contractor shall indemnify, defend (with counsel approved by District) and hold harmless the District, and its directors, officers, employees, volunteers, and agents from and against any and all actions, judgments, legal or administrative proceedings, arbitrations, claims, damages, liabilities, attorney's fees, fines, penalties, losses, costs and expenses regardless of nature or type, arising out of, pertaining to or in any way connected with the negligence, recklessness or willful misconduct of Contractor or its employees, agents, or subcontractors, suppliers or affiliates, or the agent, employee or subcontractor of any one of them, in the implementation of and compliance with the SWPPP, except where caused by the sole negligence or willful misconduct of the District or as otherwise limited by law. The provisions of this indemnification provision, including Contractor's liability for any civil or criminal fines and penalties that may be assessed after the completion of the work by a regional water quality control board or other regulatory body, shall survive the completion of the services under, or the termination of, this Agreement.

The Contractor's failure to implement the SWPPP, to comply with its requirements or to provide any form of information or assistance to the District as outlined in this section shall be deemed a material breach of the Contract Documents and may grounds for termination of the Contract for cause in accordance with section 5.32 of these General Conditions.

PATENTS

The Contractor shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated into the work, and agrees to indemnify, defend, protect and save harmless the District, the Engineer, and all of their officers, directors, employees, and other representatives, from all suits at law, or actions of every nature for, or on account of, the use of any patented materials, equipment, devices, or processes.

PUBLIC CONVENIENCE

This section defines the Contractor's responsibility with regard to convenience of the public and public traffic in connection with its operations.

The Contractor shall conduct its operations as to offer the least possible obstruction and inconvenience to the public; and it shall have under construction no greater length or amount of work than it can prosecute properly with due regard to the rights of the public.

Unless otherwise provided in the Contract Documents, all public traffic shall be permitted to pass through the work with as little inconvenience and delay as possible.

Spillage resulting from hauling operations along or across any publicly traveled way shall be removed immediately by the Contractor at its expense.

Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners.

Convenient access to driveways, houses and buildings along the line of the work shall be maintained and temporary approaches to crossings or intersecting highways shall be provided and kept in good condition. When the abutting property owner's access across the right of way line is to be eliminated, or to be replaced under the Contract by other access facilities, the existing access shall not be closed until the replacement access facilities are usable.

Water shall be supplied at Contractor's expense if ordered by the Engineer for the alleviation or prevention of dust nuisance as provided in the Contract Documents.

In order to expedite the passage of public traffic through or around the work, the Contractor shall install signs, lights, flares, barricades, and other facilities for the sole convenience and direction of public traffic. Also, the Contractor shall provide and station competent flagpersons whose sole duties shall consist of directing the movement of public traffic through or around the work. The cost of furnishing and installing such signs, lights, flares, barricades, and other facilities, and the cost of providing and stationing such flagpersons, all for the convenience and direction of public traffic, will be considered as included in the Contract price and no additional compensation will be allowed.

Flagpersons and guards, while assigned to traffic control, shall perform their duties and shall be provided with the necessary equipment in accordance with the current "Instructions to Flagmen" of the California Department of Transportation. The equipment shall be furnished and kept clean and in good repair by the Contractor at its expense.

UNDERGROUND UTILITIES

Prior to conducting any excavation, the Contractor shall contact the appropriate regional notification center as required by and shall otherwise comply with California Government Code section 4216, et seq. In accordance with Government Code section 4215, the Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating existing main or trunkline utility facilities not indicated in the Contract Plans and Specifications with reasonable accuracy, and for the equipment on the project necessarily idled during such work; provided that the Contractor shall first notify the Engineer before commencing work on locating, repairing damage to, removing or relocating such utilities.

SAFETY AND TRENCHING

The Contractor shall be solely and completely responsible for the conditions of the job site, including safety of all persons and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety procedures and practices shall conform to all applicable Federal, State, and local laws, ordinances, and codes, and to the rules and regulations established by OSHA and Cal/OSHA, and to other rules

of law applicable to the work. Any District obligations relating to safety of the work are separate from and do not alter the Contractor's primary responsibility for safety as provided in this Contract.

The Contractor shall have an Injury/Illness Prevention Program ("IIPP") in place to protect the safety of its employees and ensure that its subcontractors also have an IIPP or comply with Contractor's program. The Contractor's IIPP shall comply with and be at least as effective as the requirements of section 3203 of Title 8 of the California Code of Regulations. Upon request, the Contractor will submit a copy of its IIPP to the District.

The services of the Engineer in conducting construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's work methods, equipment, bracing or scaffolding or safety measures, in, on, or near the construction site, and shall not be construed as supervision of the actual construction nor make the Engineer or the District responsible for providing a safe place for the performance of work by the Contractor, subcontractors, or suppliers; or for access, visits, use work, travel or occupancy by any person.

All work and materials shall be in strict accordance with all applicable State, Federal and local laws, rules, regulations, and codes. The Contractor shall carefully instruct all personnel working in potentially hazardous work areas as to potential dangers and shall provide such necessary safety equipment and instruction as is necessary to prevent injury to personnel and damage to property. Special care shall be exercised relative to electrical work, work involving excavation and in pump sump work.

Nothing in this Contract is to be construed to permit work not conforming to governing law. When Contract Documents differ from governing law, the Contractor shall furnish and install the higher standards called for without extra charge. All equipment furnished shall be grounded and provided with guards and protection as required by applicable federal and state safety regulations and orders.

Shoring and Trench Safety Plan Attention is directed to California Civil Code section 832 relating to lateral and subjacent support, and the Contractor shall comply with this law.

In accordance with California Labor Code section 6705, if the total amount of the contract is in excess of \$25,000 and if the work involves the excavation of any trench or trenches five feet or more in depth, the Contractor shall submit to the District for acceptance, 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 such trench or trenches.

In accordance with California Labor Code section 6705, if the total amount of the contract is in excess of \$25,000 and if the work involves then excavation of any trench or trenches five feet or more in depth, the Contractor shall submit to the District for acceptance, 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 such trench or trenches.

The District or the Engineer or their consultants may have made investigations of subsurface conditions in areas where the work is to be performed. If so, these investigations are identified in the Contract Documents and the records of such investigations are available for inspection at the office of the Engineer. The detailed plan showing the design of shoring, etc., which the Contractor is required to submit to the District for acceptance of excavation will be not accepted by the District if the plan is based on subsurface conditions which are more favorable than those revealed by the investigations made by the District or the Engineer or their consultants; nor will the plan be accepted if it is based on soils-related criteria which is less restrictive than the criteria set forth in the report on the aforesaid investigations of subsurface conditions.

The detailed plan showing the design of shoring, etc., shall include surcharge loads for nearby embankments and structures, for spoil banks, and for construction equipment and other construction loadings. The plan shall indicate for all trench conditions the minimum horizontal distances from the side of the trench at its top to the near side of the surcharge loads.

Nothing contained in this section shall be construed as relieving the Contractor of the full responsibility for providing shoring, bracing, sloping, or other provisions which are adequate for worker protection. Review of the plan by the District and/or Engineer is only for general conformance to OSHA and Cal/OSHA requirements. Their failure to note exception(s) to the submittal does not relieve Contractor of any responsibility or liability for the plan. Contractor remains solely and completely responsible for all trench safety and for the means, methods, procedures, and materials therefor.

In accordance with California Public Contract Code section 7104, in the event that the work involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the District in writing, of any:

- a. 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;
- b. Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids; or,
- c. 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.

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

that a dispute arises between the District and the Contractor about 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. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

PROTECTION OF PERSON AND PROPERTY

The Contractor shall take whatever precautions are necessary to prevent damage to all existing improvements, including above ground and underground utilities, trees, shrubbery that is not specifically shown to be removed, fences, signs, mailboxes, survey markers and monuments, buildings, structures, the District's property, adjacent property, and any other improvements or facilities within or adjacent to the work. If such improvements or property are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored, at the Contractor's expense, to a condition at least as good as the condition they were in prior to the start of the Contractor's operations.

The Contractor shall adopt all practical means to minimize interference to traffic and public inconvenience, discomfort or damage. The Contractor shall protect against injury to any pipes, conduits or other structures crossing the trenching or encountered in the work and shall be responsible for any injury done to such pipes or structures, or damage to property resulting therefrom. The Contractor shall support or replace any such structures without delay and without any additional compensation to the entire satisfaction of the Engineer. All obstructions to traffic shall be guarded by barriers illuminated at night. The Contractor shall be responsible for all damage to persons and property directly or indirectly caused by its operations and, under all circumstances, it must comply with the laws and regulations of the County and the State of California relative to safety of persons and property and the interruption of traffic and the convenience of the public within the respective jurisdictions.

The Contractor is cautioned that it must replace all improvements in rights of way and within the public streets to a condition equal to what existed prior to its entry onto the job.

Type and time of construction required at any road subject to interference by Contract work will be determined by those authorities responsible for maintenance of said road. It shall be the responsibility of the Contractor to determine the nature and extent of all such requirements, including provision of temporary detours as required; however, any construction right of way obtained by the District at affected roadways will be adequate for provision of all required detours. As required at any road crossing, the Contractor shall provide all necessary flagpersons, guardrails, barricades, signals, warning signs and lighting to provide for the safety of existing roads and detours. Immediately after the need for temporary detours ceases, or when directed, the Contractor shall remove such detours and perform all necessary cleanup work, including replacement of fences, and removal of pavement. Included shall be all necessary replacement of existing roadway appurtenances, grading work, soil stabilization and dust control

measures, as required and directed. The cost of all work specified under this section shall be borne by the Contractor.

The Contractor shall examine all bridges, culverts, and other structures over which it will move its materials and equipment, and before using them, it shall properly strengthen such structures as necessary for their safe operation and use. The Contractor shall be responsible for any and all injury or damage to such structures caused by reason of its operations.

HAZARDOUS MATERIALS; HAZARD COMMUNICATION

Proposition 65 and the California Health and Safety Code requires businesses to provide warnings prior to exposing individuals to materials listed by the Governor as chemicals “known to cause cancer or reproductive toxicity.” The District may use chemicals on the Governor’s list at many of its facilities. In addition, many of these chemicals are present at non-District-owned facilities and locations. Accordingly, in performing the work or services contemplated under this Contract, Contractor, its employees, agents, and subcontractors may be exposed to chemicals on the Governor’s list. Except as provided in section 5.47.2, Contractor is responsible for notifying its employees, agents, and subcontractors that work performed hereunder may result in exposures to chemicals on the Governor’s list.

Before starting work, the Contractor shall have a written Hazard Communication Program (“HCP”) in place that complies with the requirements of section 5194 of Title 8 of the California Code of Regulations, including the requirements of 8 C.C.R. section 5194(e). The information in the Contractor’s HCP must include the methods by which the Contractor will communicate to the District which hazardous substances it will use and store on the job site(s) to which the District’s and Contractor’s employees and subcontractors may be exposed. The Contractor will submit its HCP to the District at the same time as submittal of its initial project schedules as provided in section 5.29 of these General Conditions. The Contractor also will provide copies of safety data sheets (“SDS”) for all hazardous substances brought onto and used or stored on the job site(s). The Contractor also will ensure that all hazardous substances are marked with Proposition 65 and any other visible warning labels as required by law. Whenever possible, the Contract shall provide SDS for all hazardous substances to the District prior to bringing a hazardous substance onto a job site, but will provide all SDS by no later than the time the hazardous substance is physically brought onto the site. The District will communicate the Contractor’s HCP and SDS information to the District’s employees who work on or will enter the job site(s). The District will provide the Contractor with a copy of the District’s HCP and SDS information specific to District operations on the job site(s). The Contractor shall, in turn, convey this information to its employees and subcontractors. During the course of the work, the Contractor will keep copies of both its and the District’s HCP, SDS and other relevant information at Contractor’s office on the job site(s).

If the Work includes the construction, alteration, improvement, or maintenance of electric power generation, control, transformation, transmission or distribution lines or equipment within the meaning of Code of Federal Regulations title 29, section 1910.269 or 1926.950, then the Contractor will implement and comply with the requirements of the “contract employer” as described and set forth in sections 1910.269 and 1926.950, including, but not limited to, the obligations to properly train the Contractor workers on safety-related work practices and

procedures, exchange information with the District concerning unique hazardous conditions presented by the Work, instruct the Contractor workers about the hazardous conditions relevant to the Work, and coordinate with the District on safety-related work rules and procedures. The Contractor also shall be responsible for transmitting safety-related information under sections 1910.269 and 1926.950 with any subcontractors retained by it to perform electrical-related Work under the Contract.

RESPONSIBILITY FOR REPAIR OF FACILITIES

All public or private facilities, including but not limited to canals, structures, telephone cables, roadways, curbs, gutters, parking lots, private drives, levees and embankments for creeks, ponds and reservoirs disturbed during construction of the work shall be repaired and/or replaced by the Contractor to match facilities existing prior to construction. In addition, the Contractor shall be responsible for any settlement damage to such facilities or adjoining areas for a period of one year after acceptance of such required facilities.

DISTRICT'S REPAIR

In the event the Contractor refuses or neglects to make good any loss or damage for which it is responsible under this Contract, the District may itself, or by the employment of others, make good any such loss or damage, and the cost and expense of doing so, including any reasonable engineering, legal and other consultant fees, and any costs of administrative and managerial services, shall be charged to the Contractor. Such costs and expenses may be deducted by the District from claims for payment made by the Contractor for work completed or remaining to be completed.

CONTRACTOR'S LICENSE NOTICE

STATEMENT REQUIRED BY CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 7030: "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 YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 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."

PUBLIC WORKS CONTRACTOR REGISTRATION

In accordance with California Labor Code Section 1771.1(a), a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this Division 2, Part 7, Chapter 1 of the Labor Code (commencing with Section 1720), unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the

Labor Code. In accordance with Labor Code section 1771.4(a)(1), this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

INSURANCE

The Contractor shall procure and maintain for the duration of the Contract, and for five years thereafter, the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

General Liability - Commercial General Liability (CGL) - Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 00 01) including products and completed operations, property damage, bodily injury, personal and advertising injury with limit of at least five million dollars (\$5,000,000) per occurrence or the full per occurrence limits of the policies available, whichever is greater. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (coverage as broad as the ISO CG 25 03, or ISO CG 25 04 endorsement provided to District) or the general aggregate limit shall be twice the required occurrence limit.

District, its directors, officers, employees, and authorized volunteers are to be given insured status (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 10 01 and CG 20 37 10 01, with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance.

Automobile Liability - Insurance Services Office (ISO) Business Auto Coverage (Form CA 00 01), covering Symbol 1 (any auto) with limit of one million dollars (\$1,000,000) for bodily injury and property damage each accident.

Workers' Compensation Insurance - The Contractor shall provide workers' compensation coverage as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

Builder's Risk – (Course of Construction) - insurance utilizing an "All Risk" (Special Perils) coverage form with limits equal to the completed value of the project and no coinsurance penalty provision. Notwithstanding the policy duration required in section 5.52.1, the insurance coverage required by this section 5.52.1.4 shall be maintained at least until Final Completion occurs and the Project is accepted by District as provided in section 5.61.

The above minimum insurance coverage limits can be met through provision of umbrella or excess policy insurance coverage consistent with the provisions of this section 5.52.

Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees and volunteers; or the Contractor shall procure a bond or other security guaranteeing payment of losses

and related investigations, claim administration and defense fees, costs and expenses. All policies that include a self-insured retention shall include a provision that payments of defense costs and damages (for bodily injury, property damage, personal injury or any other coverages included in the policy) by any party, including additional insureds and insurers, shall satisfy the self-insured retention limits.

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

Waiver of Subrogation (also known as Transfer of Rights of Recovery Against Others to Us): The Contractor hereby agrees to waive rights of subrogation to obtain endorsement necessary to affect this waiver of subrogation in favor of the District, its directors, officers, employees, and authorized volunteers, for losses paid under the terms of this coverage which arise from work performed by the Named Insured for the District; this provision applies regardless of whether or not the District has received a waiver of subrogation from the insurer.

The District, its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor, products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the District, its officers, officials, employees, agents or volunteers. The additional insured coverage or endorsement shall comply with California Insurance Code section 11580.04.

For any claims related to this project, the Contractor's insurance general and automobile liability coverage shall be primary insurance as respects the District, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the District, its officers, officials, employees, agents or volunteers.

The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits except after 30 days' prior written notice by U.S. mail has been given to the District, or after 10 days' written notice in the case of cancellation for non-payment of premium.

Course of Construction Coverage Requirements. Course of construction policies shall contain, or be endorsed to contain, the following provisions: (a) District shall be named as loss payee; and (b) The insurer shall waive all rights of subrogation against the District.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII or equivalent and that are authorized to do business and in good standing in California, unless otherwise approved by District. In the case of Workers' Compensation and Employer's Liability insurance, coverage provided by the California State Compensation Insurance Fund is acceptable.

Verification of Coverage. Before commencing work, Contractor shall provide to District the following proof of insurance: (a) certificate(s) of insurance on ACORD Form 25-S (or insurer's equivalent) evidencing the required insurance coverages; and (b) endorsement(s) on ISO Form CG 20 10 (or insurer's equivalent), signed by a person authorized to bind coverage on behalf of the insurer(s) and certifying the additional insured coverages, or equivalent additional insured blanket endorsement. The District reserves the right to require complete copies of all required insurance policies and/or endorsements affecting required insurance coverage at any time.

Subcontractors. The Contractor shall include all actions and activities of its subcontractors as insureds under its policies, or shall require each subcontractor to provide insurance coverage consistent with the foregoing and to furnish separate endorsements or certificates to the District. All coverages for subcontractors shall be subject to all of the requirements stated in this section.

Obligation to Maintain Coverage. Contractor shall maintain all required insurance coverages for the period provided in this section 5.52. If any of the required coverages expire during the coverage period, Contractor shall obtain renewal or replacement coverages and deliver certificates for the renewed or replacement coverages and any required endorsements to the District at least 10 days before the expiration date of the existing coverage.

Survival of Guarantee. Any products/completed operations insurance coverage shall be maintained after completion of the project for the full guarantee period.

The requirements as to the types, limits, and the District's approval of insurance coverage to be maintained by the Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under the Contract.

In addition to any other remedy the District may have, if the Contractor or any of the subcontractors fails to maintain the insurance coverage as required in this section 5.52, the District may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as required herein, and the District may deduct the cost of such insurance from any amounts due or which may become due the Contractor under this Contract.

INDEMNITY AND DEFENSE OBLIGATION

To the fullest extent permitted by law, Contractor shall protect, defend, indemnify and hold harmless the District and Engineer, and their respective officers, directors, agents, employees, volunteers, representatives, boards, and consultants from and against all penalties and fines imposed by law and all loss, claim, cause of action, demand, suit, judgment, cost, damage, expense, and liability (including but not limited to court or arbitration costs and

reasonable attorneys' and expert witness fees) resulting from injury to or death of persons, including without limitation employees of the District, Engineer and Contractor, or damage to or loss of property, caused by, arising out of or in any way connected with the Contractor's or its subcontractors' or suppliers' performance, operations or activities under this Contract, except to the extent the sole negligence, active negligence or willful misconduct of an indemnified party proximately causes the loss, claim, demand, cost, suit, judgment, penalty, fine, cause of action, damage, expense, or liability.

Contractor's duty to defend is a separate and distinct obligation from Contractor's duty to indemnify. Upon the request of an indemnified party hereunder, Contractor shall defend any suit asserting a claim covered by this indemnity and shall pay any costs and expenses that may be incurred by an indemnified party in enforcing this indemnity. The Contractor shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the District and/or Engineer, and their respective officers, directors, agents, employees, volunteers, representatives, boards, and consultants, immediately upon tender to Contractor of the claim in any form or at any stage of an action or proceeding, whether or not liability has been established. The obligation to defend extends through final judgment, including exhaustion of any appeals. In all cases, the indemnified party shall have the right to approve counsel selected by Contractor in the defense of any legal action or with respect to any claim, which approval shall not be unreasonably withheld. In addition, the indemnified party shall have the right to participate in and be represented by counsel of its own choice and at its own expense in any legal action or with respect to any claim. The defense obligation includes an obligation to provide independent defense counsel if the Contractor asserts that liability is caused in whole or in part by the negligence or willful misconduct of an indemnified party.

The District may withhold from payment due Contractor hereunder such amounts as, in the District's opinion, are sufficient to provide security against all loss, damage, expense, penalty, fine, cost, claim, demand, suit, cause of action, judgment, or liability covered by the foregoing indemnity provision.

In any and all claims against the District or the Engineer and his consultants, and each of their officers, directors, employees and agents by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable under Workers' Compensation statutes, disability benefit statutes or other employee benefit statutes.

Neither termination of this Contract, completion of the acts to be performed under this Contract, nor the Engineer's approval or the District's acceptance of the work shall release Contractor from its obligations to indemnify and defend the District, and the Engineer, and their respective officers, directors, agents, employees, volunteers, representatives, boards, and consultants, as provided in sections 5.53.1 and 5.53.2, so long as the event upon which the claim is predicated shall have occurred prior to the effective date of any such termination or completion and arose out of or was in any way connected with performance of operations under this Contract

by Contractor, its employees, agents, suppliers or subcontractors, or the employee, agent or subcontractor of any one of them,.

Submission of insurance certificates or submission of other proof of compliance with the insurance requirements in this Contract does not relieve Contractor from liability under this indemnification and hold harmless clause. The obligations of this indemnity section shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

In accordance with California Public Contract Code section 9201(b), if District receives any written third-party claim relating to work performed under this Contract, then District agrees to promptly notify Contractor about the third-party claim.

PROTECTION OF WORK

The Contractor shall be responsible for the care of all work until its completion and final acceptance; and it shall, at its own expense, replace damaged or lost material and repair damaged parts of the work or the same may be done at its expense by the District and the Contractor and its sureties shall be liable therefor. The Contractor shall make its own provisions for properly storing and protecting all material and equipment against theft, injury, or damage from any and all causes. Damaged material and equipment shall not be used in the work. The Contractor shall take all risks from floods and casualties except as provided by law, and shall make no charge for the restoration of such portions of the work as may be destroyed or damaged by flood or other casualties or because of danger from flood or other casualties or for delays from such causes. The Contractor may, however, be allowed a reasonable extension of time on account of such delays, subject to the conditions hereinbefore specified.

The Contractor shall effectively secure and protect adjacent property and structures, livestock, crops and other vegetation. If applicable, the Contractor shall open fences on or crossing the right of way and install temporary gates of sound construction thereon so as to prevent the escape of livestock. Adjacent fence posts shall be adequately braced to prevent the sagging or slackening of the wire. Before such fences are opened, the Contractor shall notify the owner or tenant of the property and, where practicable, the opening of the fence shall be in accordance with the wishes of said owner or tenant. The Contractor shall be responsible that no loss or inconvenience shall accrue to the owner or tenant by virtue of its fences having been opened or the gate not having been either shut or attended at all times. Where special types of fences are encountered, the Contractor shall install temporary gates made of similar materials and of suitable quality to serve the purposes of the original fences. In all cases when the Contractor removes fences to obtain work room, it shall provide and install temporary fencing as required, and on completion of construction shall restore the original fence to the satisfaction of the Engineer. All costs of providing, maintaining and restoring gates and fencing shall be borne by the Contractor. The Contractor shall provide and maintain all passageways, guard fences, lights and other facilities for protection required by public authority or local conditions.

The Contractor shall use extreme care during construction to prevent damage from dust to crops and adjacent property. The Contractor, at its own expense, shall provide

adequate dust control for the right of way and take other preventative measures as directed by the Engineer.

The Contractor shall be responsible for all damage to any property resulting from trespass by the Contractor or its employees in the course of their employment, or subcontractors or their employees in the course of their employment, or anyone directly or indirectly employed by any of them, where such trespass was committed with or without the consent or knowledge of the Contractor.

The Contractor shall see that the worksite is kept drained and free of all ground water and any other water which may impede the progress or execution of the Contract work.

The Contractor shall be responsible for any damage caused by drainage or water runoff from construction areas and from construction plant areas.

In an emergency affecting the safety of life, or of the work, or of adjoining property, the Contractor, without special instruction or authorization from the Engineer, is hereby permitted to act at its discretion to prevent such threatened loss or injury, and it shall so act without appeal if so instructed or authorized. Should the Engineer deem an emergency condition to exist, the Contractor shall immediately do those things and take those steps ordered by the Engineer. The decision of the Engineer in this respect shall be final and conclusive. Any claims for compensation made by the Contractor on account of emergency work shall be determined as specified under section 5.3.

Except as provided by California Government Code section 4215, the Contractor shall be responsible for the removal, relocation and protection of all public and private utilities, including irrigation facilities in the nature of utilities, located on the site of the construction project if and to the extent that the same are identified in the Contract Documents; and the Contractor shall not be entitled to any extension of time or claim for damages for extra compensation in connection therewith. If and to the extent that such utilities or facilities are not identified in the Contract Documents, as between the Contractor and the District, the District will be responsible for the cost of their removal, relocation or protection, as the case may be, but the Contractor shall perform any such work in conformance with applicable provisions of section 5.3, if so directed by the Engineer and in such situation the Contractor shall not be responsible for delay in completion of the project caused by the failure of the District or the owner of the utility to provide for such removal or relocation. If the Contractor, while performing the Contract, discovers utility or irrigation facilities not identified by the District in the Contract Documents, it shall immediately notify the Engineer in writing.

When the work to be performed under the Contract crosses or otherwise interferes with existing streams, watercourses, canals, farm ditches, pipelines, drainage channels, or water supplies, the Contractor shall provide for such watercourse or pipelines and shall perform such construction during the progress of the work so that no damage will result to either public or private interests; and the Contractor shall be liable for all damage that may result from failure to so provide during the progress of the work.

ACCIDENTS

The Contractor shall provide and maintain, in accordance with California Labor Code section 6708 and Cal/OSHA requirements, adequate emergency first aid treatment for its employees and anyone else who may be injured in connection with the work.

The Contractor shall promptly report in writing to the Engineer all accidents of any nature arising out of, or in connection with, the performance of the work, on or adjacent to the site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage are caused, the accident shall be reported immediately by telephone or messenger to the District and the Engineer.

If any claim is made by anyone against the Contractor or any subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the Engineer, giving full details of the claim.

NO PERSONAL LIABILITY

Neither the District, the Engineer, nor any of their officers, directors, agents, or employees shall be personally responsible for any liability arising under the Contract, except such obligations as are specifically set forth herein.

MEASUREMENT OF QUANTITIES

Where the Contract provides for payment on a lump sum price basis, no measurement of quantity will be made. Where the Contract provides for payment on a unit price basis, the quantities of work performed will be computed by the Engineer on the basis of measurements taken by the Engineer, and these measurements shall be final and conclusive. All quantities of work computed under the Contract shall be based upon measurements by the Engineer according to United States Measurements and Weights. Methods of measurement are specified herein and in the Specifications.

SCOPE OF PAYMENT

The Contractor shall accept the compensation provided in the Contract as full payment for furnishing all labor, materials, tools, equipment, and incidentals necessary to the completed work and for performing all work contemplated and embraced under the Contract; also for loss or damage arising from the nature of the work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the work until the acceptance by the District and for all risks of every description connected with the prosecution of the work; also for all expenses incurred in consequence of the suspension or discontinuance of the work as provided in the Contract; and for completing the work according to the Specifications and Plans. Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or material.

No compensation will be made in any case for loss of anticipated profits. Increased or decreased work involving supplemental agreements will be paid for as provided in such agreements.

PROGRESS ESTIMATE

For each calendar month of Contract work, the Engineer will prepare a progress estimate of all work performed under the Contract. Within the first ten (10) days of each succeeding calendar month, the Engineer will prepare in writing and certify to the District, an estimate which in his opinion is a fair approximation of the value of all work done under the Contract, including any amounts due the Contractor for extra work and change orders. In arriving at the value of the work done, the Engineer will give consideration to the value of labor and materials which have been incorporated into the permanent work by the Contractor during the preceding month. Consideration will not be given to preparatory work done or for materials or equipment on hand. In order to assist the Engineer, the Contractor shall furnish the Engineer with copies of invoices for all such items delivered to the job site and incorporated into the work.

PROGRESS PAYMENTS

Unless otherwise provided for at a different rate in the Invitation to Bid and the Contract, the District will pay the Contractor ninety-five (95%) percent of the amount of each properly submitted and undisputed progress payment request. Five (5%) percent, or any higher rate specified in the Invitation to Bid and the Contract, of the amount of each payment request shall be retained by the District until final completion and acceptance of all work under the Contract; provided, however, that if the Engineer, at any time after fifty (50%) percent of the work has been completed, finds that satisfactory progress is being made, the District may, in its sole discretion, pay any or all of the remaining progress payments in full or at a lower retention. In no case shall the District make a progress payment to the Contractor that exceeds one hundred percent (100%) of the value of the work actually completed to the date of the payment request.

The Contractor may invoice the District for no more than seventy-five (75%) percent of the cost of materials and equipment stored onsite, as long as the material or equipment has been inspected and approved by the Engineer or the District's representative, the quantity of material or equipment can be determined to the District's satisfaction after Contractor delivery of a paid invoice for such materials or equipment, and the materials or equipment are properly stored and protected in accordance with the manufacturer's recommendations. The Contractor retains liability for any damage or degradation of the quality of stored materials and equipment until after they are incorporated into the work and the work is approved by the District in accordance with the applicable requirements of the Contract Documents.

In accordance with California Public Contract Code section 20104.50, a written payment request from the Contractor shall be reviewed by the Engineer as soon as practicable in order to determine whether it is proper. If it is determined not to be a proper payment request suitable for payment, then the Engineer shall return it to the Contractor with a written explanation of the deficiencies as soon as practicable, but not later than 7 days after receipt of the payment request. If the payment request is determined to be properly submitted and is undisputed, the Engineer will certify the payment as provided above and the District shall make the payment to the Contractor within 30 days after receipt of the payment request. If a properly submitted and undisputed payment request is not paid within this 30-day period, then the District shall pay interest on the overdue amount to the Contractor at the legal rate set forth at California Code of Civil Procedure section 685.010. This section shall not apply if District funds are not available for

payment of the payment request or if payment is delayed due to an audit inquiry by the financial officer of the District.

The Contractor may, in accordance with California Public Contract Code section 22300, substitute securities for any monies which the District may withhold to insure performance under the Contract. Alternatively, on written request of the Contractor and at its expense, the District shall make payments of the retention earnings directly to an escrow agent pursuant to an escrow agreement entered into consistent with the terms of Public Contract Code section 22300.

When, in the judgment of the Engineer, the work is not proceeding in accordance with the provisions of the Contract, or when in his judgment the total amount of the work done since the last estimate amounts to less than \$1,000, no pay estimate will be prepared and no progress payment will be made.

No progress estimate or payment shall be considered to be an approval or acceptance of any work, materials or equipment. Estimated amounts and values of work done and materials and equipment incorporated into the work will be conformed with actual amounts and values as they become available in subsequent progress estimates, progress payments and the final estimate and payment. All estimates and payments will be subject to correction in subsequent progress estimates and payments and the final estimate and payment.

It is mutually agreed between the parties to the Contract that no payments made under the Contract, including progress payments and the final payment, shall be evidence of the performance of the Contract, either wholly or in part, and no payment shall be construed to be an acceptance of any defective or incomplete work or improper materials.

District reserves the right to make payments jointly to the order of the Contractor and to any of its subcontractors or suppliers that might have a right to file a stop notice with the District. The District shall have no obligation to pay or to ensure the payment of money to a subcontractor or supplier, except as may otherwise be required by law.

Each progress payment made to the Contractor in accordance with the Engineer's determination of progress payment requests is contingent upon the Contractor furnishing the District with a signed written waiver and release of all claims against the District arising out of or in any way connected to the Contract. Disputed Contract claims must be specifically stated and excluded by the Contractor from the operation of the waiver and release. The waiver and release shall be substantially in the form provided in Civil Code sections 8132 (Exhibit A) or 8134 (Exhibit B). The Contractor may only use the conditional waiver and release if the District does not pay all or a portion of a progress payment estimate submitted by the Contractor and the Contractor disputes the District's determination.

In the event that the Contractor fails or refuses to furnish the District with a signed written waiver and release of all claims against the District arising out of or in any way connected to the Contract, Contractor's acceptance of each progress payment shall be Contractor's release of all claims against the District in relation to all work paid to date to the fullest extent permitted by law.

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT (EXHIBIT A)

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: _____
Name of Customer: _____
Job Location: _____
Owner: _____
Through Date: _____

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____
Amount of Check: \$ _____
Check Payable to: _____

Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:

Date(s) of waiver and release: _____
Amount(s) of unpaid progress payment(s): \$ _____

- (4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____
Claimant's Title: _____
Date of Signature: _____

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT (EXHIBIT B)

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: _____
Name of Customer: _____
Job Location: _____
Owner: _____
Through Date: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment:

\$ _____.

Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____
Claimant's Title: _____
Date of Signature: _____

COMPLETION AND FINAL ACCEPTANCE

The following definitions govern in interpreting this article and wherever such terms may appear in the Contract Documents:

“Final Completion” means the time when the work has been fully completed in accordance with the Contract Documents and is ready for acceptance and final payment by the District.

“Final Inspection” means the inspection conducted by the District after to verify that the work has reached Final Completion.

“The Final Punch List” is the listing of items that, in the Engineer’s opinion, remain uncompleted after Substantial Completion but that must be completed by the Contractor prior to Final Completion.

“Semi-Final Inspection” means that inspection conducted by the Engineer to determine if the work is Substantially Complete.

“Substantial Completion” means the work has progressed to the point that: (1) the work is ready for beneficial use and occupancy by the District for the intended purpose, (2) all fire and life safety work has been completed, inspected and accepted, (3) all mechanical and process systems and equipment are complete and have been put in automatic operation, (4) the total value of uncompleted work is less than one-half of one percent of the Contract Price and any approved cost extensions and (5) completing the work will not significantly interfere with the District’s convenience, or use or cost of operating the work.

When specifically provided for in the Contract Documents or when agreed to in writing by the District and the Contractor, the District may begin using a portion of the work even though it is not Substantially Complete. In such a case, the Contractor, the District and the Engineer shall first agree on and document responsibilities for security, operation, safety, maintenance, utilities, insurance, warranties, and guarantees for that portion of the work being used by the District. The District, the Contractor and the Engineer shall inspect such portion of the work and shall prepare a list of work to be completed or corrected before final acceptance. The District’s use of any portion of the work shall not constitute final acceptance of that portion of the work prior to Final Completion and acceptance of the work as a whole. The District shall allow the Contractor reasonable access to complete or correct work in areas being used by the District. Partial beneficial occupancy shall not relieve the Contractor of Liquidated Damages or waive any of the District’s rights under the Contract unless the Contract Documents expressly provide for and identify such portion of the work to be considered Substantially Complete before the remaining portions of the work or waiver of specific District rights.

When the Contractor considers the work nearly complete, the Contractor shall review the Contract Documents, inspect the work and prepare a list of deficiencies (Punch List). When the Punch List is prepared, the Contractor will deliver copies to the Engineer and the District. The Contractor shall complete or correct the items on the Punch List until, in the Contractor’s opinion, the work is Substantially Complete and ready for occupancy and use by the District. The Contractor shall then deliver the completed Punch List to the Engineer and notify the

Engineer in writing that the Contractor believes the work is Substantially Complete and ready for Semi-Final Inspection.

After the Contractor notifies the Engineer in writing that it believes the work is substantially complete, the Engineer will conduct the Semi-Final Inspection and may add additional items to the Contractor's Punch List. As a result of this inspection, the Engineer may determine that: (1) the work is not sufficiently complete to warrant a Semi-Final Inspection, additions to the Contractor's Punch List, or the preparation of a Final Punch List; (2) the work is sufficiently complete for the Engineer to prepare a Final Punch List but certain incomplete or Defective work prohibits use of the work for its intended purpose and therefore, the work is not Substantially Complete; or (3) that the work is Substantially Complete and usable for its intended purpose and the Engineer can prepare a Final Punch List. In preceding cases (1) and (2), the Contractor shall continue the work and call for a second Semi-Final Inspection when it believes the work is ready. If the Contractor does not achieve Substantial Completion on the second attempt, it shall reimburse the District the cost of the Engineer's services for additional inspections. In case (3), the Engineer will prepare a Final Punch List and a notice of Substantial Completion, which shall state the time agreed to by the District and the Contractor, not to exceed 30 days, in which the Contractor shall complete all remaining Punch List items and ready the work for Final Inspection. The Engineer shall attach a copy of the Final Punch List to the notice of Substantial Completion. Time to complete punch list items provided in this section 5.61.4 is for the convenience of the District and is intended as a deadline; and therefore, nothing in this section shall extend the time of completion for the fixed in the Contract Documents or excuse the failure of the Contractor to timely deliver the work as complete in accordance with the Contract Documents.

When the Contractor has completed or corrected all items on the Engineer's Final Punch List and has made all required final submittals, the Contractor shall give the Engineer written notice that the work is ready for Final Inspection and acceptance and upon receipt of a final Application for Payment, the Engineer shall make a Final Inspection. If the Engineer finds the work is not fully complete, it shall notify the Contractor of items still requiring completion or correction. The Contractor shall immediately correct these deficiencies and call for a re-inspection. When, on the basis of its knowledge of the work, observations and inspections, the Engineer finds that the work is acceptable and fully complete in accordance with the Contract Documents, and when all final submittals have been made, the Engineer will recommend that the District issue and file a Notice of Completion designating Final Completion of the work, make Final Payment and accept the work in accordance with the terms and conditions of the Contract Documents.

The Engineer's failure to include an item on the Final Punch List, to make the Semi-Final or the Final Inspection, or to recommend final acceptance shall not alter the Contractor's responsibility to complete all work in accordance with the Contract Documents. If any lien or stop notice remains unsatisfied, the Contractor shall immediately take all steps necessary to remove any such lien or stop notice before Final Payment is made.

The making of Final Payment shall constitute a waiver of claims by the Contractor except those arising from:

Liens, claims, security interests or encumbrances arising out of the Contract and unsettled;

Failure of the work to comply with the requirements of the Contract Documents; or

Terms of the one-year guarantee period and special warranties required by the Contract Documents.

Any of the Contractor's continuing obligations under the Contract Documents.

FINAL PAYMENT

Within 10 days after the date of completion and Contractor's delivery to the District of a complete release of all liens arising out of this Contract, or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory of the District to defend and indemnify the District against such liens, the District shall accept the work and file in the office of the County Recorder, a Notice of Completion of the work herein agreed to be done by the Contractor. On the expiration of 40 days after the recordation of such Notice of Completion and there being no liens or stop notices filed, the difference between said final estimate and all payments theretofore made to the Contractor shall be due and payable to the Contractor, subject to any requirements concerning the furnishing of a maintenance bond, and excepting only such sum or sums as may be withheld or deducted in accordance with the provisions of this Contract or as required by law. All prior certifications upon which partial payments may have been made, being merely estimates, shall be subject to correction in the final certificate. In accordance with California Public Contract Code section 7107(c), in the event of a dispute between the District and the Contractor, the District may withhold from the final payment an amount not to exceed 150% of the disputed amount. If any liens are filed or exist after Final Payment is made, the Contractor shall refund to the District all money that the District may be compelled to pay in discharging such liens, including all costs and reasonable attorney's fees.

FINAL RELEASE

Final payment to the Contractor in accordance with the approved final estimate is contingent upon the Contractor furnishing the District with a signed written waiver and release of all claims against the District arising out of or in any way connected to the Contract. Disputed Contract claims in stated amounts may be specifically excluded by the Contractor from the operation of the waiver and release. The waiver and release shall be substantially in the form provided in Civil Code sections 8138 (Exhibit A) or 8136 (Exhibit B). The Contractor may only use the conditional waiver and release form if the District does not pay all or a portion of the final payment estimate submitted by the Contractor and the Contractor disputes the District's determination on such estimate. In the event the Contractor fails to furnish the District with a signed written waiver and release of all claims against the District arising out of or in any way connected to the Contract, Contractor's acceptance of final payment is Contractor's release of all claims against the District to the fullest extent permitted by law.

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT (EXHIBIT A)

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: _____
Name of Customer: _____
Job Location: _____
Owner: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

Exceptions

This document does not affect any of the following:
Disputed claims for extras in the amount of: \$ _____

Signature

Claimant's Signature: _____
Claimant's Title: _____
Date of Signature: _____

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT (EXHIBIT B)

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____

Amount of Check: \$ _____

Check Payable to: _____

Exceptions

This document does not affect any of the following:

Disputed claims for extras in the amount of: \$ _____

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

RIGHT TO WITHHOLD PAYMENTS

In addition to all other rights and remedies of the District hereunder and by virtue of law, the District may withhold or nullify the whole or any part of any progress payment or withhold up to 150% of the disputed amount from the final payment (see Public Contract Code section 7107(c)) to such extent as may reasonably be necessary to protect the District from loss on account of:

Defective work not remedied, irrespective of when any such work be found to be defective;

Claims or liens filed or reasonable evidence indicating probable filing of claims or liens including, but not limited to, claims under California Labor Code sections 1775, 1776, or 1777.7;

Failure of the Contractor to make payments properly for labor, materials, equipment, or other facilities, or to subcontractors and/or suppliers;

A reasonable doubt that the work can be completed for the balance then unearned;

A reasonable doubt that the Contractor will complete the work within the agreed time limits;

Costs to the District resulting from failure of the Contractor to complete the work within the proper time; or

Damage to work or property.

Whenever the District shall, in accordance herewith, withhold any monies otherwise due the Contractor, written notice of the amount withheld and the reasons therefor will be given the Contractor. After the Contractor has corrected the enumerated deficiencies, the District will promptly pay to the Contractor the amount so withheld. When monies are withheld to protect the District against claims or liens of mechanics, suppliers, materialmen, subcontractors, etc., the District may at its discretion permit the Contractor to deliver a surety bond in terms and amount satisfactory to the District, indemnifying the District against any loss or expense, and upon acceptance thereof by the District, the District shall release to the Contractor monies so withheld.

WAIVER OF INTEREST

The District shall have no obligation to pay and the Contractor hereby waives the right to recover interest with regard to monies that the District is required to withhold by reason of judgment, order, statute or judicial process, or may withhold pursuant to the provisions of this Contract.

SATISFACTION OF CLAIMS AND LIENS

Neither the final payment nor any part of the retained percentage shall become due until the Contractor, if required, shall deliver to the District, a complete release of all liens and claims

arising out of this Contract, or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as it has knowledge or information the releases and receipts include all the labor and material for which a lien or claim could be filed; but the Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the District, to indemnify the District against any lien or claim. If any lien or claim remains unsatisfied after all payments are made, the Contractor shall refund to the District all monies that the latter may be compelled to pay in discharging such a lien, or claim, including all costs and reasonable attorney's fees.

ASSIGNMENT OF ANTI-TRUST CLAIMS

In accordance with California Public Contract Code section 7103.5, the Contractor hereby 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 purchases of goods, services, or materials pursuant to the Contract Documents. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor, without further acknowledgment by the parties.

AVAILABILITY AND AUDIT OF INFORMATION

The District's duly authorized representatives shall have, during the term of the Contract and for three years thereafter, the right to inspect, copy and audit all of the Contractor's and its subcontractors' books, accounts, records, and other material of all description, including but not limited to source documents and computer files, and to interview personnel, pertaining to the Contract to verify or review the quantity, quality, work program and progress of the work, reimbursable costs, amounts claimed by the Contractor, pricing data, estimates of cost for fixed rates including those applicable to proposed changes, and for any other reasonable purposes. "Books," "accounts," and "records" as used herein shall include, but not be limited to, original estimates, subcontracts, bids, proposals, purchase orders, books, documents, accounting records, papers, correspondence, project files and scheduling information, including the original Bid and all documents related thereto and to its preparation, the as-planned construction schedule and any related documents.

The Contractor's and its subcontractors' accounts shall be kept in accordance with generally accepted accounting principles in the particular industry and shall be kept in such a manner and in sufficient detail to clearly disclose the nature and amounts of the different items of service and cost pertaining to the Contract and the basis for charges or allocations to the Contract. The Contractor and its subcontractors shall preserve all such accounts and records for a period of three years after the term of the Contract.

The Contractor shall include the necessary provisions in its subcontracts to ensure that its subcontractors comply with this provision.

The parties acknowledge that this Contract, and performance and payments under this Contract, are subject to examination and audit by the State Auditor General for three

years following final payment under this Contract pursuant to California Government Code section 8546.7.

INTEGRATION

The Contract Documents constitute the sole, final, complete, exclusive and integrated expression and statement of the terms of this contract among the parties concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, either oral or written, that may be related to the subject matter of this Contract, except those other documents that are expressly referenced in the Contract Documents.

COUNTERPARTS AND ELECTRONIC SIGNATURES

The Contract Documents may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument or instruments. Counterparts may be delivered by facsimile, electronic mail (including PDF or any electronic signature complying with California's Uniform Electronic Transactions Act (Cal. Civ. Code, §1633.1, et seq.) or any other applicable law) or other transmission method. The parties agree that any electronic signatures appearing on the Contract Documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

WAIVER

The waiver at any time by any party of its rights with respect to a default or other matter arising in connection with this Contract shall not be deemed a waiver with respect to any subsequent default or matter.

REMEDIES NOT EXCLUSIVE

The remedies provided in this Contract are cumulative and not exclusive, and are in addition to any other remedies that may be provided by law or equity. The exercise by either party of any remedy under this Contract shall be without prejudice to the enforcement of any other remedy.

SEVERABILITY

The invalidity, illegality or unenforceability of any provision of the Contract Documents shall not render the other provisions unenforceable, invalid or illegal.

GOVERNING LAW AND VENUE

Except as otherwise required by law, this Contract shall be interpreted, governed by, and construed under the laws of the State of California. The County shall be venue for any litigation concerning the enforcement or construction of this Contract.

NOTICES

Any notice, demand, invoice or other communication required or permitted to be given under this Contract shall be in writing and either served personally or sent by prepaid, first class U.S. mail and addressed as follows: for the District, either to the Engineer or the District at the addresses set forth below; for the Contractor, at the addresses set forth below. Any party may change its address by notifying the other party in writing of the change of address.

District: Yolo County Flood Control and Water Conservation District, 34274 State Highway 16, Woodland, CA 95695

Contractor: HTE Engineering, 8675 S. Sandy Parkway #111, Sandy, UT 84070, info@hydrotech-eng.com

Subcontractor: Leonida Builders, Inc., 15821 Live Oake Springs Canyon Road, Santa Clarita, CA 91387

(END OF GENERAL CONDITIONS.)

YOLO COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT

AGENDA REPORT

MEETING DATE: September 5, 2023

ITEM #: 8

SUBJECT: Presentation: Yolo Subbasin Groundwater Agency (YSGA) Update

INITIATED OR BOARD
REQUESTED BY: STAFF
 OTHER _____

COORDINATED OR
PREPARED BY: Kristin Sicke
APPROVED BY: Kristin Sicke

ATTACHMENT YES NO
 DIRECTION

INFORMATION
 ACTION: MOTION
 RESOLUTION

BACKGROUND:

Staff and the Board's representative to the Yolo Subbasin Groundwater Agency (YSGA) will provide an update on general activities related to the Sustainable Groundwater Management Act (SGMA) implementation.

RECOMMENDATION:

This agenda item is for informational purposes only. No Board action is required.