



SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
380 E. Vanderbilt Way, San Bernardino, CA 92408

BOARD OF DIRECTORS' SPECIAL MEETING - RESOURCES/ENGINEERING
2:00 PM Tuesday, August 11, 2026

ZOOM INFORMATION

Online: <https://sbvmwd.zoom.us/j/84832686691>

Telephone: (877) 853-5247 US Toll-free

Meeting ID: 848 3268 6691

PASSCODE: 3802026

If you are unable to participate online or by telephone, you may submit your comments and questions in writing for Board consideration by emailing comments@sbvmwd.com with the subject line Public Comment Item # (insert the agenda item number relevant to your comment) or Public Comment Non-Agenda Item. Submit your written comments no later than 6 p.m. the day prior to the meeting. All public comments will be provided to the Board President and may be read into the record or compiled as part of the record.

IMPORTANT PRIVACY NOTE: Online participants MUST log in with a Zoom account. The Zoom app is a free download. Please keep in mind: (1) This is a public meeting; as such, the virtual meeting information is published on the World Wide Web and available to everyone. (2) Should you participate remotely via telephone, your telephone number will be your identifier during the meeting and available to all meeting participants; there is no way to protect your privacy if you elect to call in to the meeting.

CALL TO ORDER

1) INTRODUCTIONS

2) PUBLIC COMMENT

Members of the public may address the Board regarding any item within the subject matter jurisdiction of the Board; however, no action may be taken on off-agenda items except as authorized by law. Each speaker is limited to a maximum of three (3) minutes.

3) DISCUSSION AND POSSIBLE ACTION ITEMS

- 3.1 Consider Construction Bid Award to PRIDE Industries One, Inc. for the Direct Installation Program Turf Removal and Indoor Water Fixture Replacement Project (30 min) - Page 3
[Staff Memo - Consider Construction Bid Award to PRIDE Industries One, Inc. for the Direct](#)

Installation Program Turf Removal and Indoor Water Fixture Replacement Project
Request for Proposal and Addendum 1
Staff Bid Review Documents
PRIDE Industries One, Inc. Bid Proposal

4) **FUTURE BUSINESS**

5) **ADJOURNMENT**

DATE: August 11, 2026

TO: Board of Directors' Special Meeting – Engineering/ Resources

FROM: Kelly Malloy, Manager of Strategic Communications & Special Initiatives

SUBJECT: Consider Construction Bid Award to PRIDE Industries One, Inc. for the Direct Installation Program Turf Removal and Indoor Water Fixture Replacement Project

Staff Recommendation

Staff recommends the Board of Directors take the following actions:

1. Consider waiving the minor irregularity contained in PRIDE Industries One, Inc. (PRIDE) bid, award the construction contract for the Direct Installation Program Turf Removal and Indoor Water Fixture Replacement Project (Project) to PRIDE based on the bid amount of \$1,322,319, and authorize execution of the agreement for the Direct Installation Program Turf Removal and Indoor Water Fixture Replacement Project; and
2. Authorize contingency costs of up to ten (10) percent above the contract amount, or \$132,231, subject to review and approval by the CEO/General Manager;

The total budgetary request for the Project is \$1,454,550. The funds for this project are included in the approved 2026/2027 General Fund budget and will be reimbursed by the Department of Water Resources' Urban Drought Communities Grant.

Background

San Bernardino Valley was awarded \$5.7 million as part of the California Department of Water Resources' (DWR) 2022 Urban Community Drought Relief Grant. Following the Grant Amendment and Resolution No. 1194 approved by the Board of Directors at the June 3, 2025, Regular Board Meeting, the Agency has implemented a Commercial Turf Removal Rebate Program and sought to concurrently implement both an indoor water fixture and a turf removal/replacement direct installation program (Direct Install Program).

Staff previously sought licensed contractors through a Request for Qualifications (RFQ) process and requested that the Board award the contract to EcoTech Services, Inc. Prior to beginning

construction and in preparation for grant reporting, staff identified that the grant requires a formally advertised public bidding process, rather than the previously utilized procurement method. Staff determined that the RFQ procurement process did not satisfy this grant's requirement to be eligible for reimbursement. Therefore, to maintain compliance with the grant, the Agency rescinded the contract and implemented a new procurement process using a formally advertised competitive bid.

PRIDE submitted proposals for the Direct Install Program for a cost not to exceed \$3 million. This program is funded through the 2022 Urban Community Drought Relief Grant and has been granted a Cost Match Waiver because of benefits to regional disadvantaged communities, with all work and reporting completed by December 30, 2026. San Bernardino Valley will provide the funding to complete the work and be 100% reimbursed by the grant. The agreement with PRIDE is the Agency's standard construction agreement and has been reviewed by General Counsel.

Advertised Competitive Bid

The project was advertised for bids on July 14, 2026, in the San Bernardino Sun and Press Enterprise print and digital issues, including the Agency's website. The Engineer's Cost Estimate for the Project, given the available grant funding, was \$3 million. The Direct Installation Program: Turf Removal and Indoor Water Fixture Replacement includes the following two elements:

- a) Conversion of turf areas in approved commercial, institutional properties, multi-family, homeowner association zones, and/or mobile home parks to climate-appropriate landscaping to reduce outdoor water consumption; and
- b) Replacement of high-water-use fixtures with high-efficiency alternatives, including toilets, showerheads, and faucet aerators, in approved commercial, industrial, institutional properties, multi-family homes, and mobile home parks.

Staff advertised the Direct Installation Program: Turf Removal and Indoor Water Fixture Replacement and conducted a public bid opening on July 28, 2026, at 1:00 pm. Two (2) bidders submitted bids for the Project: PRIDE and EcoTech Services, Inc. (Staff Bid Review, Attachment 2).

PRIDE was the apparent lowest bidder at the time of the bid opening with a bid price of \$1,322,319 (Attachment 3) to complete the project scope, which included 100,000 square feet of landscape design and turf removal/ replacement, 750 ultra-high efficiency toilets, and 500 low-flow showerheads. Founded in 1966, PRIDE Industries creates employment for people with

disabilities. Through personalized employment services, they help individuals realize their true potential and lead more independent lives. They have grown to become the nation's leading employer of people with disabilities and those with other barriers to employment, including veterans and former foster youth. PRIDE has extensive experience working with government agencies, including airports, schools, military bases, cities, and special districts. Due to a typographical error, PRIDE has requested that the Board waive a minor irregularity correcting the bond/insurance line item from the originally listed \$1,600 to \$16,000. This waiver does not materially change the bid amount, provide PRIDE with an unfair competitive advantage, or result in a different apparent low bidder.

The bid results are as follows for the first phase of project implementation:

	<u>Name of Bidder</u>	<u>Bid Amount</u>
1	PRIDE Industries One, Inc.	\$ 1,322,319.00
2	Eco Tech Services, Inc.	\$ 2,998,600.00
* This total has incorporated the request to waive a minor irregularity.		

Staff recommends that the Board award the construction contract to PRIDE in the amount of \$1,322,319, authorize a contingency of up to \$132,231, and direct staff to begin implementation of the project scope included in the bid. The total authorized amount would not exceed \$1,454,550. Alternatively, if the Board determines that all bidders are non-responsive, the Board may elect to reject all bids and direct Staff to re-advertise this project. Rejecting all bids and re-advertising the project may delay implementation, reducing the Agency's ability to complete the project by the grant deadline and potentially jeopardizing reimbursement under the DWR grant.

Given the \$1.5 million remaining grant funding available, if the Board approves the award of construction, staff will work with PRIDE to determine if an expansion of work can take place in order to fully use the \$3 million grant funding by the end of the calendar year. If an expansion is feasible, staff would bring back a change order for the Board to consider increasing the approved maximum budget to allow for more properties to benefit from the program.

District Strategic Plan Application

This is consistent with San Bernardino Valley's mission, vision, and values to develop innovative projects and programs that will provide a reliable, resilient, and sustainable water supply that contributes to a healthy watershed for future generations.

Fiscal Impact

The cost of this item is \$1,454,550, which will be reimbursed by the 2022 Urban Community Drought Relief Grant funds awarded to the Agency for conservation projects. If the scope of work can be expanded to implement the full \$3 million grant award before the end of 2026, staff will return to the Board in a future item requesting approval of additional funds.

Attachments

1. Request for Proposal and Addendum 1
2. Staff Bid Review Documents
3. PRIDE Industries One, Inc. Bid Proposal

SPECIFICATION NUMBER 26-01

For construction of

**DIRECT INSTALLATION PROGRAM
TURF REMOVAL AND INDOOR WATER FIXTURE
REPLACEMENT**



**A REGIONAL WATER AGENCY
SINCE 1954**

BID SET

SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT

07/14/2026

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**SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
SAN BERNARDINO, CALIFORNIA**

NOTICE INVITING BIDS

**Direct Installation Program:
Turf Removal and Indoor Water Fixture Replacement**

N-1. The San Bernardino Valley Municipal Water District, by this Notice, invites sealed bids for the construction of: **Direct Installation Program: Turf Removal and Indoor Water Fixture Replacement** in accordance with Specification No. 26-01. Opening and announcement of the bids will take place in the Board Room of the District office located at 380 East Vanderbilt Way, San Bernardino, California at 1:00 p.m. on July 28, 2026.

Bids may be delivered personally by the Bidder, his designated agent or messenger, or by U. S. Mail and, to receive consideration, shall arrive at the District Office not later than the time designated for opening. Bids posted for mail delivery must be addressed to the District at 380 East Vanderbilt Way, San Bernardino, California 92408.

N-2. Complete sets of the Contract Documents are available for review at the District office or may be obtained via downloading in a PDF file format. For instructions on procedure for downloading Contract Documents send an email request to bids@sbvmwd.com. Contract Documents will be furnished only in complete groups contained in all sheets relating to the same work division and identified by identical prefixes to drawing sheet number designations.

N-3. The work under this Contract is the **Direct Installation Program: Turf Removal and Indoor Water Fixture Replacement**. The Project is funded through a California Department of Water Resources grant and has an available program budget of up to \$3,000,000. The Project is intended to implement water conservation improvements within San Bernardino Valley Municipal Water District's service area at approved participating properties. Contractor shall furnish all labor, equipment, materials, supervision, coordination, and documentation necessary to complete the Direct Installation Program, as shown in the approved contract documents, plans, and specifications, including the following:

- (A) Conversion of turf areas in approved commercial, institutional properties, multi-family, homeowner association zones, and/or mobile home parks to climate-appropriate landscaping to reduce outdoor water consumption.
- (B) Replacement of high-water-use fixtures with high-efficiency alternatives, including toilets, showerheads, and faucet aerators, in approved commercial, industrial, institutional properties, multi-family homes, and mobile home parks.

N-4. Each proposal must be accompanied by either a certified or cashier's check or by a corporate surety bond payable to the District on the forms provided, as a guarantee that the bidder will, if an award is made to him/her in accordance with the terms of his/her proposal, promptly execute a contract in the required form, and furnish the necessary insurance certificates, Performance Bond and Payment Bond, in accordance with the Contract Documents. Said check or bidder's bond shall be in an amount not less than 10 percent (10%) of the estimated total contract payments for the maximum amount of work which may be awarded the bidder in accordance with the terms of his/her proposal.

N-5. The Contractor shall maintain during the life of the contract a protective liability policy and other insurance as provided in the Contract Documents. Insurance industry standard "Accord" forms may be substituted whenever applicable.

N-6. Strict compliance with all DIR registration requirements in accordance with Labor Code Sections 1725.5 and 1771.1 is a material obligation of the Contractor and all of its subcontractors (of any tier) under the Contract Documents. The foregoing includes, without limitation, compliance with DIR registration requirements at all times during performance of the Work by the Contractor and all of its subcontractors of any tier. Contractor shall provide certification of registration and registration number to the District before a subcontractor shall be allowed to work on the Project. The failure of the Contractor and all subcontractors of any tier to be properly registered with DIR at all times during performance of the Work is a material breach of the Contract and subject to termination for cause.

N-7. An affirmative and ongoing obligation of the Contractor under the Contract Documents is the verification that all subcontractors of any tier are at all times during performance of the Work are in full and strict compliance with the DIR registration requirements. The Contractor shall not permit or allow any subcontractor of any tier to perform any Work without the Contractor's verification that all subcontractors are in full and strict compliance with the DIR registration requirements. Any subcontractors of any tier not properly registered with DIR shall be substituted in accordance with Labor Code section 1771.1. Contractor or its subcontractors of any tier shall not be entitled to any additional costs or time arising from or in any way related to compliance with the DIR registration requirements. In accordance with the provisions of Sections 1770, 1773 and 1773.1 of the California Labor Code, the Director of Industrial Relations has determined that the general prevailing rates of wages, including employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided in Section 1773.8 of the California Labor Code, apprenticeships and other training programs authorized by Section 3093 of the California Labor Code, for the crafts, classifications, or types of workers required for any work, in the locality of the project are available from the California Director of Industrial Relations. The successful bidder will be required to pay not less than the rates set forth by the Director of Industrial Relations. More information on prevailing rates may be obtained from:

Department of Industrial Relations
Division of Labor Statistics and Research
Prevailing Wage Unit
P.O. Box 420603
San Francisco, CA 94142-0603
(415) 703-4774
<http://www.dir.ca.gov/dlsr/PWD/>

N-8. In accordance with California Public Contract Code Section 22300, the Contractor will be permitted to substitute securities for any monies that would otherwise be withheld to insure performance of the contract.

N-9. The Contract Documents consisting of this Notice Inviting Bids, together with the Instructions to Bidders, the Proposal with the Bid Schedule(s), the Agreement, the Specifications and Drawings listed therein, are hereby referred to and made a part of this notice. Plans showing the character of the work may be seen in the office of the District at the location given above and additional copies of the Specifications and Drawings may be obtained at Consolidated Reprographics, San Bernardino, California (909) 387-9229. Payment for the Specifications and Drawings will not be refunded.

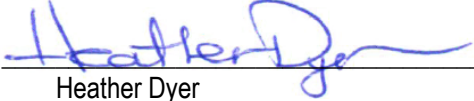
N-10. Any bidder is required to hold a Class A or both a C27 and C36 Contractors License at the time the contract is awarded. Any bidder or Contractor not so licensed shall be subject to all legal penalties imposed by law, including but not limited to, any appropriate disciplinary action by the Contractors State License Board. Failure of the bidder to obtain proper and adequate licensing prior to an award of a contract shall constitute a failure to execute the contract and shall result in the forfeiture of the Bid Bond or check.

N-11. The District hereby affirmatively ensures that minority business enterprises will be afforded full opportunity to submit bids in response to this notice and will not be discriminated against on the basis of race, color, national origin, ancestry, sex, or religion in any consideration leading to the award of contract. Affirmative action to ensure against discrimination in employment practices on the basis of race, color, national origin, ancestry, sex, or religion will also be required.

N-12. All questions regarding the project must be submitted on the Bidder's Question Form provided and transmitted by email to BIDQ@SBVMWD.COM no later than 5:00 p.m. on July 23, 2026.

N-13. A pre-bid conference will be held by the District with responsible representatives of prospective bidders on July 22, 2026 at 10:00 am 380 East Vanderbilt Way, San Bernardino, California. Attendance at the pre-bid conference is a condition precedent to submittal of the bid. The District will not consider a bid from any bidder not represented at the pre-bid conference.

**SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT**

By: 
Heather Dyer
General Manager

Dated:
_7/10/2026_____

[END OF DOCUMENT]

**SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
SAN BERNARDINO, CALIFORNIA**

INSTRUCTIONS TO BIDDERS

**Direct Installation Program:
Turf Removal and Indoor Water Fixture Replacement**

I-1. FORM OF PROPOSAL AND SIGNATURE

- a. The Proposal shall be submitted on the following forms provided by the District:

Document Title

Bid Proposal Form

Bid Schedule

Bidder's Security

Bidder's Statement of Qualifications

Designation of Subcontractors

Affidavit of Non-collusion

Workers' Compensation Insurance Certification

Certification of Contractor and Subcontractor Department of Industrial Relations Registration

These documents constitute the Proposal. Proposals must be received by the District on or before the date and time specified in the Notice Inviting Bids. The Proposal shall be enclosed in a sealed envelope marked "Bid Enclosed - Do Not Open Until Bid Opening" and addressed to the General Manager of the San Bernardino Valley Municipal Water District and delivered to 380 East Vanderbilt Way, San Bernardino, CA 92408. The envelope shall be plainly marked in the upper left-hand corner with the name and address of the bidder and bear the words "Bid for," followed the number and title of the Specifications for the work, and the date and hour of opening bids. The bidder's security, in accordance with Paragraph I-7 herein below, shall be enclosed in the same envelope with the Proposal. The District will not consider any Proposal failing to meet these requirements.

b. The bidder shall state the unit prices or the specific sums as the case may be, for which he/she proposes to supply the labor, materials, supplies or machinery, and perform the work required by the Specifications. If the unit price and the total amount named by a bidder for any item are not in agreement, the unit price alone will be considered as representing the bidder's intention and the totals will be corrected to conform thereto.

c. If the Proposal is made by an individual, it shall be signed and his/her full name and his/her address shall be given. If it is made by a partnership, it shall be signed with the partnership name by a general partner, who shall also sign his/her own name, and the name and address of each partner shall be given; and if it is made by a corporation, the name of the corporation shall be signed by its duly authorized officer(s) attested by the corporate seal, and the names and titles of all officers of the corporation shall be given.

d. No telegraphic or facsimile Proposal or telegraphic or facsimile modification of a Proposal will be considered.

I-2. PREPARATION OF PROPOSAL/WITHDRAWAL OF PROPOSAL

a. The bidder shall make its own interpretation of Contract Documents, data disclosed by borings or other preliminary investigations and information received from the District. The bidder shall notify the District of conflicts, errors, or discrepancies noted in the Contract Documents. The quantities of work or materials stated in the unit price items of the Bid Schedule are given only as a basis of the comparison of bids, and the District does not expressly or impliedly agreed that the actual amount of work or material will correspond therewith. The price as quoted by the bidder shall include all applicable taxes and duties. All applicable taxes and duties shall be paid by the Contractor. In accordance with 26 U.S.C. § 4221, prices as quoted by the bidder shall be exclusive of federal excise taxes pursuant to the exemption of political subdivisions of a state under federal law.

b. Blank spaces in the Proposal shall be properly filled in. The phraseology of the Proposal must not be changed and no additions shall be made to the items mentioned therein. Unauthorized conditions, limitations, or provisions attached to a Proposal will render it informal and may cause rejection. Alterations by erasure or interlineations must be explained or noted in the Proposal and initialed by the bidder. Alternative Proposals will not be considered unless specifically provided for in the Bid Schedule.

c. A bidder may withdraw his Proposal before the time fixed for opening bids, without prejudice, by submitting a written request to the District for its withdrawal, and his Proposal will be returned to him/her unopened. Following withdrawal of its Proposal, the bidder may submit a new Proposal, provided that such new Proposal is received by the District prior to the stated time for opening bids.

d. Except as provided by law, no Proposal may be withdrawn after the hour fixed for opening bids without rendering the accompanying Bid Bond or check subject to forfeiture as liquidated damages in like manner as in the case of failure to execute contract after award, as hereinafter provided. No Proposal received after the time named or at any place other than the place stated in the Notice Inviting Bids will be considered. All bids will be opened and declared publicly.

I-3. AWARD OF CONTRACT

Following a review of the bids, the District shall determine whether to award the contract or to reject all bids. The award of contract, if made, will be to the lowest responsible bidder as determined solely by the District. The District reserves the right to waive any informality in any bid, to reject any or all Proposals, and to reject one part of a Proposal and accept the other, except to the extent that bids are qualified by specific limitations. A Contract will be awarded to the lowest responsive and responsible bidder (or upon refusal or failure of the lowest bidder to execute the Contract, to the next lowest bidder) as the interest of the District may require. Where bonds are required, the bidder shall name in his Proposal the surety or sureties who have agreed to furnish said bonds. Additionally, the District reserves the right to take bids under advisement for a period of sixty (60) calendar days following the bid opening, as may be required to provide for the best interests of the District. In no event will an award be made until all necessary investigations are made as to the responsibility and qualification of the bidder to whom the award is contemplated.

No bidder may withdraw its Proposal for a period of ninety (90) calendar days following the bid opening. However, the District will return all Proposal guarantees to the respective bidders whose Proposals they accompany (other than to the successful bidder, if any) within ten (10) calendar days after the award of the Contract or rejection of the bids, as the case may be.

Any Proposal which, in the opinion of the District, is so unbalanced between the various contract items as to be detrimental to the interests of the District will be rejected.

I-4. LOWEST RESPONSIBLE BIDDER

In selecting the lowest responsible bidder, consideration will be given not only to the financial standing but also to the general competency of the bidder for the performance of the work covered by the Proposal. To receive favorable consideration a bidder must present evidence that he has successfully performed similar work of comparable magnitude or submit other evidence satisfactory to the District that he or his associates are personally competent to manage the proposed undertaking and to carry it forward to a successful conclusion. Professional integrity and honesty of purpose shall be essential requirements. A showing of adequate financial resources is also required but will not alone determine whether a bidder is competent to undertake the proposed work.

I-5. ALTERNATE BIDS

If alternate bid items are called for in the Contract Documents, the lowest Bid will be determined on the basis of the base bid only. However, the District may choose to award the Contract on the basis of the base bid and any alternate or combination of alternates if this method of award is specifically indicated in the Bid Schedule. The time required for completion of the alternate bid items has been factored into the Contract duration and no additional Contract time will be awarded for performance of any of the alternate bid items. The District may elect to include one or more of the alternate bid items or to otherwise remove certain work from the Project scope of work, accordingly, each Bidder must ensure that each bid item contains a proportionate share of profit, overhead and other costs or expenses which will be incurred by the Bidder. Failure by any Bidder to furnish a bid price for alternate bid items (even if the lowest Bid is determined on the basis of the base bid only) shall result in the bid being deemed nonresponsive.

I-6. CONTRACTOR'S LICENSE AND REGISTRATION REQUIREMENTS

Pursuant to Section 7028.15 of the Business and Professions Code and Section 3300 of the Public Contract Code, all bidders must possess proper licenses for performance of this Contract. Subcontractors must possess the appropriate licenses for each specialty subcontracted. Pursuant to Section 7028.5 of the Business and Professions Code, the District shall consider any Proposal submitted by a contractor not currently licensed in accordance with state law and pursuant to the requirements found in the Contract Documents to be nonresponsive, and the District shall reject the Proposal. The District shall have the right to request, and bidders shall provide within five (5) calendar days, evidence satisfactory to the District of all valid licenses(s) currently held by that bidder and each of the bidder's subcontractors, before awarding the Contract.

At the time of submitting a bid, the bidder shall possess a valid Class C27 and C36 Contractors License issued by the California Contractors State License Board. In the event a bid is submitted on behalf of a joint venture, each party to the bid shall possess a valid California Contractors License in the required classification at the time of the bid submission. If such joint venture is the successful bidder, an appropriate license in the name of the joint venture shall be obtained prior to award of the Contract.

A contractor and subcontractor shall not be qualified to bid or 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 the Labor Code, unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. It is not a violation of this Section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

I-7. BIDDER'S SECURITY

a. Each bidder shall submit with the Proposal (i) a certified or cashier's check drawn on a solvent state or national bank or (ii) a bidder's bond with a responsible corporate surety, on the form furnished by the District for that amount stated in the Notice Inviting Bids, payable to San Bernardino Valley Municipal Water District, as guarantee that

the bidder will, if an award is made to him in accordance with the terms of his/her Proposal, promptly execute a Contract in the required form and will furnish the necessary insurance certificates, Performance Bond and Payment Bond.

b. If a bidder, to whom an award is made, fails or refuses to execute the Contract, provide proof of workers' compensation insurance, or furnish the required bonds or insurance certificates within the time stated in the Section hereof entitled "Execution of Contract", the moneys represented by said check or bidder's bond shall become and remain the property of the District. The full amount thereof is agreed to by the bidder as reasonable liquidated damages due to the District on account of the delay in the execution of the Contract and in the performance of work thereunder resulting from such failure or refusal. It is agreed that the amount of actual damages would be extremely difficult or impossible to determine in advance.

c. The check or Bid Bond of a bidder to whom the Contract has been awarded will be returned within ten (10) calendar days after the bidder has executed the Contract, provided proof of worker's compensation insurance, and furnished the required bonds and insurance certificates. Checks or Bid Bonds of other bidders will be returned at the earliest of the following: (i) their Proposal is rejected; (ii) within ten (10) calendar days of the receipt from the selected bidder of an executed Contract, proof of workers' compensation insurance, required bonds, and insurance; and (iii) within ninety (90) calendar days from the date of bid opening. The liability of the District in connection with the said checks and Bid Bonds shall be limited to their return as herein provided.

I-8. EXECUTION OF CONTRACT

a. A bidder to whom award is made shall execute a written Contract with the District on the form of agreement attached hereto, secure workers' compensation insurance, and furnish good and approved bonds and insurance certificates, as required in the following paragraphs, all in accordance with the provisions hereof within fourteen (14) calendar days from the date of the mailing of a notice from the District to the bidder, according to the address given by him, of the acceptance of his Proposal, or such additional time as may be allowed by the District.

b. If a bidder to whom award is made fails or refuses to enter into the Contract as herein provided, or to conform to any of the stipulated requirements in connection therewith, the money represented by his/her check or bidder's bond shall become the property of the District as provided in the section hereof entitled "Bidder's Security", the award will be annulled, and an award may be made to the bidder whose Proposal is next most acceptable to the District; and such bidder shall fulfill every stipulation embraced herein as if he/she were the party to whom the first award was made.

c. A corporation to which an award is made may be required before the Contract is finally executed, to furnish evidence of its corporate existence, of its right to do business in California, and of the authority of the officer signing the Contract and bonds for the corporation to so sign.

I-9. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

The bidder acknowledges that it has ascertained the nature and location of the work and that it has investigated and assured itself as to the general and local conditions that can affect the work or its cost. The bidder also acknowledges that it is satisfied as to the character, quality and quantity of surface inspection of the site, including exploratory work done by the District, as well as from the drawings, plans, and specifications. Failure of the bidder to take actions will not relieve it from responsibility for estimating properly the difficulty and cost of successfully completing the work, or for proceeding to successfully complete the work without additional cost to the District.

The District assumes no responsibility for conclusions or interpretations made by the bidder based on the information that the District makes available. The District assumes no responsibility for any understanding reached or representation made concerning conditions that can affect the work by any of its employees or agents before execution of the Contract, unless that understanding or representation is expressly stated in the drawings and specifications.

The quantities of work or material stated in the items of the Bid Schedule are given only as a basis for the comparison of bids, and the District does not expressly or by implication agree that the actual amount of work or material will correspond therewith, but reserves the right to increase or decrease the amount of any unit price item of the work as may be deemed necessary or expedient by the District or the Engineer.

I-10. PERFORMANCE AND PAYMENT BONDS

The successful bidder shall furnish and maintain a performance bond and a labor and material payment bond issued by a surety approved by the District. A surety authorized to issue bonds in California and in other states where work is to be performed, and whose bonding limitation is sufficient to provide bonds in the amount herein required shall be deemed to be approved unless specifically rejected by the District. The bonds shall be submitted in the forms provided by the District, each equal to 100 percent of the bid. All bonds shall be furnished by the bidder at his/her own cost and expense.

I-11. PREVAILING RATES OF WAGES

The successful bidder and bidder's agents, employees, and subcontractors shall comply with all applicable provisions of the California Labor Code (including but not limited to Section 1773) and all federal, state and local laws and regulations that affect the hours of work, wages, and other compensation of employees, non-discrimination, and other conduct of the work.

The contractor and all subcontractors shall furnish certified payroll records as required pursuant to Labor Code Section 1776 directly to the Labor Commissioner in accordance with Labor Code Section 1771.4 on at least a monthly basis, or more frequently, if required by the District (or the Labor Commissioner) and in a format prescribed by the Labor Commissioner.

This Project is a public works project as defined in Labor Code Sections 1720 et seq. Each contractor bidding on this Project, and all subcontractors (of any tier) performing any portion of the work must comply with Labor Code Sections 1720 et seq. including Labor Code Sections 1771.1 and 1725.5 and must be properly and currently registered with the Department of Industrial Relations and qualified to perform public works pursuant to Labor Code Section 1725.5 throughout the duration of the Project. Pursuant to Labor Code Sections 1770 et seq., the District has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the work is to be performed for each craft, classification, or type of worker needed to execute the contract. Copies are available from the District to any interested party on request and are also available from the Director of the Department of Industrial Relations. The contractor shall obtain copies of the above referenced prevailing wage sheets and post a copy of such wage rates at appropriate, conspicuous, weatherproof points at the Site.

I-12. SUBCONTRACTORS

Pursuant to the Subletting and Subcontracting Fair Practices Act as contained in Sections 4100-4114 of the Public Contract Code, the bidder in its Proposal shall set forth:

a. The name and location of the place of business, scope of work, contact information and Department of Industrial Relations ("DIR") registration number for each subcontractor, whom it proposes to use to perform work or labor or render service to the bidder in or about the construction of any work or improvement, or a subcontractor who, under subcontract to the bidder, will specially fabricate and install a portion of the work or improvement according to detailed drawings contained in the plans and specifications in an amount in excess of one-half of one percent (0.5%) of the largest total set forth in the bidder's Proposal for which an award could be made. Contractor shall provide the DIR registration number for all listed subcontractors at the time of bid or within 24 hours of bid opening, otherwise the Contractor's bid may be considered nonresponsive.

b. The portion of the work which will be done by each such proposed subcontractor if the bidder is awarded the Contract. The bidder shall list only one subcontractor for each portion of the work as defined in the bid.

c. Pursuant to Labor Code Section 1725.5 all subcontractors (of any tier) as defined by DIR performing work on this Project must be registered with DIR.

I-13. AFFIDAVIT OF NON-COLLUSION

Each bidder shall declare that the only persons or parties interested in the Proposal as principals are those named therein; that no officer, agent, or employee of the District is personally interested, directly or indirectly, in the Proposal; that the Proposal is made without connection to any other individual, firm, or corporation making a bid for the same work; and that the Proposal is in all respects fair and without collusion or fraud. The Affidavit of Non-collusion shall be executed and submitted with the Proposal.

I-14. SUBSTITUTION OF SECURITIES

In conformance with the California Public Contract Code Section 22300, the Contractor may substitute securities for any monies withheld by the District to ensure performance under the Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the District or with a state or federally chartered bank as the escrow agent who shall pay such monies to the Contractor upon notification by District of Contractor's satisfactory completion of the Contract. The type of securities deposited and the method of release shall be as provided in said Section 22300 of the Public Contract Code.

I-15. INTERPRETATION OF PLANS AND DOCUMENTS

If any person contemplates submission of a bid for the proposed contract and is in doubt as to the true meaning of any documents, or finds discrepancies in, or omissions from, the drawings or specifications, he/she may submit to the Engineer of said District a written request (using the Bidder's Question Form) for an interpretation or correction thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation or correction of the proposed documents shall be made only by addendum duly issued and a copy of such addendum will be mailed or delivered to each person receiving a set of such documents. The Engineer will not be responsible for any other explanation or interpretation of the proposed documents and the bidder may not rely on any explanations, interpretations, corrections or other communications regarding the bid documents other than as given in accordance with this Section I-15.

I-16. ADDENDA

All bidders are advised as to the possibility of issuance of addenda affecting the items, scope or quantity of the work required for their project. Each bidder shall be fully responsible for informing itself as to whether or not any such addenda have been issued. The effect of all addenda to the Contract Documents shall be considered in the bid, and said addenda shall be made a part of the Contract Documents and shall be attached to them. Failure to cover in his bid any such addenda issued may render the bid irregular and may result in its rejection by the District.

I-17. ESCROW BID DOCUMENTS

This Contract requires that the low Bidder submit, within the specified time after receipt of Bids, one copy of all documentary information generated in preparation of bid prices for this Project. This material is hereinafter referred to as "Escrow Bid Documents", and the requirements are described in more detail in Article 16 of the General Conditions. The Escrow Bid Documents of the successful Bidder will be held in escrow for the duration of the Contract. The Escrow Bid Documents will be used to assist in the negotiation of price adjustments and change orders and in the

settlement of disputes, claims and other controversies. They will not be used for pre-award evaluation of the Contractor's anticipated methods of construction or to assess the Contractor's qualifications for performing the Work. The successful Bidder agrees, as a condition of the award of the Contract, that the Escrow Bid Documents constitute all the information used in preparation of this Bid, and that no other Bid preparation information shall be considered in resolving disputes. Nothing contained in the Escrow Bid Documents shall change or modify terms or conditions of the Contract Documents.

[END OF DOCUMENT]

**SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
SAN BERNARDINO, CALIFORNIA**

BID QUESTION FORM

**Direct Installation Program:
Turf Removal and Indoor Water Fixture Replacement**

(Please type or print legibly)

Email Bidder's Questions to BIDQ@SBVMWD.COM

Project: Direct Installation Program: Turf Removal and Indoor
Water Fixture Replacement

Specification No.: 26-01

Name: _____ **Phone:** () _____

Position: _____ **Fax:** () _____

Company Name: _____

Address: _____

Drawings Reference (Sheet/Detail): _____

Specifications Reference: (Section/Article): _____

Question: _____

Response:

By:

(Name)

(Signature)

Firm

Title:

Date:

Note: Please use additional sheets if you need more space for question(s)/response(s)

[END OF DOCUMENT]

**SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
SAN BERNARDINO, CALIFORNIA**

BID PROPOSAL FORM

**DIRECT INSTALLATION PROGRAM:
TURF REMOVAL AND INDOOR WATER FIXTURE REPLACEMENT**

The undersigned submits this Proposal in response to the Notice Inviting Bids issued by the District to construct the Work of the following project in accordance with the Contract Documents:

Direct Installation Program: Turf Removal and Indoor Water Fixture Replacement, SPECIFICATION NO. 26-01

A. Enclosed herewith and by this reference incorporated herein and made a part of this Bidder's Proposal are the following completed forms:

1. Bid Schedule
2. Affidavit of Non-collusion
3. Bid Security in the following form (*check one*):

☐ Cashier's Check☐ Certified Check☐ Bid Bond
4. Designation of Subcontractors
5. Bidder's Statement of Qualifications
6. Workers' Compensation Insurance Certification

B. Acknowledgment of Addenda. The Bidder acknowledges receipt of following Addenda:

<u>Addendum No.</u>	<u>Description</u>	<u>Date Received</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

If an Addendum has been issued by the District and not noted above as being received by the Bidder, the Proposal may be rejected.

C. Inspection of the Work and Contract Documents. Bidder certifies that it has carefully examined and is fully familiar with all of the provisions of the bidding documents and said bidding documents contain sufficient detail regarding the Work to be performed; that it has notified District of any errors or omissions in the bidding documents and/or any unusual site conditions; and that it has carefully checked all words, prices, and statements in this Proposal. Bidder hereby certifies that he/she and his/her subcontractors have inspected the site and related drawings and specifications of Work and fully acquainted themselves with all conditions and matters which may in any way affect the Work, time of completion or the costs thereof. Bidder also certifies he/she has observed the designated contractor Work areas and access routes, if disclosed or shown, as part of the Work in this Contract. Bidder agrees that all costs of Work shown in the bidding documents, including work reasonably inferable therefrom and necessary thereto are included in his/her Total Base Bid Price. All Work shown in the bidding documents for which a specific line item is not provided in the Bid Schedule is included in the Total Base Bid Price. Bidder agrees that the District will not be responsible for any errors or omissions on the part of the undersigned in making this Proposal. Bidder agrees and understands that any geotechnical report attached to the Contract Documents is provided for informational purposes only and that Bidder shall not rely upon any such report in preparing his/her Bid.

D. Forfeiture of Bid Security. Bidder further agrees that, in case of his/her failure to execute the required Contract and the required bonds or to furnish the required insurance as required by the Contract Documents, the Bid Security accompanying this Proposal shall be forfeited to the District and the money payable under the Bid Security may be applied by the District towards payment of the damage to the District on account of such default.

E. Period of Irrevocability. Bidder agrees that this Proposal shall remain open and shall not be withdrawn for a period of not less than ninety (90) calendar days from the date of bid opening, or until rejected by the District, whichever period is shorter.

F. Bid Dispute Indemnification. In the event District is named in an action or proceeding commenced or maintained to challenge the District's acceptance of the Bidder's Proposal or the award of a contract to Bidder where such acceptance or award is in compliance with applicable law, the Bidder agrees to indemnify, defend, and hold harmless at its expense the District and its agents, employees, attorneys and officers from liability, claims, demands, damages, costs and expenses, including attorney's fees, incurred by the District in connection with such action or proceeding.

I hereby certify under penalty of perjury under the laws of the State of California that the representations made herein are true and correct.

Executed this _____ day of _____, 20____ at _____, _____
City State

Name of Bidder

Company:

Signed:

Print Name:

Title:

Address:

Contact Person:

Telephone Number: ()

Fax Number: ()

E-mail:

Contractor's License No.:

License Class:

Expiration Date:

Tax Identification No.:

Surety:

FORM OF ENTITY OF BIDDER

Corporation:

State of Incorporation _____

President: _____

Secretary: _____

Partnership:

Name of all Partners: _____

Joint Venture:

Name of all Joint Venturers: _____

Sole Proprietorship:

All d/b/a's: _____

[If the bidder is a corporation, then enter state or county of incorporation in addition to the business address and include an Incumbency Certificate (see next page) executed by a Secretary thereof in the form set forth on the following page listing each officer with signing authority and his/her corresponding office. If the bidder is a partnership or joint venturer stating that the respective partner or joint venturer agrees to be held jointly and severally liable for any and all of the duties and obligations of the bidder under the Bid and under any contract arising therefrom. Attach evidence to the Bid Proposal Form that the individual signing has authority to do so.]

[END OF DOCUMENT]

INCUMBENCY CERTIFICATE

The undersigned hereby certifies to the San Bernardino Valley Municipal Water District that he/she is the duly elected and acting Secretary of _____ (the "Company"), and that, as such, he/she is authorized to execute this Incumbency Certificate on behalf of the Company, and further certifies that the persons named below are the duly elected, qualified and acting officers of the Company, holding on the date hereof the offices set forth opposite their names and are authorized to sign this Bid Proposal Form and Bid Schedule.

NAME

OFFICE

IN WITNESS WHEREOF, the undersigned has executed this Incumbency Certificate this _____ day of _____, 20____.

Secretary

**SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
SAN BERNARDINO, CALIFORNIA**

BID SCHEDULE

**DIRECT INSTALLATION PROGRAM:
TURF REMOVAL AND INDOOR WATER FIXTURE REPLACEMENT**

NAME OF BIDDER: _____

The undersigned bidder hereby declares that it has carefully examined the location of the proposed Work and has read and examined the Contract Documents as identified in the form Agreement provided to bidders, including all plans, specifications, and all Addenda, if any, for the following Project:

Direct Installation Program: Turf Removal and Indoor Water Fixture Replacement, SPECIFICATION 26-01

Bidder hereby proposes to furnish all labor, materials, equipment, tools, transportation, appurtenances, and incidentals and services and to discharge all duties and obligations necessary and required to perform and complete the Project for the following UNIT COST BID PRICE:

BID ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT COST	BID ITEM COST
1.	Bonding & Insurance	1		
2.	Site Identification and Customer Outreach (Lump Sum)	1		
Turf Removal and Replacement (Estimated 100,000 square feet total)				
3.	Turf Removal and Replacement: Mobilization & Demobilization (Lump Sum)	1		
Turf Removal and Replacement Cost Per Assessment				
4.	Commercial/ Institutional Site Assessment	15		
5.	Multi-Family Site Assessment	5		
6.	Homeowners Association Site Assessment	10		
Turf Removal and Replacement Site Design Price Design				
7.	500 - 1,000 square feet per site	1,000 sq ft		
8.	1,001- 5,000 square feet per site	10,000 sq ft		
9.	5,001- 10,000 square feet per site	24,000 sq ft		
10.	10,001- 20,000 square feet per site	60,000 sq ft		

BID ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT COST	BID ITEM COST
Turf Removal and Replacement: Site Landscape Construction Price				
11.	500-1,000 square feet	1,000 sq ft		
12.	1,001- 5,000 square feet	10,000 sq ft		
13.	5,001- 10,000 square feet	24,000 sq ft		
14.	10,001- 20,000 square feet	60,000 sq ft		
15.	Turf Removal and Replacement: Decomposed Granite or Gravel as Ground Cover (Optional)	15,000		
16.	Turf Removal and Replacement: Property Owner Representative Landscape Training	25		
Indoor Fixtures				
17.	Indoor Water Fixture: Mobilization & Demobilization	1		
18.	Indoor Water Fixture: Dispatch Fee	75		
19.	Indoor Water Fixture: Ultra-High Efficiency Toilet	750		
20.	Indoor Water Fixture: Toilet Disposal	750		
21.	Indoor Water Fixture: Low Flow Showerhead	500		
22.	Indoor Water Fixture: Low Flow Aerator	500		
23.	Indoor Water Fixture: Angle Stop Valve	150		
24.	Indoor Water Fixture: Flange Repair	85		
25.	Indoor Water Fixture: Water Supply Line- Flex Line	750		
Additional As-Needed Services				
26.	Hourly Rate (by Clarification)	80		
27.	Mileage	500		
28.	Materials Cost plus ____%			
	Total			

In case of discrepancy between the actual total of the bid item costs set forth above and the Total Base Bid Price, the total of the individual bid item costs shall prevail and be utilized as the basis for determining the lowest responsive, responsible bidder.

TOTAL BASE BID PRICE IN WORDS:

TOTAL BASE BID PRICE IN NUMBERS: \$

The undersigned agrees that this Bid Schedule constitutes a firm offer to the District which cannot be withdrawn for the number of calendar days indicated in the Notice Inviting Bids from and after the Bid opening, or until a Contract for the Work is fully executed by the District and a third party, whichever is earlier.

The Contract duration shall commence on the date stated in the District's Notice to Proceed and shall be completed by the Contractor in the time specified in the Contract Documents. In no case shall the Contractor commence construction prior to the date stated in the District's Notice to Proceed.

I hereby certify under penalty of perjury under the laws of the State of California that all of the information submitted in connection with this Bid and all of the representations made herein are true and correct.

Name of Bidder: _____

Signature: _____

Name and Title: _____

Dated: _____

[END OF DOCUMENT]

BIDDER'S STATEMENT OF QUALIFICATIONS

DIRECT INSTALLATION PROGRAM: TURF REMOVAL AND INDOOR WATER FIXTURE REPLACEMENT

(Bidder should attach and properly designate additional pages as necessary)

BIDDER CERTIFIES THAT THE FOLLOWING INFORMATION IS TRUE AND CORRECT:

Bidder's Name: _____

Business Address: _____

Telephone Number: _____ Fax Number: _____

State Contractors License No. and Class: _____

Original Date Issued: _____

Expiration Date: _____

A. ORGANIZATION

1. How many years has your organization been in business as a contractor?

2. How many years has your organization been in business under its present name?

- 2.1 Under what other names has your organization operated?

3. If your organization is a corporation or a limited liability company, answer the following:

3.1 Date of incorporation/organization: _____

3.2 State of incorporation/organization: _____

3.3 Corporate ID number: _____

3.4 Name of President or Manager(s): _____

4. If your organization is a partnership, answer the following:

4.1 Date of organization/formation: _____

4.2 Type of partnership (if applicable): _____

4.3 Name(s) of general partner(s): _____

4.4 List all states in which you are registered and state ID numbers for each:

5. If your organization is individually owned, answer the following:

5.1 Date of organization: _____

5.2 Name of owner: _____

6. If the form of your organization is other than those listed above, describe it and name the principals:

B. FINANCIAL INFORMATION

1. List trade references:

2. List bank references including bank name and address:

3. Has any principal having an interest in this proposal ever been the subject of any voluntary or involuntary bankruptcy filing? If your answer is "Yes", please explain and provide case number, date of filing, and current status of bankruptcy action.

4. Are there any judgments, arbitration proceedings or lawsuits pending or outstanding against your organization or its officers? If your answer is "Yes", please explain and include the date of filing, the amount of any judgment/award, the name of any adverse party, and the current status.

C. LICENSING

1. List jurisdictions in which your organization is legally qualified to do business, indicate registration or license numbers, and category of license, if applicable.

2. List any licensing suspensions and/or violations assessed against your organization within the past five years.

D. EXPERIENCE AND TECHNICAL QUALIFICATIONS

1. List major construction projects your organization currently has in progress, giving the name of the project, owner, contract amount, percent complete and scheduled completion.

Project	Owner	Contract Amount	Percent Complete	Complete Date

Project	Owner	Contract Amount	Percent Complete	Complete Date

2. List the ten most recent projects your organization has completed within the past five years, giving the name of project, owner, contract amount, period of performance and cost of the work. Please include those projects which are similar enough to demonstrate bidder's capability to perform required Work.

Project Client	Description of Bidder's Work	Period of Performance	Cost of Bidder's Work

3. List a client reference for each of the projects listed in response to Item No. 2 above.

Project Client	Name of Reference	Email Address	Telephone No.

4. State average annual amount of construction work performed during the past five years:

5. Personnel:

The Bidder shall identify the key personnel to be assigned to this Project in a management, construction supervision or engineering capacity. (Attach additional sheets, if necessary.)

5.1 List each person's job title, name and percent of time to be allocated to this Project:

5.2 Summarize each person's specialized education:

5.3 List each person's years of construction experience relevant to the Project:

5.4 Summarize such experience:

Bidder agrees that personnel named in this Bid will remain on this Project until completion of all relevant Work, unless substituted by personnel of equivalent experience and qualifications approved in advance by the District. The Bidder shall identify the key personnel to be assigned to this Project in a management, construction supervision or engineering capacity:

Project Manager: _____
Project Superintendent: _____
Project Foreman: _____

E. CLAIMS AND SUITS

1. Has your organization ever failed to complete any Work awarded to it? If your answer is "Yes", please explain.

2. Has your organization ever been debarred from bidding on any public work of improvement by any state, county or local government agencies? If your answer is "Yes", please explain.

3. In the last five years has your firm been denied an award of a public works contract based on a finding by a public agency that your company was not a responsible bidder? If your answer is "Yes", please explain and identify the year of the event, the owner, the project, and the basis for the finding by the public agency.

4. Has your organization ever been assessed liquidated damages on any public work of improvement? If your answer is "Yes", please explain.

5. Has your organization filed any lawsuits or requested arbitration against a public owner with regard to construction within the last five (5) years? If your answer is "Yes", please explain.

6. Have you or, if bidder is a corporation, any principal of the corporation ever been convicted of a felony? If your answer is "Yes", please explain the details of that conviction and, if so, whether you or said officer have served his/her sentence.

7. In the last 10 years have you or your company ever received a citation, violation notice, fine or penalty from any governmental agency (including, without limitation, Cal/OSHA) for failing to follow safety regulations or requirements? If your answer is "Yes", please explain.

8. Has any governmental agency ever submitted a complaint against you to the California State Labor Commission for failure to submit certified payrolls? If your answer is "Yes", please provide the details of such complaint.

9. Within the last five years, has any officer or principal of your organization ever been an officer of another organization when it failed to complete a construction contract? If your answer is "Yes", please explain.

10. At any time during the past five years, has any surety company made any payments on your firm's behalf, as a result of a default, to satisfy any claims made against a performance or payment bond issued on your firm's behalf, in connection with a construction project, either public or private? If "yes," please explain each such claim, the name and telephone number of the claimant, the date of the claim, the grounds for the claim, the present status of the claim, the nature of any resolution and the amount, if any, at which the claim was resolved.

11. In the last five years has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm? If your answer is "Yes", please explain and name the insurance carrier, the form of insurance, and the year of refusal.

Additional Bidder's Statement:

If the Bidder believes that there is additional information which has not been included in the questionnaire above, and which would contribute to the qualification review, it may add that information in a statement here or on an attached sheet, appropriately marked.

I declare under penalty of perjury under the laws of the State of California that the foregoing information is true and correct:

Name of Bidder: _____

Signature: _____

Name and Title: _____

Dated: _____

QUESTIONNAIRE REGARDING BIDDERS

Number of years and months engaged in the contracting business under present business name.

List of last three Contracts performed which show experience in Work of a nature similar to that covered in this proposal. If none, so indicate.

<u>Year</u>	<u>Type of Work</u>	<u>Contract Amount</u>	<u>Location</u>	<u>For Whom Performed</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Because this project is Federally funded, it is necessary to obtain information concerning minority group participation for statistical purposes so that the Department of Housing and Urban Development may determine the degree to which its programs are being utilized by minority Contractors.

A minority enterprise is defined by the Federal Government as a business that is 50% or more minority-owned.

Please check applicable box concerning the ownership of your business:

- | | |
|---|--|
| (1) ☐ American Indian or Alaska Native | (2) ☐ Asian or Pacific Islander |
| (3) ☐ Black | (4) ☐ Hispanic |
| (5) ☐ White | (6) ☐ Female |
| (7) ☐ Other (Specify) | |

State of California Contractor's License No. _____

Contractor's License expiration date _____

Return With Bid Proposal

BID BOND

(Not necessary when cash, certified or cashier's check accompanies Bid)

KNOW ALL MEN BY THESE PRESENT,

That we, _____, the undersigned Bidder, as Principal and _____, as Surety, our respective heirs, executors, administrators, successors and assigns, are jointly and severally and firmly bound, unto the **SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT** (hereinafter "Obligee") for payment of the penal sum hereof in lawful money of the United States, as more particularly set forth herein.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Principal has submitted the accompanying Bid for the _____ Project and the Bid must be accompanied by bid security.

WHEREAS, subject to the terms of this Bond, the Surety is firmly bound unto the Obligee in the penal sum of \$_____ representing ten percent (10%) of the total amount of the Bid on the base contract work submitted by the Principal to the Obligee, as set forth above.

NOW THEREFORE, if the Principal does not withdraw its Bid within the period specified in the Contract Documents, and if the Principal is awarded the Contract and provides all documents to the District as required by the Contract Documents, then this obligation shall be null and void and of no effect. Otherwise, this bond will remain in full force and effect.

In the event that suit or other proceeding is brought upon this Bond by the Obligee, the Surety shall pay to the Obligee all costs, expenses and fees incurred by the Obligee in connection therewith, including without limitation, attorneys' fees and costs.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this ____ day of _____, 20____ by their duly authorized agents or representatives

BIDDER:

(Corporate Seal)

(Principal's Name)

By:

(Signature)

(Typed or Printed Name and Title)

(Address)

[CONTINUED ON NEXT PAGE]

SURETY:
(Corporate Seal)

(Surety's Name)

By:

(Signature of Attorney-in-Fact for Surety)

(Attach Attorney-in-Fact Certificate)

(Typed or Printed Name)

(Address of Surety's Office where Bond is issued)

(Area Code and Telephone Number of Surety)

**NOTARIAL CERTIFICATION OF ATTORNEY IN FACT, CORPORATION SEAL
AND SURETY SEAL MUST BE ATTACHED**

ACKNOWLEDGMENT OF BID BOND

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss:
COUNTY OF [COUNTY])

On _____, before me, [Notary Name] , Notary Public, personally appeared [Name of person] , who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

**SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
SAN BERNARDINO, CALIFORNIA**

DESIGNATION OF SUBCONTRACTORS

Direct Installation Program: Turf Removal and Indoor Water Fixture Replacement

NAME OF BIDDER _____

Each bidder shall set forth below:

1. The name and location of the place of business of each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work of improvement, or a subcontractor licensed in the State of California who, under subcontract to the Contractor, specially fabricates and installs a portion of the work of improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of one percent (0.5%) of the Contractor's total bid.
2. The portion and estimated dollar amount of the work which will be done by each subcontractor. The Contractor shall list only one subcontractor for each portion as is defined by the Contractor in his/her bid.
3. If the Contractor fails to specify a subcontractor, or if the Contractor specifies more than one subcontractor for the same portion for work to be performed under the Contract in excess of one-half of one percent of the Contractor's total bid, then he/she agrees that he/she is fully qualified to perform that portion himself/herself, and that he/she shall perform that portion himself/herself. If after award of Contract, the Contractor subcontracts any such portion of the Work, the Contractor shall be subject to the statutory penalties.
4. All subcontractors (of any tier) performing any portion of the work or labor or rendering services to the contractor must comply with Labor Code Sections 1771.1 and 1725.5, must be properly registered with the California Department of Industrial Relations, and must be qualified to perform public works pursuant to Labor Code Section 1725.5 throughout the duration of the Project.

Please type or legibly print (attach additional sheets as necessary).

Bid Item No.	Subcontractor	Business Address	License Number	Portion of Work	Estimated \$ Amount	DIR Registration Number*

Bid Item No.	Subcontractor	Business Address	License Number	Portion of Work	Estimated \$ Amount	DIR Registration Number*

*NOTE: The DIR Registration Number must be provided at the time of submission of bid or must be provided within 24 hours after the time set for the opening of bids. Bidders who choose to provide this information within 24 hours after the time set for the opening of bids are solely responsible to ensure the District receives this information in a timely manner. The District is not responsible for any problems or delays associated with emails, faxes, delivery, etc. Absent a verified fax or email receipt date and time by the District, the District's determination of whether the information was received timely shall govern and be determinative. Bidder shall not revise, amend or add to any other information in this form submitted at the time of bid. The information submitted at the time of bid shall govern over any conflicts, discrepancies, ambiguities or other differences in any subsequent Designation of Subcontractor form(s) submitted by the Bidder.

Name of Bidder: _____

Signature: _____

Name and Title: _____

Dated: _____

[CONTINUED ON NEXT PAGE]

DESIGNATION OF SUBCONTRACTORS

The Contractor shall not:

- A. Substitute any person as subcontractor in place of the subcontractor listed in the original bid, except that the District may consent to the substitution of another person as subcontractor:
 - 1. When the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written Contract, based upon the general terms, conditions, plans and specifications for the project involved or the terms of such Contractor's written bid, is presented to him/her by the Contractor, or
 - 2. When the listed subcontractor becomes bankrupt or insolvent, or
 - 3. When the listed subcontractor fails or refuses to perform his/her subcontract, or
 - 4. When the listed subcontractor fails or refuses to meet the bond requirements of the Contractor, or
 - 5. When the Contractor demonstrates to the District that the name of the subcontractor was listed as the result of an inadvertent clerical error, or
 - 6. When the listed subcontractor is not licensed pursuant to the Contractors License Law, or
 - 7. When the District determines that the Work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the Plans and Specifications, or that the subcontractor is substantially delaying or disrupting the progress of the Work.
 - 8. When the listed subcontractor is not properly registered under Labor Code Section 1771.1.
- B. Permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, without the consent of the District.
- C. Other than in the performance of "change orders", cause changes or deviations from the original Contract, sublet or subcontract any portion of the Work in excess of one-half of one percent of the Contractor's total bid as to which his/her original bid did not designate a subcontractor.

Prior to approval of a Contractor's request for a subcontractor substitution, the District will give notice in writing to the listed subcontractor of the Contractor's request to substitute and of the reason for the request. The notice will be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified shall have five (5) working days within which to transmit to the District written objections to the substitution. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution.

If written objections are filed, the District will give notice in writing of at least five (5) working days to the listed subcontractor of a hearing by the District on the Contractor's request for substitution.

The Contractor, as a condition to asserting a claim of inadvertent clerical error in the listing of a subcontractor, shall within two (2) working days after the time of the bid opening by the District, give written notice to the District and copies of such notice to both the subcontractor he/she claims to have listed in error and the intended subcontractor who had bid to the Contractor prior to the bid opening.

Subletting or subcontracting of any portion of the Work in excess of one-half of one percent of the Contractor's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency

or necessity, and then only after a finding reduced to writing as a public record of the District setting forth the facts constituting the emergency or necessity.

If the Contractor violates any of the above provisions the Contractor may be in breach of this Contract and the District may exercise the option, in its own discretion, of (1) canceling the Contract, or (2) assessing the Contractor a penalty in an amount not more than ten percent (10%) of the amount of the subcontract involved, and this penalty shall be deposited in the fund out of which the Contract is awarded.

[END OF DOCUMENT]

**SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
SAN BERNARDINO, CALIFORNIA**

CONTRACTOR'S AFFIDAVIT OF NON-COLLUSION

**DIRECT INSTALLATION PROGRAM:
TURF REMOVAL AND INDOOR WATER FIXTURE REPLACEMENT**

STATE OF CALIFORNIA)
)
COUNTY OF _____)

_____ being first duly sworn deposes and says:

1. That he/she is the _____ (Title of officer if a corporation, sole owner, Partner, or other proper title) of _____, (hereinafter called "Contractor") who has submitted to the San Bernardino Valley Municipal Water District a Bid Proposal for the construction of Direct Installation Program: Turf Removal and Indoor Water Fixture Replacement.
2. That said Bid Proposal is genuine; that the same is not sham; that all statements of fact therein are true.
3. That said Proposal is not made in the interest or behalf of any person, partnership, company, association, organization, or corporation not named or disclosed.
4. That Contractor did not, directly or indirectly induce, solicit, agree, collude, conspire or contrive with anyone else to submit a false or sham bid, to refrain from bidding, or withdraw his/her bid, to raise or fix the bid price of Contractor or of anyone else, or to raise or fix any overhead profit, or cost element of Contractor's price or the price of anyone else; and did not attempt to induce action prejudicial to the interests of the San Bernardino Valley Municipal Water District, or of any other bidder, or anyone else interested in the proposed Contract.
5. That the Contractor has not in any manner sought by collusion to secure for himself an advantage over any other bidders or induce action prejudicial to the interests of the San Bernardino Valley Municipal Water District or of any other bidder, or anyone else interested in the proposed Contract.
6. That the Contractor has not accepted any bid from any subcontractor or material supplier through any bid depository, the bylaws, rules or regulations of which prohibit or prevent the Contractor from considering any bid from any subcontractor or material supplier, which is not processed through said bid depository, or which prevent any subcontractor or material supplier from bidding to any Contractor who does not use the facilities of or accept bids from or through such bid depository.

7. That the Contractor did not, directly or indirectly, submit the Contractor's bid price or any breakdown thereof, or the contents thereof, or divulge information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, or to any individual or group of individuals, except to the San Bernardino Valley Municipal Water District, or to any person or persons who have partnership or other financial interest with said Contractor in his/her business.

Dated this _____ day of _____ at _____, _____
Month/Year City State

Contractor

Title

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 20____, by _____, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Notary Public in and for said County and State

(SEAL)

[END OF DOCUMENT]

**SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
SAN BERNARDINO, CALIFORNIA**

WORKERS' COMPENSATION INSURANCE CERTIFICATION

**DIRECT INSTALLATION PROGRAM:
TURF REMOVAL AND INDOOR WATER FIXTURE REPLACEMENT**

I am aware of the provisions of Section 3700 of the Labor Code of the State of California 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 of this Contract.

Name of Bidder: _____

Signature: _____

Name and Title: _____

Dated: _____

[END OF DOCUMENT]

**CERTIFICATION OF CONTRACTOR AND SUBCONTRACTOR
DEPARTMENT OF INDUSTRIAL RELATIONS REGISTRATION**

Pursuant to Labor Code section 1725.5, a contractor or subcontractor must be registered with the Department of Industrial Relations in order to bid on, be listed in a bid proposal, or engage in the performance of any defined public work contract.

I, _____, _____ certify that
(Name) (Title)
_____ is currently registered with the Department of
(Contractor Name)

Industrial Relations (DIR):

Contractor's DIR Registration Number: _____

Expiration date: _____

Contractor further acknowledges that:

1. Contractor shall maintain DIR registered status for the duration of the project without a lapse in registration.
2. Contractor shall note in its invitation to bid the DIR's registration requirement for all subcontractors and their subcontractors.
3. Contractor shall ensure that all subcontractors are registered at time of bid opening and maintain registered status for the duration of the project.
4. Contractor is to furnish DIR Registration Number for all subcontractors on the project either at the time of bid or within 24 hours of the bid opening.
5. Contractor shall substitute any subcontractor with a DIR registered subcontractor if listed subcontractor is unable to perform the work.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature

Date

**SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
SAN BERNARDINO, CALIFORNIA**

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

**DIRECT INSTALLATION PROGRAM:
TURF REMOVAL AND INDOOR WATER FIXTURE REPLACEMENT**

Escrow Agreement No. _____

This Escrow Agreement is made and entered into by and between San Bernardino Valley Municipal Water District whose address is 380 East Vanderbilt Way, San Bernardino, California 92408 (hereinafter called "District"); _____ whose address is: _____ (hereinafter called "Contractor"); and _____, whose address is: _____ (hereinafter called "Escrow Agent").

For the consideration hereinafter set forth, District, the Contractor, and the Escrow Agent agree as follows:

(1) Pursuant to § 22300 of the Public Contract Code of the State of California, the Contractor has the option to deposit securities with the Escrow Agent as a substitute for retention earnings required to be withheld by District pursuant to the contract entered into between District and the Contractor for the construction of _____, in the amount of _____, dated _____ under Specifications No. _____ (hereinafter called "Contract").

Alternatively, on written request of the Contractor, District shall make payments of the retention earnings directly to the Escrow Agent. When the Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify District within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between District and the Contractor. Securities shall be held in the name of District and shall designate the Contractor as the beneficial owner.

Securities eligible for deposit with the Escrow Agent shall be limited to those specified in § 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposits, or any other security mutually agreed to by District and the Contractor.

(2) District shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent hold securities in the form and amount specified above.

(3) When District makes payment of earned contract retentions directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until the time that the escrow created under this Agreement is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when District pays the Escrow Agent directly.

(4) The Contractor shall be responsible for paying all fees for the expenses incurred by the Escrow Agent in administering the Escrow Account and all expenses of District. These expenses and payment terms shall be determined by District, the Contractor, and the Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of the Contractor and shall be subject to withdrawal by the Contractor at any time and from time to time without notice to District.

(6) The Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to the Escrow Agent accompanied by written authorization from District to the Escrow Agent that District consents to the withdrawal of the amount sought to be withdrawn by the Contractor.

(7) District shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the District of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by District.

(8) Upon receipt of written notification from District certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, the Escrow Agent shall release to the Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) The Escrow Agent shall rely on the written notifications from District and the Contractor pursuant to Paragraphs (5) to (8), inclusive, of this Agreement. District and the Contractor shall hold the Escrow Agent harmless from the Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The Contractor, or person authorized to execute contracts on behalf of the Contractor, and a person authorized to execute on behalf of the Escrow Agent shall sign three copies of the Escrow Agreement on behalf of the Escrow Agent and submit it to District. When approved and signed by District, one copy will be returned to the Contractor and one copy to the Escrow Agent.

(11) The names of the persons who are authorized to give written notice or to receive written notice on behalf of District and on behalf of the Contractor in connection with the foregoing, and exemplars of their respective signatures, are as follows:

On behalf of District:

Name

Signature

Title

Address

On behalf of the Contractor

Name

Signature

Title

Address

On behalf of Escrow Agent:

Name

Signature

Title

Address

IN WITNESS WHEREOF, the parties have executed this Agreement in triplicate by their proper officers on the date indicated below.

District:

Name

Signature

Title

Address

Contractor:

Name

Signature

Title

Address

Escrow Agent:

Name

Signature

Title

Address

[END OF DOCUMENT]

**SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
SAN BERNARDINO, CALIFORNIA**

AGREEMENT

**DIRECT INSTALLATION PROGRAM:
TURF REMOVAL AND INDOOR WATER FIXTURE REPLACEMENT**

THIS AGREEMENT, made and entered into this ____ day of _____, 20__, by and between the San Bernardino Valley Municipal Water District, a district organized and incorporated under California Municipal Water District Law of 1911, herein after designated as the "District", and _____, hereinafter designated as the "Contractor". District and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement. The District and Contractor for the consideration stated herein agree as follows:

1. CONTRACT DOCUMENTS

The "Contract Documents" except for modifications issued after execution of this Agreement, shall consist of the following documents which are either attached hereto as exhibits or are incorporated into this Agreement by this reference, with the same force and effect as if set forth at length herein:

- A. This Agreement, including any and all Exhibits and attachments
- B. Project Plans and Technical Specifications, including General Conditions and any Special Provisions (or Special Conditions)
- C. Notice Inviting Bids
- D. Instructions to Bidders
- E. Bid Proposal Form
- F. Bid Schedule
- G. Bidding Addenda
- H. Performance and Payment Bonds (in the forms attached hereto as Exhibits)
- I. Bidder's Security
- J. Designation of Subcontractors
- K. Affidavit of Non-collusion
- L. Bidder's Statement of Qualifications
- M. Workers' Compensation Insurance Certification
- N. Certification of Contractor and Subcontractor of Department of Industrial Relations Registration
- O. Escrow Agreement for Security Deposit in Lieu of Retention (if applicable)

Appendix: Contract Provisions Applicable to Federally Funded Projects (Including WIFIA)

2. SCOPE OF WORK

Within the Contract Time and for the stated Contract Price, subject to adjustments thereto, and pursuant to the Contract Documents, the Contractor shall perform and provide all necessary labor, services, supervision, materials, tools, equipment, apparatus, facilities, supplies, tools, permits, supervision, utilities and transportation necessary to complete the Work in strict conformity with the Contract Documents.

Contractor shall supervise and direct the Work, and shall furnish the services of all supervisors, forepersons, skilled and unskilled labor, and all other personnel necessary to construct the complete, operational, and fully functional Project. Contractor shall provide, manage and organize such personnel as necessary to complete the Work in accordance with all requirements of the Contract Documents.

Contractor shall obtain, at Contractor's expense, all governmental and private approvals, licenses, and permits required to complete the Work. Contractor shall construct a complete, operational, and fully functional Project in full compliance with all applicable laws, codes and standards (both public and private), including but not limited to, the standards included and warranties expressed in the Contract Documents and manufacturer's recommendations pertaining to individual items of equipment or systems.

3. TIME FOR PERFORMANCE

The date of commencement of the Work shall be fixed in a Notice to Proceed issued by the District. If District's issuance of a Notice to Proceed is delayed due to Contractor's failure to return a fully-executed Agreement, insurance documents or bonds within fourteen (14) calendar days after the date of award of the Contract, one (1) calendar day will be deducted from the number of days to achieve Substantial Completion of the Work for every day of delay in District's receipt of such documents. This right is in addition to and does not affect District's right to demand forfeiture of Contractor's Bid Security, or any other rights or remedies available to District if Contractor persistently delays in providing the required documentation. Contractor agrees to promptly commence the Work after the Notice to Proceed is issued by the District, to achieve Substantial Completion of the entire Work within 140 calendar days after the date of commencement ("Contract Time") and to achieve Final Completion of the Work within the time fixed by the District in the Certificate of Substantial Completion. The Contract Time may be extended only with the written authorization of the District. By its signature hereunder, Contractor agrees that the Contract Time is adequate and reasonable to complete the Work.

4. LIQUIDATED DAMAGES

District and Contractor recognize that time is of the essence in this Agreement and that the District may suffer financial loss in the form of lost grant funds, additional contract administration expenses, loss of public use if the Work is not completed within the Contract Time, including any extensions thereof allowed in accordance with the Contract Documents.

Contractor and District agree to liquidate damages with respect to Contractor's failure to achieve Substantial Completion of the Work within the Contract Time. The Parties intend for the liquidated damages set forth herein to apply to this Contract as set forth in Government Code Section 53069.85. Contractor acknowledges and agrees that the liquidated damages are intended to compensate District solely for Contractor's failure to meet the deadline for Substantial Completion and shall not excuse Contractor from liability from any other breach, including any failure of the Work to conform to the requirements of the Contract Documents, and shall not limit any non-monetary rights or remedies available to the District for Contractor delay, including, without limitation, the right to direct acceleration and the right to terminate the Contract.

In the event that Contractor fails to achieve Substantial Completion of the Work within the Contract Time, Contractor agrees to pay District \$500.00 per day for each calendar day that Substantial Completion is delayed.

Contractor acknowledges and agrees that the foregoing liquidated damages have been set based on an evaluation by District of damages that it will incur in the event of the late completion of the Work. Contractor and District agree that because of the nature of the Project it would be impractical or extremely difficult to fix the amount of actual damages incurred by the District due to a delay in completion of the Work. Accordingly, the District and Contractor have agreed to such liquidated damages to fix Contractor's costs and to avoid later disputes. It is understood and agreed by Contractor that any liquidated damages payable pursuant to this Agreement are not a penalty and that such amounts are not manifestly unreasonable under the circumstances existing as of the effective date of this Agreement.

It is further mutually agreed that District shall have the right to deduct liquidated damages against progress payments or retainage and that the District will issue a unilateral change order and reduce the Contract Sum accordingly. In the event the remaining unpaid Contract Sum is insufficient to cover the full amount of liquidated damages, Contractor shall pay the difference to District.

5. CONTRACT SUM

In consideration of the Contractor's full, complete, timely, and faithful performance of the Work required by the Contract Documents, District shall pay Contractor the sum of [Spell out dollar amount] dollars/no cents (\$numerical dollar amount), payable as set forth in the General Conditions ("Contract Sum").

The Contract Sum is the total amount payable by District to Contractor for performance of the Work under the Contract Documents and is deemed to cover all costs arising out of or related to the performance of the Work, including, without limitation, the effects of natural elements upon the Work, unforeseen difficulties or obstructions affecting the performance of the Work (including, without limitation, unforeseen conditions at the site that do not constitute differing site conditions) and fluctuations in market conditions and price escalations (whether occurring locally, nationally or internationally) from any cause, including, without limitation, causes beyond the control or foreseeability of the Contractor.

6. PROVISIONS REQUIRED BY LAW

Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and the California Public Contract Code where applicable to this Project.

7. DIR REGISTRATION

Strict compliance with all DIR registration requirements in accordance with Labor Code Sections 1725.5 and 1771.1 is a material obligation of the Contractor and all of its subcontractors (of any tier) under the Contract Documents. The foregoing includes, without limitation, compliance with DIR registration requirements at all times during performance of the Work by the Contractor and all of its subcontractors of any tier. Contractor shall provide certification of registration and registration number to the District before a subcontractor will be allowed to work on the Project. The failure of the Contractor and all subcontractors of any tier to be properly registered with DIR at all times during performance of the Work is a material breach of the Contract and grounds for termination for cause.

An affirmative and ongoing obligation of the Contractor under the Contract Documents is the verification that all subcontractors of any tier are at all times during performance of the Work are in full and strict compliance with the DIR registration requirements. The Contractor shall not permit or allow any subcontractor of any tier to perform any Work without the Contractor's verification that all subcontractors are in full and strict compliance with the DIR registration requirements. Any subcontractors of any tier not properly registered with DIR shall be substituted in accordance with Labor Code section 1771.1. Contractor or its subcontractors of any tier shall not be entitled to any additional costs or time arising from or in any way related to compliance with the DIR registration requirements.

8. PREVAILING WAGES

The Project constitutes a public work and is subject to the requirements of Article 2 (commencing at section 1720), Chapter 1, Part 7, Division 2 of the Labor Code.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rate shall be made available at 380 East Vanderbilt Way, San Bernardino, CA 92408 or may be obtained online at <http://www.dir.ca.gov/dlsr> and which must be posted at the jobsite.

9. CERTIFICATION BY CONTRACTOR

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 of this Contract.

10. WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT (WIFIA) PROJECT FUNDING

This Project is ☐/is not ☒ being funded, either in full or in part, through the Water Infrastructure Finance and Innovation Act ("WIFIA"). If the Project is being funded, either in full or in part, through WIFIA, then Contractor must comply with all the referenced requirements in the Agreement (including the Appendix attached hereto) and the General Conditions related to WIFIA, and the same shall be enforced by the District.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed the date and year first above written.

[Contractor]

By: _____
[Name and Title]

Dated: _____

**SAN BERNARDINO VALLEY MUNICIPAL
WATER DISTRICT**

By: _____
President, Board of Directors

Dated: _____

ATTEST:

APPROVED AS TO FORM AND EXECUTION:

Secretary of San Bernardino Valley Municipal
Water District

Attorney for the District

Dated: _____

NOTE: Signatures of corporate officials must be notarized.

[END OF DOCUMENT]

EXHIBIT 1 TO AGREEMENT

Performance Bond No. _____

PERFORMANCE BOND

WHEREAS, the San Bernardino Valley Municipal Water District ("District") has awarded [Insert Name of Contractor] designated as the "Principal" herein, a contract for the work described as follows:

WHEREAS, on or about _____, 20____, the Principal entered into a Contract with the District for the construction of the work of improvement, which Contract and all Contract Documents set forth therein are incorporated herein and made a part hereof by this reference; and

WHEREAS, Principal is required to furnish a bond guaranteeing the faithful performance of its obligations under the Contract Documents concurrently with delivery to District of the executed Contract.

NOW, THEREFORE, Principal and _____ ("Surety"), a duly admitted surety in the State of California, are held and firmly bound to District for payment of the penal sum of \$_____ ("the Bonded Sum"), in lawful money of the United States, for payment of which sum Principal and Surety jointly and severally bind themselves and their heirs, executors, administrators, successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The following terms and conditions shall apply with respect to this Bond:

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to District for the complete and proper performance of the Contract, which is incorporated herein by reference.
2. If the Contractor completely and properly performs all of its obligations under the Contract, the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no District Default, the Surety's obligation under this Bond shall arise after:
 - 3.1 District has declared a Contractor Default under the Contract pursuant to the terms of the Contract; and
 - 3.2 District has agreed to pay the Balance of the Contract Sum to:
 - 3.2.1 The Surety in accordance with the terms of this Bond and the Contract; or

- 3.2.2 The contractor selected to perform the Contract in accordance with the terms of this Bond and the Contract.
4. When District has satisfied the conditions of Paragraph 3, the Surety shall promptly (within thirty (30) days) and at the Surety's expense elect to take one of the following actions (provided, that unless and until District has actually terminated Contractor for default, the Surety need only respond to District and commence a diligent investigation, not make an election):
- 4.1 Arrange for the Contractor, with consent of District, to perform and complete the Contract (but District may withhold consent, in which case the Surety must elect an option described in Paragraphs 4.2, 4.3 or 4.4, below); or
- 4.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors, but District may reject use of the contractor as an agent or independent contractor; or
- 4.3 Obtain bids from qualified contractors acceptable to District for a contract for performance and completion of the Contract (other than the original Contractor), and, upon determination by District of the lowest responsible bidder, arrange for a contract to be prepared for execution by District and the contractor selected with District's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract; and, if the Surety's obligations defined in Paragraph 6, below, exceed the Balance of the Contract Sum, then the Surety shall pay to District the amount of such excess; or
- 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, and, after investigation and consultation with District, determine in good faith its monetary obligation for which it may then be liable to District under Paragraph 6, below, for the performance and completion of the Contract and, as soon as practicable after the amount is determined, tender payment therefor to District with full explanation of the payment's calculation. If District accepts the Surety's tender under this Paragraph 4.4, District may still hold Surety liable for future damages then unknown or unliquidated resulting from the Contractor Default. If District disputes the amount of Surety's tender under this Paragraph 4.4, District may exercise all remedies available to it at law to enforce the Surety's liability under Paragraph 6 below.
5. If the Surety does not proceed as provided in Paragraph 4, above, then the Surety shall be deemed to be in default on this Bond ten (10) calendar days after receipt of an additional written notice from District to the Surety demanding that the Surety perform its obligations under this Bond. At all times District shall be entitled to enforce any remedy available to District at law or under the Contract including, without limitation, and by way of example only, rights to perform work, protect work, mitigate damages, or coordinate work with other consultants or contractors.
6. The Surety's monetary obligation under this Bond is limited to the amount of this Bond, plus the Balance of the Contract Sum paid hereunder. Subject to these limits, the Surety's obligations under this Bond are commensurate with the obligations of the Contractor under the Contract. The Surety's obligations shall include, but are not limited to:
- 6.1 The responsibilities of the Contractor under the Contract for completion of the Contract and correction of defective work;

- 6.2 The responsibilities of the Contractor under the Contract to pay liquidated damages, and for damages for which no liquidated damages are specified in the Contract, actual damages caused by non-performance of the Contract, including but not limited to, all valid and proper back charges, offsets, payments, indemnities, or other damages;
- 6.3 Additional legal, design professional and delay costs resulting from the Contractor Default or resulting from the actions or failure to act of the Surety under Paragraph 4, above.
- 7. No right of action shall accrue on this Bond to any person or entity other than District or its heirs, executors, administrators, or successors.
- 8. The Surety hereby waives notice of any change, alteration or addition to the Contract or to related subcontracts, purchase orders and other obligations, including changes of time. The Surety consents to all terms of the Contract, including provisions on changes to the Contract. No extension of time, change, alteration, modification, deletion, or addition to the Contract Documents, or of the work required thereunder, shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond.
- 9. Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is pending between District and the Contractor regarding the Contract, or in the courts of the County of San Bernardino, or in a court of competent jurisdiction in the location in which the work is located.
- 10. Notice to the Surety, District or the Contractor shall be mailed or delivered to the address shown on the signature page.
- 11. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein.
- 12. Definitions.
 - 12.1 Balance of the Contract Sum: The total amount payable by District to the Contractor pursuant to the terms of the Contract after all proper adjustments have been made under the Contract, for example, deductions for progress payments made, and increases/decreases for approved modifications to the Contract.
 - 12.2 Contract: The agreement between District and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3 Contractor Default: Material failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
 - 12.4 District Default: Material failure of District, which has neither been remedied nor waived, to pay the Contractor progress payments due under the Contract or to perform other material terms of the Contract, if such failure is the cause of the asserted Contractor Default and is sufficient to justify Contractor termination of the Contract under the terms of the Contract.
- 13. Qualification Regarding Extended Warranties. The Surety's liability for extended warranties for Subcontractors and suppliers shall not apply to a breach of any such extended warranty under the

Contract that occurs more than one year after the applicable warranty commencement date under the Contract.

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety of the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body. Principal and Surety have caused this Bond to be duly executed and delivered as of this _____ day of _____, 20____.

SURETY:

PRINCIPAL:

Name

Name

Principal Place of Business

Address

By: _____
Signature

By: _____
Signature

Attorney-In-Fact

Printed Name

Signature

Its: _____
Title

**NOTARIAL CERTIFICATION OF ATTORNEY IN FACT, CORPORATION SEAL
AND SURETY SEAL MUST BE ATTACHED**

ACKNOWLEDGMENT OF PERFORMANCE BOND

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me, _____ personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they/ executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT OF ATTORNEY IN FACT

PERFORMANCE BOND

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me, _____ personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they/ executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT 2 TO AGREEMENT

Payment Bond No. _____

PAYMENT BOND (Labor and Material Bond)

WHEREAS, the San Bernardino Valley Municipal Water District ("District") has awarded Insert Name of Contractor designated as the "Principal" herein, a contract for the work described as follows:

WHEREAS, on or about _____, 20____, the Principal entered into a Contract with the District for the construction of the work of improvement, which Contract and all Contract Documents set forth therein are incorporated herein and made a part hereof by this reference; and

WHEREAS, by terms of the Contract, as well as California Civil Code § 9550, Principal is required to furnish a bond guaranteeing payment of claims.

NOW, THEREFORE, Principal and _____ ("Surety"), a duly admitted surety in the State of California, are held and firmly bound to the District for payment of the penal sum of \$_____ ("the Bonded Sum"), in lawful money of the United States, for payment of which sum Principal and Surety jointly and severally bind themselves and their heirs, executors, administrators, successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT if Principal shall fail to pay any of the persons named in California Civil Code § 9100 for all labor, materials, equipment or services used or reasonably required for use in performance of the Work of the Project, then Surety shall pay for the same in an amount not-to-exceed the Bonded Sum, otherwise this obligation shall be null and void.

The following terms and conditions shall apply with respect to this Bond:

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to District and to Claimants, to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to District, this obligation shall be null and void if the Contractor:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies and holds harmless District from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract, provided District has promptly notified the Contractor and the Surety (at the address described in Paragraph 10) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no District Default.

3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly through its subcontractors, for all sums due Claimants. However, if Contractor or its subcontractors fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor or subcontractors pursuant to the Unemployment Insurance Code Section 13020, with respect to such work and labor, then Surety will pay for the same, and also, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the Court.
4. Consistent with the California Mechanic's Lien Law, California Civil Code §§ 8400, et seq., the Surety shall have no obligation to Claimants under this Bond unless the Claimant has satisfied all applicable notice requirements.
5. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety under this Bond.
6. Amounts due the Contractor under the Contract shall be applied first to satisfy claims, if any, under any Construction Performance Bond and second, to satisfy obligations of the Contractor and the Surety under this Bond.
7. District shall not be liable for payment of any costs, expenses, or attorney's fees of any Claimant under this bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
8. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.
9. Suit against Surety on this Payment Bond may be brought by any Claimant, or its assigns, at any time after the Claimant has furnished the last of the labor or materials, or both, but, pursuant to California Civil Code § 9558, must be commenced before the expiration of six months after the period in which stop notices may be filed as provided in Civil Code § 9356.
10. Notice to the Surety, District or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, District or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
11. This Bond has been furnished to comply with the California Mechanic's Lien Law, including, but not limited to, Civil Code §§ 9550, et seq. Any provision in this Bond conflicting with said statutory requirements shall be deemed deleted and provisions conforming to such statutory or other legal requirements shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
13. DEFINITIONS
 - 13.1 Claimant: An individual or entity having a direct contract with this Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the

performance of the Contract, as further defined in California Civil Code § 9100. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a stop notice might be asserted. The term Claimant shall also include the Unemployment Development Department.

- 13.2 Contract: The agreement between District and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
- 13.3 District Default: Material failure of District, which has neither been remedied nor waived, to pay the Contractor as required by the Contract, provided that failure is the cause of the failure of Contractor to pay the Claimants and is sufficient to justify termination of the Contract.

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety of the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body. Principal and Surety have caused this Bond to be duly executed and delivered as of this _____ day of _____, 20____.

SURETY:

PRINCIPAL:

Name

Name

Principal Place of Business

Address

By: _____
Signature

By: _____
Signature

Attorney-In-Fact

Printed Name

Signature

Its: _____
Title

**NOTARIAL CERTIFICATION OF ATTORNEY IN FACT, CORPORATION SEAL
AND SURETY SEAL MUST BE ATTACHED**

ACKNOWLEDGMENT OF PAYMENT BOND

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me, _____ personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they/ executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT OF ATTORNEY IN FACT

PAYMENT BOND

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me, _____ personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they/ executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
SAN BERNARDINO, CALIFORNIA

GENERAL CONDITIONS
FOR
CONSTRUCTION CONTRACT

DIRECT INSTALLATION PROGRAM:
TURF REMOVAL AND INDOOR WATER FIXTURE
REPLACEMENT
SPECIFICATION 26-01



**A REGIONAL WATER AGENCY
SINCE 1954**

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ARTICLE 1

PRELIMINARY PROVISIONS

1.01 DEFINITIONS

The following words shall have the following meanings:

- A. **As-Builts.** The documents prepared by Contractor showing the condition of the Work as actually built, including, without limitation, all changes and the exact locations of all pipe, fittings, valves, structures or other portions of the Work that are shown diagrammatically in the Contract Documents.
- B. **Bid.** Contractor's written bid proposal submitted to District for the Work in response to the Notice Inviting Bids.
- C. **Bidder.** The individual, partnership, firm, corporation, joint venture or other legal entity submitting a bid on these Contract Documents or any part thereof.
- D. **Change Order.** A Change Order is a written document prepared by the District reflecting the agreement between the District and Contractor for: a change in the terms or conditions of the Contract, if any; a specific scope change in the Work; the amount of the adjustment, if any, in the Contract Sum; and the extent of the adjustment, if any, in the Contract Time.
- E. **Change Order Request (COR).** A Change Order Request is a written document originated by the Contractor, which describes an instruction issued by the District after the effective date of the Contract, which Contractor believes to be a scope change that may result in changes to the Contract Sum or Contract Time or, which describes the need for or desirability of a change in the Work proposed by Contractor.
- F. **District or Owner.** The San Bernardino Valley Municipal Water District, acting through its Board of Directors, General Manager or other District officials authorized to act for the District, acting in its proprietary rather than regulatory capacity in connection with the Project.
- G. **Contract Documents.** The Contract Documents consist of the documents enumerated as such in the Agreement between District and Contractor, all Addenda issued prior to and all modifications issued after the effective date of the Agreement.
- H. **Contract Sum.** The total amount of compensation stated in the Construction Contract that is payable to Contractor for the complete performance of the Work in accordance with the Contract Documents.
- I. **Contract Time.** The total number of days set forth in the Construction Contract within which Substantial Completion of the Work must be achieved, beginning with the date established in the Notice to Proceed to commence the Work and ending with the date that the Notice of Substantial Completion is issued by the Engineer, including approved extensions of time permitted under the terms of the Contract Documents. The Contract Time for Contractor's performance of the Work is measured in calendar days (not work days).
- J. **Contractor.** The licensed individual, partnership, firm, corporation, joint venture or other legal entity with whom the Contract is made by said District, or the agent or legal representative who may be appointed to represent such individual, partnership, firm, corporation, joint venture or other legal entity in the execution of the Contract as general contractor for construction of the work.

- K. **Date of Commencement.** The date for commencement of the Work fixed by District in a Notice to Proceed to Contractor.
- L. **Day.** The terms "day" or "days" mean calendar days unless otherwise specifically designated in the Contract Documents. The term "Work Day" or "Working Day" shall mean any calendar day except Saturdays, Sundays and the following District-recognized legal holidays: New Year's Day, Martin Luther King's Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving and Christmas.
- M. **Engineer.** The term Engineer shall mean the General Manager of the San Bernardino Valley Municipal Water District or his/her duly appointed representative duly designated in writing and acting within the scope of the particular duties entrusted to them.
- N. **Extra Work.** Work required to be performed by Contractor that is not described in, or reasonably inferable from, the Contract Documents, the performance of which requires the expenditure by Contractor of additional and unforeseen costs.
- O. **Field Directive.** A Field Directive is a unilateral written order prepared and signed by the District directing the Contractor to perform a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both.
- P. **Final Completion.** The term Final Completion is the date, evidenced by the District's approval of Contractor's Final Application for Payment, when the Work has been completed and the requirements for Project closeout set forth in the Contract are accepted by District.
- Q. **Force Majeure.** The term Force Majeure includes but is not limited to declared or undeclared war, sabotage, insurrection, riot, or other acts of civil disobedience, labor disputes, fires, explosions, floods, earthquakes or other acts of God.
- R. **Notice to Proceed.** The Notice to Proceed is a document issued by the District fixing the date for commencement for the Work.
- S. **Parties.** The District and Contractor may be referred to in the Contract Documents from time to time as the Parties.
- T. **Project.** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the District or by separate contractors.
- U. **Site.** The physical area designated in the Contract Documents for Contractor's performance of the Work.
- V. **Substantial Completion.** Substantial Completion is defined to mean the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents as determined by the District so that the District can occupy and utilize the Work for its intended use (for which a Temporary Certificate of Occupancy ("TCO") has been issued by the District unless a TCO is not required to operate that type of facility) and as further defined in the Contract Documents.
- W. **Unilateral Change Order.** A Unilateral Change Order is a unilateral written order prepared and signed by the District, directing Contractor to perform a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both.
- X. **Work.** The term "Work" means the construction and other services required by, and reasonably inferable from the Contract Documents, whether completed or partially completed, and includes all other labor,

materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.02 REPRESENTATIVES

- A. The Engineer shall be the representative of the District and, except as otherwise expressly provided herein, shall make all decisions and interpretations to be made by the District under the provisions of the Contract Documents.
- B. The Contractor shall at all times be represented on the Work in person or by a duly designated agent. Instructions and information given by the Engineer to the Contractor's agent on the Work shall be considered as having been given to the Contractor.

1.03 PERMITS, LICENSES AND UTILITIES

- A. The Contractor shall apply for and obtain all permits and licenses required by any federal, state, and county agencies as well as the District (including without limitation any business license required by a municipality). All permits and licenses shall be obtained by and at the expense of the Contractor and/or Subcontractors, with the exception of the following which the District will obtain: **N/A** Any permit fees payable to the District shall be waived. The Contractor shall abide by the permit requirements and comply with all conditions of approval.
- B. Where requirements of the permits differ from those of the Drawings and Specifications, the more stringent requirements shall apply.
- C. Unless otherwise specified in this Contract, Contractor shall be responsible for payments of all utilities including but not limited to gas, electricity, sewer, water, refuse hauling and telephone.

1.04 SPECIFICATIONS AND DRAWINGS

- A. The Contractor shall keep on the Work Site a copy of all Specifications, Drawings, and change orders pertaining to the Work and shall at all times give the Engineer access thereto. Anything mentioned in the Specifications and not shown on the Drawings or shown on the Drawings and not mentioned in the Specifications shall be of like effect as though shown or mentioned in both.
- B. In general, the Drawings will show dimensions, positions, and kind of construction; and the Specifications will define materials, quality, and standards. Any Work not particularly detailed, marked or specified, shall be the same as similar parts that are detailed, marked or specified.
- C. The Drawings shall not be scaled to determine dimensions, and in all cases shall be calculated from figures shown on the Drawings. Any discrepancies between scale and figured dimensions, not marked "not to scale," must be brought to the Engineer's attention before proceeding with the Work affected by the discrepancy. The District will accept no responsibility for errors resulting from misinterpretation or scaling of the Drawings.
- D. Omissions from the Drawings and/or Specifications shall not relieve the Contractor from the responsibility of furnishing, making or installing all items required by law or code, or usually furnished, made or installed in a project of the scope and general character indicated by the Drawings and Specifications.
- E. For convenience, the Drawings and Specifications are arranged in various trade subparagraphs, but such segregation shall not be considered as limiting the Work of any subcontract or trade. The Contractor shall be solely responsible for all subcontract arrangements of the Work regardless of the location or provision in the Drawings and Specifications.

- F. The District will furnish free of charge to the Contractor, a maximum of six (6) sets of contract drawings and specifications. The Contractor shall pay for the costs of any additional sets or portions thereof. The Contractor shall be responsible to see that all sets are the same as the up to date approved set.

1.05 PRECEDENCE OF CONTRACT DOCUMENTS

- A. In the event of conflict between any of the Contract Documents, the provisions placing a more stringent requirement on the Contractor shall prevail. The Contractor shall provide the better quality or greater quantity of Work and/or materials unless otherwise directed by District in writing. In the event none of the Contract Documents place a more stringent requirement or greater burden on the Contractor, the controlling provision shall be that which is found in the document with higher precedence in accordance with the following order of precedence:
1. Permits issued by regulatory agencies required for the Work
 2. Modifications issued after execution of the Contract (including modifications to Plans and Specifications)
 3. The Contract, including all exhibits, attachments, appendices and addenda, with later addenda having precedence over earlier addenda.
 4. Supplementary Provisions, if any
 5. Specifications
 6. Plans
 7. Notice Inviting Bids, Instructions to Bidders and Bidder's Proposal
- B. With reference to the Plans, the order of precedence is as follows:
1. Change Order plans govern over Addenda and Contract plans
 2. Addenda plans govern over Contract plans
 3. Contract plans govern over standard plans
 4. Detail plans govern over general plans
 5. Figures govern over scaled dimensions
- C. Within the Specifications, the order of precedence is as follows:
1. Change Orders
 2. Special Provisions, if any
 3. Project Technical Specifications
 4. Standard Specifications, if any
 5. Applicable Trade Association Specifications

1.06 NOTICE OF CONFLICTS

If the Contractor, in the course of the Work, becomes aware of any claimed conflicts, errors or omissions in the Contract Documents or in the District's fieldwork or work of District's separate contractors, the Contractor shall immediately notify the Engineer in writing. The Engineer shall promptly review the matter, and if the Engineer finds a conflict, error or omission, the Engineer shall determine the corrective actions and advise the Contractor accordingly. If the correction associated with a conflict, error or omission increases or decreases the amount of Work called for in the Contract, the District shall issue an appropriate Change Order in accordance with the Contract Documents. After discovery of an error or omission by the Contractor, any related additional work performed by the Contractor shall be done at the Contractor's risk unless authorized by the Engineer.

1.07 DAILY REPORTS

Contractor shall maintain a daily report for each day containing a record of weather, Contractor's own forces working on site, Subcontractors working on the site, the number of workers for each Subcontractor equipment on site, materials delivered, Work accomplished, problems encountered and other similar relevant data as the District may reasonably require. The daily report shall be signed by Contractor's Superintendent, submitted within twenty-four (24) hours (next working day) to the Engineer, and shall be made available to others as directed by District.

1.08 AS-BUILTS

Contractor shall maintain a set of black line prints and shall use colored pencils to mark-up said set with "record information" in a legible manner to show: (i) deviations from the District-approved drawings and plans; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings and plans; (iv) the actual installed position and location of piping, fittings, valves and structures; and (v) such other information as District may reasonably request. In addition, Contractor shall continuously update the drawings and plans in the latest version of AutoCAD format.

1.09 LINES, GRADES, AND MEASUREMENTS

- A. All lines and grades will be established by the Contractor. The Contractors shall carefully preserve all survey stakes and reference points as far as possible. Should any stakes or points be removed or destroyed unnecessarily by any act of the Contractor or his/her employees, they must be reset to the satisfaction of the Engineer, at the Contractor's expense.
- B. The Contractor shall inform the Engineer within forty-eight (48) hours (two Working Days) in advance of the times and places at which he/she intends to Work in order that inspection may be provided, and that necessary measurements for records and payments may be made with minimum inconvenience.
- C. No direct payment will be made for the cost to the Contractor of any of the Work or delay occasioned by giving lines and grades, by making other necessary measurements or by inspection.

1.10 MAIN OR TRUNK LINE UTILITY FACILITIES

Pursuant to 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 trunk line utility facilities not indicated in the Drawings and Specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. The Contractor shall not be assessed liquidated damages for delay in completion when such delay is caused by the failure of the District or the utility to provide for removal or relocation of such facilities. Contractor shall immediately notify the Engineer in writing if he/she discovers utility facilities not identified in the Drawings or Specifications, and shall have no claim for extra compensation or extension of time if such notification in writing is not promptly given.

1.11 INTERFERENCE WITH FIRE HYDRANTS, ROADS AND FENCES

The Contractor shall so conduct his/her operations as not to close or obstruct any portion of any road or street or prevent in any manner, free access to fire hydrants until he/she has obtained permits therefor from the proper authorities. If any road required to be kept open shall be rendered unsafe by the Contractor's operations, he/she shall make such repairs or provide such temporary guards as shall be acceptable to the authorities having jurisdiction and to the District. Any road or street maintenance or repair work required by local authorities in connection with necessary operations under this Contract, shall be performed by the Contractor at his/her own expense and costs. Fences subject to interference shall be kept up by the Contractor until the work is finished and then restored to their original conditions.

1.12 RIGHT OF WAY

- A. The site for the installation of equipment or the right of way for the Work to be constructed under this Contract will be provided by the District.
- B. The District will provide the appropriate rights of way and property for pipelines and structures. Upon approval by the Engineer, the Contractor may, without cost, use portions of any of the District's rights of way or property which may be suitable for working space and for reasonable storage of equipment and materials. The Contractor will be held responsible for any damage to structures, streets, and roads, trees and landscaping, and for any damage that may result from his/her use of District property.
- C. In case areas additional to those available on the District's rights of way or property are required by the Contractor for his/her operations, he/she shall make arrangements with the property owner(s) for the use of such additional areas at his/her own expense (see Section 2.10) and furnish the District with a copy of said arrangements. Contractor shall indemnify the District, in accordance with Article 11 herein, in the event of a claim for damages from any such property owner(s).

1.13 OTHER RIGHTS-OF-WAY AND STRUCTURES

Except as otherwise specifically provided, the Contractor shall not do any work that would affect any railway track, pipeline, telephone, telegraph or electric transmission line, irrigation ditch or other structure nor enter upon the site or other lands appurtenant thereto, until notified that the District has secured authority therefor from the proper companies or parties. Thereafter and before he/she begins such work, the Contractor shall give said companies or parties due notice of his/her intentions to do so, and he/she shall give said companies or parties convenient access and every facility for removing, shoring, supporting or otherwise protecting such tracks, lines, ditches, or structures and for replacing same. The Contractor shall not be entitled to any extension of time or any extra compensation on account of any postponement, interference or delay caused by any such structures being on the site of the Work except as otherwise allowed herein.

1.14 CONTRACTOR'S OPERATIONS/STORAGE YARD

In the event the Contractor requires space for the storage and/or staging of construction materials, supplies, equipment, stockpiling of debris, or any other needs required for construction operations, he/she shall acquire at his/her own expense such areas as he/she may desire. For properties within the District, the staging area must be enclosed at Contractor's expense with construction fencing covered with a mesh screen to limit visibility to the site. Approval of the Neighborhood Services Department is required to ensure that private properties with code enforcement problems are not used. Private property used for storage of construction material or debris shall be restored to a legal condition with regard to appearance and maintenance upon conclusion of the Project. Property should be graded and free of weeds and debris when Project is completed.

1.15 SUBSURFACE DATA

The District may have prepared a geotechnical report that includes boring logs for various locations within the Project. If prepared for this Project, the report would be attached as an exhibit to the Contract Documents. All soil and test hole boring data, groundwater evaluations and soil analyses provided within said exhibit applies only at the locations of the test holes and to the depths indicated. If attached to the Contract Documents, the report is provided to the Contractor for his/her convenience and informational purposes only and should not be solely relied upon in preparing the Bid. Any additional subsurface exploration shall be done by the Contractor at its own expense. It is the Contractor's sole and express responsibility to determine and allow for subsurface conditions. A difference between soil analyses shown in boring logs and conditions actually encountered in the field during construction will not be considered as a basis for extra work except as detailed elsewhere in these General Conditions. A difference in groundwater levels shown in soil boring logs and groundwater levels actually encountered will not be considered as a basis for extra work.

[END OF ARTICLE]

ARTICLE 2

PERFORMANCE OF THE WORK

2.01 PERFORMANCE OF WORK - GENERAL

Contractor shall, at its own cost and expense, furnish all necessary materials, labor, transportation, and equipment for doing and performing said Work and the materials used shall comply with the requirements of the Contract Documents. All Work shall be performed and completed as required in the Contract Documents and subject to the approval of the Engineer or his/her designated assistant.

2.02 NO ASSIGNMENT OR DELEGATION

Contractor shall not assign, transfer, convey or delegate the duties or obligation under this Contract or his/her interest therein in whole or in part without the prior written consent of the District, which may be withheld at the District's sole discretion. Should the Contractor violate the provisions of this section it will be deemed a material breach and the Contract may, at the option of the District, be terminated, revoked and annulled and the District shall thereupon be relieved and discharged from any and all liability and obligations arising out of the same to Contractor and to his/her assignee or transferee.

2.03 STANDARD OF PERFORMANCE

Contractor agrees that all services performed hereunder shall be provided in a manner commensurate with the highest professional standards and shall be performed by qualified and experienced personnel; that any Work performed by Contractor under the Contract will be performed in the best manner; that any material furnished shall be subject to the approval of the Engineer; and that both Work and materials will fully meet the requirements of the Contract Documents.

2.04 DEFECTIVE WORK

The Contractor shall remove, replace and/or rebuild at his/her own expense any part of the Work that has been improperly executed, even though it has been included in the monthly payment application estimates. The Contractor shall be required to remedy such defective Work within thirty (30) calendar days after written demand by the District. If Contractor refuses or neglects to remedy such defective Work within said timeframe, prior to acceptance of the Work, it may be replaced by the District at the expense of the Contractor, plus 15% for overhead expenses, and his/her sureties shall be liable therefor. The District shall be entitled to deduct corresponding amounts from the Contractor's next monthly payment application. (See Section 2.14 for curing defects after acceptance of the Work.)

2.05 COMMUNICATIONS REGARDING THE WORK

- A. Notices under the Contract Documents shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by email or facsimile communication and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

All correspondence with Contractor shall be sent to the following address:

Attention: _____
Telephone: _____
Cell Phone: _____
Email: _____

Facsimile: _____

All communications shall be copied to District and shall be delivered to District's Strategic Communications at the address set forth below, with copies to such additional persons as may be directed by District's Manager of Strategic Communications & Special Initiatives.

San Bernardino Valley Municipal Water District
380 East Vanderbilt Way
San Bernardino, CA 92408
Attention: Kelly Malloy
Telephone: 909-387-9229
Cell Phone: 760-885-8716
Email: kellym@sbfmwd.com
Facsimile: (909) 387-9247

- B. Notices delivered by carrier shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other person making the delivery. Notwithstanding the foregoing, notices sent by email or facsimile after 4:00 p.m. Pacific Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. shall be deemed received on the first business day following delivery (that is, in order for an email or fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.). Any technical or other communications pertaining to the Work shall be conducted by Contractor's Project Manager and technical representatives designated by District. Contractor's representatives shall be available at all reasonable times for consultation, and shall be authorized to act on behalf of Contractor in matters concerning the Work.
- C. Contractor shall copy District on all written correspondence pertaining to the Contract between Contractor and any person other than Contractor's Subcontractors, consultants and attorneys.

2.06 INDEPENDENT CONTRACTOR

The Contractor in the performance of the Work hereunder will be acting in an independent capacity and not as an agent, employee, partner, or joint venture of the District.

2.07 SUBCONTRACTORS

- A. All Subcontractors, if applicable, shall be properly licensed by the California State License Board. As used in this Contract, the term "Subcontractor" shall refer to subcontractors of any tier performing any portion of the Work. All Subcontractors must comply with the Labor Code Sections 1725.5 and 1771.1 and must be properly and currently registered with the California Department of Industrial Relations (DIR) and qualified to perform public work pursuant to Labor Code Section 1725.5 throughout the duration of the Project. No portion of the work is permitted to be performed by a Subcontractor unless the Subcontractor is properly registered with the DIR. Any Subcontractor not properly registered with the DIR shall be substituted in accordance with Labor Code Section 1771.1.
- B. Each subcontract shall contain a reference to the Contract between the District and the Contractor, and the terms of the Contract and all parts thereof shall be made part of each subcontract insofar as applicable to the Work covered thereby. Each Subcontractor shall provide for its annulment at the order of the Strategic Communications, if, in his/her opinion, the Subcontractor fails to comply with the requirements of the principal Contract insofar as the same may be applicable to his/her Work.
- C. Nothing contained in these Contract Documents shall be construed as creating any contractual relationship between any Subcontractor and the District.

- D. The Contractor shall be considered the employer of any Subcontractors and shall be fully responsible to the District for the acts and omissions of Subcontractors and of persons employed by them as he/she is for the acts and omissions of persons directly employed by him/her.
- E. The Contractor shall be responsible for the coordination of the trades, Subcontractors, and material suppliers engaged upon his/her Work. It shall be his/her duty to see that all of his/her Subcontractors commence their Work at the proper time and carry it on with due diligence so that they do not delay or injure either the Work or materials; and that all damage caused by them or their workers is made good at his/her expense.
- F. The District will not undertake to settle differences between the Contractor and his/her Subcontractors or between Subcontractors.
- G. The Contractor shall utilize the services of specialty Subcontractors, without additional expense to the District, on those parts of the Work which are specified to be performed by specialty contractors.

2.08 USE OF FACILITIES PRIOR TO COMPLETION OF CONTRACT

- A. Whenever in the opinion of the Strategic Communications any Work under the Contract, or any portion(s) thereof, is in a condition suitable for use by the District, the District may, after written notice and designation from the Strategic Communications to the Contractor, use (which includes, but is not limited to, taking over or placing into service) any portion(s) designated by the Strategic Communications.
- B. The use of any portion(s) by the District shall not be construed as, and will not constitute acceptance in any sense, of any portion(s) of the Work of the Contractor nor will such use trigger the running of any warranty and/or guarantee periods.
- C. All necessary repairs, renewals, changes, or modifications in the Work or any portion thereof so used, not due to ordinary wear and tear, but due to defective materials or workmanship, the operations of the Contractor, or any other cause, shall be made at the expense of the Contractor.
- D. The use of any portion(s) by the District shall not relieve the Contractor of any of his/her responsibilities or liabilities under the Contract nor constitute a waiver by the District of any of the conditions thereof. Said use shall not cancel liquidated damages as of the first date of use, or any continuance thereof, nor impair, reduce, or change the amount of liquidated damages.

2.09 COOPERATION WITH OTHER WORK FORCES

- A. The District reserves the right to perform other Work at or near the site at any time by the use of its own forces or other contractors.
- B. Other contractors, other utilities and public agencies or their contractors, other District contractors, and District personnel may be working in the vicinity during the project construction period. There may be some interference between these activities and the Work under the Contract Documents. The Contractor shall cooperate and coordinate his/her Work with that of other Work forces to assure timely Contract completion.

2.10 AGREEMENTS WITH PROPERTY OWNERS

Agreements with property owners for spoiling excavated material, storing materials, or other purpose related to the Work shall be made in writing and a copy submitted to the Strategic Communications for his/her information. All storage charges shall be at the Contractor's sole expense.

2.11 PROTECTION OF PROPERTY

All public and private property, pavement or improvement, shall be safely guarded from damage or loss in connection with this Contract by the Contractor at all times. Should any facility, structure, or property be damaged during operations of the Contractor, he/she shall immediately notify the proper owners or authorities. All damages and losses incurred shall be paid by the Contractor. The Contractor shall at all times maintain adequate protection against weather so as to preserve the Work, materials, equipment, apparatus, and fixtures.

2.12 CONTRACTOR'S RESPONSIBILITIES FOR LOSSES OR LIABILITIES

A. Risk of Loss

Except as otherwise provided in the Contract Documents and except as to the cost of repair or restoration of damage to the Work caused by force majeure, the Contractor shall bear all losses resulting to him/her on account of the amount or character of the Work, or from any unforeseen obstructions or difficulties which may be encountered, or from any encumbrances in the line of the Work, or because the nature of the ground in or on which the Work is done is different from what is assumed. The Contractor shall bear the risk for any District equipment, material, or supplies with which he/she has been entrusted.

B. Materials and Facilities

The Contractor shall be responsible for materials and facilities as hereinafter provided and in the event of his/her failure to carry out said responsibilities, the same may be carried out by the District at the expense of the Contractor:

1. The Contractor shall be responsible for any materials so furnished and for the care of all Work until its completion and final acceptance, and he/she shall at his/her own expense replace damaged or lost materials and repair damaged parts of the Work.
2. The Contractor shall protect District facilities from damage resulting from his/her Work. District facilities damaged by, or as a result of, the Contractor's Work under this Contract shall be repaired or replaced, as directed by the Strategic Communications, at the Contractor's expense.
3. The Contractor shall remove from the vicinity of the completed Work all debris, rubbish, unused material, concrete forms, and other materials belonging or used under his/her direction during construction. If Contractor fails to completely remove such items within a reasonable time the District may do so at the Contractor's expense.

C. Laws and Regulations

The Contractor shall obey all laws, ordinances, and regulations in any manner affecting those engaged or employed on the Work, or the materials used in the Work, or in any way affecting the conduct of the Work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency should be discovered in this Contract, or in the Drawings or Specifications herein referred to, in relation to any such law, ordinance, regulation, order, or decree, he/she shall forthwith report the same in writing to the Strategic Communications.

The Contractor shall not assume nor base his/her Bid on the belief that any legal immunities and/or exemptions applicable to the District will also apply to the Contractor during the course of the Project.

Contractor shall, at all times, cause all his/her agents and employees to observe and comply with all such applicable laws, ordinances, regulations, orders, and decrees in effect or which may become effective before Final Completion of this Contract.

Nothing in the Contract Documents shall be construed to permit Work not conforming to such laws, ordinances, and regulations. If the Contractor ascertains at any time that any requirement of this Contract is at variance with such applicable law requirement, he/she shall promptly notify the Strategic Communications.

If such applicable law requirement was not in effect on the date of submission of bids, any necessary adjustment of the Contract price shall be made as provided in Article 6 (changes clause) of the General Conditions. If such applicable law requirement was in effect on said date of bid submission, no adjustment of Contract price will be considered.

The Contractor, at his/her own expense, shall pay all taxes properly assessed against his/her equipment, materials, or property used or required in connection with the Work.

2.13 GUARANTEE OF WORK

- A. The Contractor guarantees all materials and workmanship against defects for a period of one year, unless a longer period of time is noted elsewhere in the Contract Documents, from the date of Final Acceptance of all Work performed under the Contract. The date of Final Acceptance will be established and confirmed in writing by the Strategic Communications.
- B. The Contractor assumes responsibility for said one year guarantee, unless noted otherwise, for all Work and materials provided or performed by subcontractors, manufacturers, or suppliers.
- C. Within a period of one (1) year, unless noted otherwise, after Final Acceptance of the Work the Contractor hereby agrees that if any portion of the Work installed, constructed, or performed fails to fulfill any of the requirements of the Contract, Contractor will, without delay and with the least practicable inconvenience and without further cost to the District, repair or replace defective or otherwise unsatisfactory Work or materials.
- D. Should the Contractor fail to act promptly in accordance with this requirement, or should the exigencies of the case require repairs or replacements to be made before the Contractor can be notified or can respond to notification, the District may at its option make the necessary repairs or replacements, or perform the necessary Work, and the Contractor shall pay to the District the actual cost of such repairs plus 15 percent, or District may charge such costs to the Contractor's retention.
- E. The Contractor shall be responsible for the full expense incidental to making good any and all of the above guarantees and Contracts.

2.14 CLEANING AND ENVIRONMENTAL CONTROLS

The Contractor, Subcontractors and employees shall comply with all litter and pollution laws and it shall be the responsibility of the Contractor to insure compliance. The Contractor shall do all of the following:

- A. Maintain Site in a clean and orderly condition and remove waste materials, debris and rubbish from Site and dispose off-site legally.
- B. Contractor shall maintain at their disposal any and all equipment necessary to prevent and remediate any sanitary sewer overflow arising out of the Work. In addition, the Contractor shall furnish and operate a self-loading motor sweeper with spray nozzles as directed by the Strategic Communications to maintain the affected areas in a condition of cleanliness acceptable to the District at all locations affected by the Contractor's operation. For purposes of this Section, the affected areas include the Site as well as all haul routes to and from the Site and all areas of construction and restoration which have not been completed. The Contractor shall not proceed with Work until affected areas are clean to the satisfaction of the Engineer, which shall be evidenced in writing.

- C. Contractor shall take appropriate action to ensure that no dust originates from the Site.
- D. Any equipment or vehicles driven and/or operated within or adjacent to a street gutter, storm drain, runoff conveyance or ocean shall be checked and maintained daily to prevent leaks of materials that if introduced to water could be deleterious to aquatic life.
- E. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material from any construction or associated activity or whatever nature shall be allowed to enter into or placed where it may be washed by rainfall or runoff into waters of the state. When operations are completed, any excess materials or debris shall be promptly removed from the Work area.

2.15 WATER POLLUTION CONTROL

- A. Contractor shall be required to comply with all conditions of the State Water Resources Control Board ("State Water Board") National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity ("Permit") for all construction activity which results in the disturbance of in excess of one (1) acre of total land area or which is part of a larger common area of development or sale. Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan ("SWPPP") prior to initiating Work. In bidding on this Project, it shall be Contractor's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP. Contractor shall comply with all requirements of the State Water Board. Contractor shall include all costs of compliance with specified requirements in the Contract Sum.
- B. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. Contractor shall provide copies of all reports and monitoring information to the Strategic Communications.
- C. Contractor shall comply with the lawful requirements of any applicable municipality, the District, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- D. Storm, surface, nuisance, or other waters may be encountered at various times during construction of the Work. Therefore, the Contractor, by submitting a Bid, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its bid accordingly, and assumes any and all risks and liabilities arising therefrom.
- E. Failure to comply with the Permit is in violation of federal and state law. Contractor hereby agrees to indemnify and hold harmless District, its officials, officers, agents, employees and authorized representatives from and against any and all claims, demands, losses or liabilities of any kind or nature which District, its officials, officers, agents, employees and authorized representatives may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the District, its officials, officers, agents, employees or authorized representatives. District may seek damages from Contractor for delay in completing the Contract in accordance with the Contract Documents, caused by Contractor's failure to comply with the Permit.

2.16 CONSTRUCTION MEETINGS

The Contractor shall hold weekly progress meetings with the District at the Project site or at such other time and frequency as the District requires. The Contractor shall also hold weekly progress meetings with Subcontractors at the Project site or at such other time and frequency as the District requires. The District may be present at all such progress meetings and interact with all participants. The progress of the Work shall be recorded by the Contractor and reported in detail at each meeting with reference to the current Project Schedule. Subcontractors to the Contractor who are currently performing work or whose work is scheduled to be performed in the near term shall have a competent representative present at each meeting to report the condition of the Subcontractor's work and to receive information discussed at the meeting. Contractor shall issue detailed, written meeting minutes within seventy-two (72) hours of the meeting with District's prior written approval, after each progress meeting, including the names and contact information of all participants.

[END OF ARTICLE]

ARTICLE 3

TIME OF COMMENCEMENT AND COMPLETION

3.01 COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK

A. Notice to Proceed

The Contractor is not authorized to perform any Work under the Contract Documents until Contractor has received from the District an official notification to commence Work. The date on which the notification is received by the Contractor is herein referred to as the Notice to Proceed. The Contractor shall commence Work within fourteen (14) calendar days after the date the Notice to Proceed is issued. The Notice to Proceed shall be issued after the Contract is properly executed, bonds are furnished and approved, and insurance has been submitted and approved.

B. Prosecution of the Work

Work shall be continued at all times with such force and equipment as will be sufficient to complete it within the specified time. The Contractor expressly confirms that it has taken into consideration and made allowances for all ordinary delays and hindrances to the Work to be performed and that it will complete the Work within the specified time.

C. Required Contract Completion

Time is of the essence in the completion of this Contract. The Work shall be completed in its entirety and made ready for service within ONE-HUNDRED AND FOURTY (140) calendar days following issuance of the Notice to Proceed ("Contract Time"). By executing the Contract, Contractor confirms that the Contract Time is a reasonable period for performing the Work.

D. Sequencing of Work/Schedule Constraints

In general, the Work shall be scheduled, sequenced and performed in a manner which minimizes disruption to the public. Further, a variety of construction and scheduling constraints are identified throughout the Contract Documents. It is the Contractor's responsibility to coordinate and plan the construction activities to integrate each schedule constraint into performance of the overall Work.

3.02 DISTRICT'S DISCRETION TO EXTEND CONTRACT TIME

In the event the Work required hereunder is not satisfactorily completed in all parts and in compliance with the Contract Documents, District shall have the right, in its sole discretion, to increase the number of Working Days or not, as may seem best to serve the interest of District. A change order extending the Contract Time only will be issued by the District should the District decide to increase the number of Working Days.

3.03 SUBSTANTIAL COMPLETION

A. Contractor Request for Inspection and Punch List

When the Contractor considers that it has achieved Substantial Completion of the Work, Contractor shall prepare and submit to the Strategic Communications a request for inspection and a comprehensive punch list of items to be completed or corrected prior to Final Payment. Failure to include an item on such punch list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

B. District Inspection

Upon receipt of the Contractor's punch list, the Strategic Communications will conduct an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the inspection discloses any item, whether or not included on the Contractor's punch list, which is not sufficiently complete in accordance with the Contract Documents so that the District can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before District's issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by District. The Contractor shall then submit a request for another inspection by District to determine Substantial Completion.

C. Certificate of Substantial Completion

When the Work or designated portion thereof is substantially complete, the Engineer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the District and Contractor for security, maintenance, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall finish all items on the Contractor's punch list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work.

3.04 DELAYS AND EXTENSIONS OF TIME FOR CONTRACTOR

- A. The Contractor shall take reasonable precautions to foresee and prevent delays to the Work. In the event of any delay to the Work, the Contractor shall implement accelerative measures such as working overtime hours or re-sequencing operations, to the extent possible under the terms of the Contract, to offset the delay.
- B. If any delay to the Work is caused by circumstances within the control of the Contractor or its Subcontractors, it is not excusable and not compensable, and the Contractor will not be entitled to any extension of time or to any other compensation for damages resulting directly or indirectly therefrom.
- C. If any delay having a direct effect on the Work is caused by circumstances beyond the control of the Contractor and its Subcontractors, such delay may be excusable and may entitle the Contractor to an equivalent extension of time, but not to any other compensation. Excusable but not compensable causes include, but are not limited to, labor disputes, unusually severe weather conditions unfavorable for prosecution of the Work, and Force Majeure.
- D. If any delay having a direct effect on the Work is caused by failure of the District to provide information as specified, or necessary instructions for carrying on the Work, or to provide the necessary right of way or site for installation, or failure of a utility to remove or relocate an existing facility such delay may be compensable and may entitle the Contractor to an equivalent extension of time, and to compensation for damages resulting directly from any of the causes of delay specified in this paragraph.
- E. The Contractor shall notify the Engineer in writing of any delay having a direct effect on the Work and the causes thereof within 15 days from the beginning of such delay.
- F. Any claim for an extension of time or for compensation for damages resulting from delay shall be made in writing to the Engineer not more than 30 days after the ending of such delay. The Contractor shall provide a written report evaluating the impact of the delay which shall include, at a minimum, all of the following:
 - 1. a narrative description of the delay and its impact on the critical path to Substantial Completion of the Work or a portion of the Work designated by District;

2. a contemporaneous, fragmentary schedule network, which graphically identifies the sequencing of all critical and non-critical new activities and/or activity revisions affected by a compensable delay or excusable delay with logic ties to all affected existing activities noted on the Project Schedule;
3. a detailed breakdown of the claimed costs, if any, sought by Contractor due to the delay;
4. the number of days of extension sought by Contractor as an adjustment to the Contract time;
5. a statement that Contractor has complied with the requirements of the General Conditions for written notice of delays, along with the dates and copies of such notices;
6. the measures taken by Contractor and Subcontractors to prevent or minimize the delay; and
7. Contractor's recommendations for reordering or resequencing the Work to avoid or minimize further delay.

No extension of time or compensation for damages resulting from delay will be granted unless the delay affects the timely completion of the overall Work under the Contract or the timely completion of a portion of the Work for which a time of completion is specified.

- G. The Engineer will investigate the facts and ascertain the extent of the delay, and his/her findings thereon shall be final and conclusive.
- H. Failure of the Contractor to give written notice of a delay, or to submit or document a claim for an extension of time or for damages resulting from delay in the manner and within the times stated above shall constitute a waiver of all claims thereto.
- I. When the Contractor experiences two concurrent delays, one compensable and the other excusable, no compensation other than an extension of time will be allowed.
- J. An extension of time must be approved by the Engineer to be effective. However, an extension of time, whether with or without consent of the sureties, shall not release the sureties from their obligations, which shall remain in full force until the discharge of the Contract.

3.05 CLIMATIC CONDITIONS

- A. The Engineer may suspend the Work whenever weather conditions or conditions resulting from inclement weather are unfavorable for the prosecution of the Work. The delay caused by such suspension may entitle the Contractor to an extension of time but not to any other compensation.
- B. If the Contractor believes that Work should be suspended under this Section 3.05, he/she may request such suspension. The delay caused by such suspension may entitle the Contractor to an extension of time but not to any other compensation.
- C. No extension of time will be granted for suspension of Work unless the suspension affects the timely completion of all Work under the Contract or the timely completion of a portion of the Work for which a time of completion is specified. Determination that the suspension for inclement weather conditions or conditions resulting from inclement weather affects timely completion and entitles the Contractor to an extension of time shall be made and agreed to in writing by the Engineer and the Contractor on each day that Work is suspended.
- D. If Work is suspended and an extension of time is granted under this Section 3.05 the Contractor will be entitled to a one day extension of time for each day that he/she is unable to Work at least one-half of

his/her current normal Work day; and if the Work is suspended at the regular starting time on any Work day and the Contractor's workforce is dismissed as a result thereof, then he/she will be entitled to a one day extension of time whether or not conditions change thereafter and the major portion of the day is suitable for Work.

3.06 COMPLETION AND ACCEPTANCE

- A. Upon request by the Contractor, the Engineer shall conduct a final inspection of the Work. If, in the Engineer's opinion, the Work has been completed and all conditions of the Contract Documents have been met the Engineer will issue a "Notice of Acceptance" of the Work. Upon the issuance of a Notice of the Acceptance the Contractor will be relieved from responsibility to protect the Work.
- B. Within 10 calendar days after issuing the Notice of Acceptance, the Engineer will file with the County Recorder's Office a "Notice of Completion".

3.07 LIQUIDATED DAMAGES

- A. Contractor and District agree to liquidate damages in the amount of \$500 (Five Hundred Dollars) per day, with respect to Contractor's failure to achieve Substantial Completion of the Work within the Contract Time. The Parties intend for the liquidated damages set forth herein to apply to this Contract as set forth in Government Code Section 53069.85. Contractor acknowledges and agrees that the liquidated damages are intended to compensate District solely for Contractor's failure to meet the deadline for Substantial Completion, shall not limit District's other, non-monetary remedies for Contractor delay, and shall not excuse Contractor from liability for any other breach, including any failure of the Work to conform to the requirements of the Contract Documents.
- B. In the event that Contractor fails to achieve Substantial Completion of the Work within the Contract Time, Contractor agrees to pay District the amount specified herein for each calendar day that Substantial Completion is delayed.
- C. Contractor and District acknowledge and agree that the foregoing liquidated damages have been set based on an evaluation of damages that the District will incur in the event of late completion of the Work. Contractor and District acknowledge and agree that the amount of such damages is impossible to ascertain as of the effective date hereof and have agreed to such liquidated damages to fix District's damages and to avoid later disputes. It is understood and agreed by Contractor that liquidated damages payable pursuant to this Contract are not a penalty and that such amount is not manifestly unreasonable under the circumstances existing as of the effective date of this Contract.
- D. It is further mutually agreed that District shall have the right to deduct liquidated damages against progress payments or retainage and that the District will issue a Unilateral Change Order and reduce the Contract Sum accordingly. In the event the remaining unpaid Contract Sum is insufficient to cover the full amount of liquidated damages, Contractor shall be responsible for paying the difference to District.

[END OF ARTICLE]

ARTICLE 4

CONSTRUCTION SCHEDULES

4.01 BASELINE PROJECT SCHEDULE

Within fourteen (14) calendar days of any Pre-Construction Meeting or within fourteen (14) calendar days of the date that the Notice to Proceed is issued, whichever occurs first, Contractor shall submit to the District a Baseline Project Schedule, in electronic format, showing in detail how the Contractor plans to execute and coordinate the Work.

A. Format

1. At a minimum, the Baseline Project Schedule shall be shown using detailed critical path methodology (CPM) and coded on a work discipline basis (in accordance with CSI format) and by geographic area or location on the Project. The Baseline Project Schedule shall include a detailed description of each activity, sequence, logic relationships, duration estimates, resource-loading and all other information required for the performance of the Work. The Baseline Project Schedule shall be based on and incorporate Contract milestone and completion dates specified in the Contract Documents. The schedule shall be comprehensive and shall include all interdependencies and interactions required to perform the Work of the Project.
2. Overall time of completion and time of completion for each milestone shown on the Schedule shall adhere to the specified Contract Time, unless an earlier (advanced) time of completion is requested by Contractor, agreed to by the District and formalized by Change Order.
3. Contractor shall use the latest version of Primavera, Microsoft Project or software agreed to by the parties.
4. The District will review the submitted Baseline Project Schedule for conformance with these scheduling requirements. Within fourteen (14) calendar days after receipt, the District will accept the proposed Baseline Project Schedule or will return it with comments. If the proposed Baseline Project Schedule is accepted by the District, it shall be deemed part of the Contract Documents. If the Baseline Project Schedule is not accepted by District, Contractor shall revise the Baseline Project Schedule, in accordance with the recommendations of the District, and re-submit same for acceptance, no later than seven (7) calendar days after receipt of said recommendation.
5. Acceptance of Baseline Project Schedule by District, failure to include an element of work or inaccuracy in Baseline Project Schedule shall not relieve Contractor from the responsibility for accomplishing the Work in accordance with the Contract Documents.

B. Float

1. Critical Work activities are defined as Work activities which, if delayed or extended, will delay the scheduled completion of the milestones and/or time of completion. All other Work activities are defined as non-critical Work activities and are considered to have float. Float is defined as the time that a non-critical Work activity can be delayed or extended without delaying the scheduled completion of the milestones and/or time of completion. Float is considered a Project resource available to either party or both parties as needed. Contractor's schedules shall clearly identify float time. Once identified, Contractor shall monitor, account for, and maintain float in accordance with critical path methodology.
2. Delays of any non-critical Work shall not be the basis for an extension of Contract Time until the delays consume all float associated with that non-critical Work activity and cause the Work activity to become critical.

3. It is acknowledged that District-caused time savings (i.e., critical path submittal reviews returned in less time than allowed by the Contract Documents, approval of substitution requests which result in a savings of time for Contractor, etc.) create shared float. Accordingly, District-caused delays may be offset by District-caused time savings.

C. Weather

Contractor shall allow for inclement weather in the Baseline Project Schedule by incorporating an activity titled "Rain Day Impact Allowance" as the last activity prior to the Substantial Completion milestone. No other activities may be concurrent with it. The duration of the Rain Day Impact Allowance activity will be based on the Table #1 below, and will be calculated from the Notice to Proceed until the original date of Substantial Completion.

Table 1: Cumulative Calendar Days "Rain Day Impact Allowance"

Month	Rain Days Allowance	Month	Rain Days Allowance
January	6	July	0
February	5	August	0
March	5	September	1
April	4	October	1
May	1	November	3
June	0	December	5

When inclement weather at the Project site impacts critical path activities, Contractor may provide the District with a written request for a weather impact day describing the inclement weather delay on the critical path activities. The inclement weather delay must be clearly indicated by a 50% decrease in the field labor workforce hours on critical path activities on the day in question as indicated by Contractor's daily reports from the day in question and the scheduled work days prior to the day in question. Upon District's independent confirmation of the amount of rainfall and impact, District will authorize Contractor to reduce the duration of the Rain Day Impact Allowance accordingly.

Inclement weather on non-scheduled work days shall not be granted as weather impact days. If Contractor asks to work a specific weekend or holiday and gives District advanced, written notification of critical path work to be performed and a substantial amount of precipitation occurs that prevents the work from being performed, then that day can be claimed as a weather impact day. If the effects of inclement weather from a non-scheduled work day carry forward to a scheduled work day and impacts the critical path as noted above, then the scheduled work day will be considered impacted by weather. Any unused rain day allowance at the end of the Project will be shown as available float to Substantial Completion milestone. Excusable, non-compensable time extensions will be granted for inclement weather to Substantial Completion milestone only after the weather impact area affecting the critical path work has exhausted the allotted cumulative Rain Day Impact Allowance.

D. Early Completion

While the Contractor may schedule completion of the Project earlier than the date established by the Contract Documents, no additional compensation shall become due the Contractor for the use of float time between the Contractor's projected early completion date and the date for Substantial Completion established by the Contract Documents, unless an earlier (advanced) time of completion is requested by Contractor, agreed to by the District, and formalized by written Change Order.

4.02 SCHEDULE UPDATES

- A. Together with each monthly Application for Payment submitted by Contractor (other than the Final Application for Payment), the Contractor shall submit to the District a Schedule Update (both a hard copy and an electronic copy in a backup file format or other format acceptable to the District) revised to indicate the Work completed, status of Work in progress, all progress slippages, corrective actions taken, or slippage carry-over for all anticipated delays or difficulties, and all other information required to accurately present the actual status of the progress of the Work as of the date of the Application for Payment. If the Contractor does not submit a Schedule Update with an Application for Payment, District may withhold payment, in whole or in part, until the Schedule Update is submitted. In the event that an update to the Project Schedule indicates a delay to the Contract Time the Contractor shall propose an affirmative plan to correct each such delay, including overtime and/or additional labor, if necessary. In no event shall a Schedule Update constitute an adjustment in the Contract Time, any deadline, or the Contract Sum unless any such adjustment is agreed to by the District and authorized pursuant to Change Order or Unilateral Change Order.
- B. At no time shall historical data contained within the Schedule Update (i.e. completed activities) be removed and/or altered in any way. This historical data is to be preserved within each of the Schedule Updates and submitted with the final Schedule Update to reflect the actual start and finish dates for each activity within the schedule.
- C. Any work stoppages within individual work activities that exceed seven (7) calendar days in duration shall be clearly indicated within the Schedule Update. In cases where unplanned activity work stoppages exceed seven (7) calendar days activities shall be added to the Schedule Update to clearly indicate the work stoppage period and identify forecasted resumption and completion of the activity where work has stopped.

4.03 NONCOMPENSABLE EXTRAORDINARY MEASURES

- A. Should the District determine, in its sole judgment, that the performance of the Work has not progressed to the level of completion required by the Contract Documents, District shall have the right to order the Contractor to take corrective measures to expedite the progress of construction, at no additional cost to the District, including, without limitation, the following:
 - 1. Working additional shifts of overtime.
 - 2. Supplying additional manpower, equipment, and/or facilities.
 - 3. Reschedule activities to maximize practical concurrence of accomplishment of activities.
 - 4. Submitting a Recovery Schedule discussed above, for resequencing performance of the Work or other similar measures.
 - 5. Any other actions that may be necessary to mitigate delays.
- B. Such Extraordinary Measures shall continue until the progress of the Work is no longer behind schedule and/or reaches the stage of completion required by the Contract Documents. Contractor shall not be entitled to an adjustment in the Contract Sum in connection with the performance of any such Extraordinary Measures required by the District under this section. The District may exercise the rights furnished the District pursuant to this section as frequently as the District deems necessary to ensure that the Contractor's performance of the Work will comply with the Contract Time or interim completion dates set forth in the Contract Documents. If Contractor or its Subcontractors fail to implement or commence Extraordinary Measures within ten (10) calendar days of District's written demand, District may, without prejudice to other remedies, take corrective action at the expense of the Contractor which shall reduce the Contract Sum accordingly.

4.04 CONDITION OF PAYMENT

Compliance by Contractor with the requirements of the Contract Documents pertaining to preparation, submission, revising and updating of the Project Schedule is a condition precedent to District's obligation to make payment to Contractor of any or all sums that might otherwise be due to Contractor in the absence of such noncompliance. Payment by District under circumstances in which District, for any reason, fails or elects not to assert its right to withhold payment for noncompliance with this section shall not be construed as a waiver of the right to withhold future payments on account of such noncompliance or any other noncompliance.

[END OF ARTICLE]

ARTICLE 5

SUSPENSION OR TERMINATION OF CONTRACT

5.01 TERMINATION BY THE CONTRACTOR

A. Work Stoppage Not Caused by District

If the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the Contractor or a subcontractor, sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor due to:

1. the issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped; or
2. an act of government, such as a declaration of national emergency which requires all Work to be stopped;

and Contractor has given District written notice within ten (10) days of the occurrence of such ground for termination, then the Contractor may, upon thirty (30) additional days written notice to District and, unless the reason has theretofore been cured, terminate its performance and recover from the District payment for Work executed to date and reasonable demobilization costs.

B. Work Stoppage Caused by District

If the Work is stopped for a period of one hundred and twenty (120) consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the District has persistently failed to fulfill the District's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may give District ten (10) days written notice to cure. If the District fails to cure, the Contractor may, upon ten (10) additional days written notice to the District, terminate the Contract and recover from the District as provided in Section 5.01-A above.

5.02 TERMINATION BY THE DISTRICT FOR CAUSE

A. Grounds

The District may terminate the Contractor's performance of the Contract if:

1. Contractor fails to promptly begin the Work under the Contract Documents;
2. Contractor refuses or fails to supply enough properly skilled workers or proper materials;
3. Contractor fails to perform the Work in accordance with the Contract Documents, including conforming to applicable standards set forth therein in constructing the Project, or refuses to remove and replace rejected materials or unacceptable Work;
4. Contractor discontinues the prosecution of the Work (exclusive of work stoppage: (a) due to termination by District; or (b) due to and during the continuance of a Force Majeure event or suspension by District);
5. Contractor fails to resume performance of Work which has been suspended or stopped, within a reasonable time after receipt of notice from District to do so or (if applicable) after cessation of the event preventing performance;

6. Any representation or warranty made by Contractor in the Contract Documents or any certificate, schedule, instrument, or other document delivered by Contractor pursuant to the Contract Documents shall have been false or materially misleading when made;
7. Contractor fails to make payment to subcontractors or material suppliers for materials or labor in accordance with the respective Contract Documents and applicable law;
8. Contractor disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction;
9. Contractor is guilty of breach of a provision of the Contract Documents;
10. Contractor and its Subcontractors of (any tier) failed to maintain full and strict compliance with the DIR registration requirements in accordance with Labor Code Sections 1725.5 and 1771.1; or
11. Contractor becomes insolvent, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors and fails to provide District with adequate assurances of Contractor's ability to satisfy its contractual obligations.

A receiver, trustee, or other judicial officer shall not have any right, title, or interest in or to the Contract. Upon that person's appointment, District has, at its option and sole discretion, the right to immediately cancel the Contract and declare it null and void.

B. District's Rights

When any of the reasons specified in Section 5.02-A exist, the District may, in addition to and without prejudice to any other rights or remedies of the District, and after giving the Contractor five (5) calendar days written notice, terminate employment of the Contract and may:

1. Take possession of the Site and all materials, equipment, tools and construction equipment, and machinery thereon owned by the Contractor;
2. Suspend any further payments to Contractor;
3. Accept assignment of subcontracts from Contractor, at the sole discretion of District; and
4. Finish the Work by whatever reasonable method the District may deem expedient. Upon request of the Contractor, the District shall furnish to the Contractor a detailed accounting of the costs incurred by the District in finishing the Work.

C. Costs

If District's costs to complete and damages incurred due to Contractor's default exceed the unpaid Contract balance, the Contractor shall pay the difference to the District.

D. Erroneous Termination

If it has been adjudicated or otherwise determined that District has erroneously or negligently terminated the Contractor for cause, then said termination shall automatically convert to a termination by the District for convenience as set forth in Section 5.04.

5.03 SUSPENSION BY THE DISTRICT

A. Suspension for Convenience.

1. The District may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the District may determine.
2. Contractor shall promptly recommence the Work upon written notice from District directing Contractor to resume the Work. The Contract Sum and Contract Time shall be adjusted for any increases in the cost and time caused by suspension, delay, or interruption provided Contractor complies with the Change Order and Claims proceedings set forth in these General Conditions. No adjustment shall be made to the extent:
 - (a) That performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or
 - (b) That an equitable adjustment is made or denied under another provision of the Contract.

B. Suspensions for Cause

District has the authority by written order to suspend the Work without liability to District in whole or in part for Contractor's failure to:

1. Correct conditions unsafe for the Project personnel or general public,
2. Carry out the Contract; or
3. Carry out orders of District.

C. Responsibilities of Contractor During Suspension Periods

During periods that Work is suspended, Contractor shall continue to be responsible for the Work and shall prevent damage or injury to the Project, provide for drainage, and shall erect necessary temporary structures, signs or other facilities required to maintain the Project and continue to perform according to the Contract Documents.

5.04 TERMINATION BY THE DISTRICT FOR CONVENIENCE

A. Grounds

Without limiting any rights which District may have by reason of any default by Contractor hereunder, District may terminate Contractor's performance of the Contract in whole or in part, at any time, for convenience upon written notice to Contractor. Such termination shall be effective as of the date stated in the written notice, which shall be no less than fifteen (15) days from the date of the notice.

B. Contractor Actions

Immediately upon receipt of such notice, Contractor shall: (1) cease performance of the Work to the extent specified in the notice; (2) take actions necessary or that the District may direct, for the protection and preservation of the Work; (3) settle outstanding liabilities, as directed by District; (4) transfer title and deliver to District Work in progress, specialized equipment necessary to perform the Work, and As-Builts; and, (5) except for Work directed by District to be performed, incur no further costs or expenses. At the

option of the District, all or any of the subcontracts entered in to by Contractor prior to the date of termination shall be terminated or shall be assigned to District, at the election of the District.

C. Compensation

If the Parties are unable to agree on the amount of a termination settlement, the District shall pay the Contractor the following amounts:

1. For Work performed before the effective date of termination, the total (without duplication of any items) of:
 - (a) The Cost of Work; and
 - (b) A sum, as profit on (1)(a) above, determined by the District to be fair and reasonable;
2. The reasonable costs of settlement of the Work terminated, including:
 - (a) Accounting, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data; and
 - (b) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

Under no circumstances shall Contractor be entitled to recover overhead or profit on Work not performed.

D. No Consequential Damages

Under no circumstances shall Contractor be entitled to anticipatory or unearned profits or consequential or other damages as a result of a termination or partial termination under this Article 5 including, but not limited to, losses of financing, bonding capacity, business and reputation. The payment to Contractor determined in accordance with this Section constitutes Contractor's sole and exclusive remedy for a termination hereunder.

[END OF ARTICLE]

ARTICLE 6

CHANGES

6.01 DISTRICT'S RIGHT TO ORDER CHANGES

The District, without invalidating the Contract, may authorize changes in the Work consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly, if necessary. All such changes in the Work shall be authorized by Change Order or Unilateral Change Order and Contractor shall perform such changes in the Work according to the applicable requirements of the Contract Documents.

6.02 FIELD DIRECTIVES

The District shall have the right, exercised in its sole discretion, to direct performance or order changes (including, without limitation, scope changes) in performance of the Work by issuing to Contractor a Field Directive. If Contractor believes such Field Directive constitutes a basis for adjustment to the Contract Sum or Contract Time, then Contractor shall give a Notice of Scope Change provided in Section 6.04, followed by a submission of a Change Order Request as required by Section 6.08. Contractor shall, if requested by District in such Field Directive or in a subsequent Field Directive, proceed with the performance of the work as contained in Field Directive. Any work performed by Contractor, either before or after issuance by Contractor of a Notice of Scope Change, without authorization by Field Directive directing performance shall be deemed performed at Contractor's expense, at no cost to the District and without adjustment to the Contract Sum or Contract Time. Failure by Contractor after receipt of a Field Directive to comply with the Notice of Scope Change and Change Order Request procedures shall constitute a waiver by Contractor of the right to any adjustment to the Contract Sum or Contract Time on account of such Field Directive. Upon completion of the work affected by the Field Directive, Contractor shall give written notice that the work required is complete and ready for inspection.

6.03 NO ESTOPPEL

Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly and diligently with the change, unless otherwise provided in the Change Order or Unilateral Change Order. It is of the essence to this Contract that all scope changes in the Work that form the basis of an adjustment of the Contract Sum or Contract Time must be authorized in advance in writing through either a Change Order or Unilateral Change Order. A change in the Contract Sum or the Contract Time shall be accomplished only by Change Order or Unilateral Change Order. Accordingly, no verbal directions, course of conduct or dealings between the Parties, express or implied acceptance of alterations or additions to the Work, or claim that the Contract has been abandoned or the District has been unjustly enriched by any alteration or addition to the Work shall be the basis of any claim for an increase in any amounts due under the Contract Documents or a change in any time period provided in the Contract Documents.

6.04 NOTICE OF SCOPE CHANGE

Contractor shall promptly submit written notice of any change in scope to the Engineer if, in the Contractor's opinion, any instruction, request, drawing, specification, action, condition, omission, default, or other situation occurs that the Contractor believes constitutes a scope change or other matter resulting in Extra Work, for which Contractor believes it is entitled to an adjustment of the Contract Sum or Contract Time. Such notice shall be provided prior to performance of the Work affected by such occurrence and within seven (7) calendar days after the discovery date of the circumstances of such scope change or other matters. The written notice shall state the date, circumstances, extent of adjustment to the Contract Sum or the Contract Time, if any, requested. The mere presentation of such notice shall not establish the existence of any right by Contractor to adjustment of the Contract Sum or Contract Time. Failure to provide such timely written notice described herein shall constitute a waiver by Contractor of the right to any adjustment to the Contract Sum or Contract Time on account thereof. Contractor

hereby acknowledges that its failure to provide timely written notice is prejudicial to the District and necessarily detrimental to the District's ability to mitigate the situation.

6.05 CHANGE ORDERS

A. Computation

Methods used in determining adjustments to the Contract Sum by Change Order may include those listed in Section 6.06 below.

B. Accord and Satisfaction

Agreement on any Change Order shall be a full compromise and settlement of all adjustments to Contract Time and Contract Sum, and compensation for any and all delay, extended or additional field and home office overhead, disruption, acceleration, inefficiencies, lost labor or equipment productivity, differing site conditions, construction interferences and other extraordinary or consequential damages (hereinafter called "Impacts"), including any ripple or cumulative effects of said Impacts on the overall Work under the Contract arising directly or indirectly from the performance of Work described in the Change Order. By execution of any Change Order, Contractor agrees that the Change Order constitutes a complete accord and satisfaction with respect to all claims for schedule extension, Impacts, or any costs of whatever nature, character or kind arising out of or incidental to the Change Order. No action, conduct, omission, product failure or course of dealing by the District shall act to waive, modify, change, or alter the requirement that (i) Change Order's must be in writing, signed by the District and Contractor and; (ii) that such written Change Orders are the exclusive method for effectuating any change to the Contract Sum and/or Contract Time.

6.06 CHANGE ORDER PRICING

A. Alternative Methods of Pricing

The amount of any adjustment by Change Order increasing or decreasing the Contract Sum shall be determined, in the sole discretion of District, using one or a combination of the following methods:

1. Lump Sum. By mutual acceptance of a lump sum proposal from Contractor properly itemized and supported by sufficient substantiating data to permit evaluation. Such proposal shall be based solely on Allowable Costs and Allowable Markups as defined in this Section and shall not include any costs or expense that is not permitted by the terms of any provision of the Contract Documents.
2. Unit Prices. By unit prices contained in Contractor's original Bid and incorporated in Contract Documents or fixed by subsequent agreement between District and Contractor. Unless otherwise stated in the Bid Documents, unit prices stated in the Contract Documents or agreed upon by the District and Contractor shall be deemed to include and encompass all Allowable Markups.
3. Time and Materials. In the case of Extra Work only, by calculating the actual Allowable Costs directly incurred, plus a sum for Allowable Markups on such Allowable Costs.

B. Time and Materials Documentation

Without limitation to any other provisions of the Contract Documents, Contractor's right to reimbursement of Allowable Costs incurred for Extra Work involved in the performance of a scope change on a time and materials basis pursuant to Section 6.06-A.3, above shall be conditioned on its compliance with the following conditions:

1. Labor. At the close of each day on which such Extra Work is performed, Contractor shall submit an Extra Work labor report, on forms provided by Engineer, to Engineer that sets forth a list of the actual hours spent in performing the Extra Work, that clearly differentiates between the labor expended on the Extra Work and other work, and the Allowable Costs for such Extra Work performed that day showing the names of workers, their classifications, hours worked and hourly rates.
2. Materials, Equipment. A list of Allowable Costs of materials consumed and equipment utilized in the performance of the Extra Work on the day on which such Extra Work is performed, together with copies of applicable delivery tickets and unit prices for all materials and for all equipment used the type of equipment, identification number, hours of operation (including loading and transportation) and hourly/daily rates involved for that day.
3. Other Services or Expenditures. A list of other services and expenditures constituting Allowable Costs incurred in performance of the Extra Work on the day on which such Extra Work is performed, along with documentation verifying the amounts thereof in such detail as Engineer may require.
4. Subsequent Documentation. Documentation not available on the day on which the Extra Work is performed, such as, but not limited to, material invoices, shall be submitted as soon as they are available but not later than five (5) days after the earlier of the day of delivery or incorporation of the particular item of Extra Work at the Site.
5. Authentication. The Engineer may additionally require authentication of all time and material tickets and invoices by persons designated by the Engineer for such purpose.
6. Waiver by Contractor. Failure to submit such records daily as are required by this Section shall waive any rights for recovery of Allowable Costs incurred for Extra Work performed that day. The failure of the Contractor to secure any required authentication shall, if the District elects in its sole discretion to treat it as such, constitute a waiver by the Contractor of any right to adjustment of the Contract Sum for the Allowable Cost of all or that portion of the Extra Work covered by such non-authenticated ticket or invoice.

C. Allowable Costs

The term "Allowable Costs" shall mean in the case of Extra Work actual costs incurred by Contractor and/or any Subcontractor, regardless of tier, and necessarily involved in direct performance of the Extra Work, or in the case of deleted work the actual costs that would have been incurred in performing deleted work by Contractor and/or any Subcontractor, regardless of tier, and shall be limited to the following costs:

1. Labor. Straight-time wages or salaries, and overtime wages and salaries specifically authorized by District in writing, for employees employed at the site, or at fabrication sites off the site, in the direct performance of the Extra Work or that would have been incurred in the direct performance of the deleted work, based on the actual cost for wages prevailing locally for each craft or type of workers at the time the Extra Work is done or the deleted work is ordered eliminated. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental. The use of labor classification which would increase the Allowable Cost for Extra Work will not be permitted unless Contractor establishes the necessity for such additional costs.
2. Benefits. Payroll taxes, insurance, health and welfare, pension, vacation, apprenticeship funds and benefits required by lawful collective bargaining agreements for employees on straight-time wages or salaries, and on overtime wages and salaries specifically authorized by District in writing, for employees employed at the site, or at fabrication sites off the Site, in the direct performance of the Extra Work or that would have been incurred in the direct performance of the deleted work.

3. **Materials, Consumables.** Costs of materials and consumable items which are furnished and incorporated into the Work, as approved by District, or that would have been incorporated into the Work in the case of deleted work shall be at the lowest price available to Contractor but in no event shall such costs exceed competitive wholesale prices obtainable from other Subcontractors, suppliers, manufacturers and distributors in the general vicinity of the site. If District determines, in its discretion, that the cost of materials is excessive, or if Contractor fails to furnish satisfactory evidence of the cost from the actual supplier thereof, then in either case the cost of the materials shall be deemed to be the lowest wholesale price at which similar materials are available in the quantities required at the time they were needed. The District reserves the right to furnish such materials as it deems advisable, and Contractor shall have no claim for costs or profits on materials so furnished.
4. **Taxes.** Sales taxes on the costs of materials and consumable items described in Section 6.06-C.3 above.
5. **Tool, Equipment Rental.** Rental charges for necessary machinery and equipment, whether owned or hired, as authorized in writing by District, exclusive of hand tools, used directly in the performance of the Extra Work or that would have been used in the direct performance of the deleted work. Regardless of ownership, such rental charges shall not exceed the hourly rate derived from the most recently published Rental Rate Blue Book for Construction Equipment or the Rental Rate Blue Book for Older Construction Equipment as published by K-111, San Jose, California, which is in effect at the time of commencement of the changed work (the "Blue Book"). Contractor shall attach a copy of the rate schedule to the daily reports required by Section 6.06-B, above. The charges for any machinery and equipment shall cease when the use thereof is no longer necessary for the Extra Work or deleted work. No charge shall be allowed for use of equipment or tools which have a replacement value of \$500 or less. The allowable rental rates shall include the cost of fuel, power oil, lubrication, supplies, small tools, necessary attachments, loading, transportation, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals. Notwithstanding the provisions of Section 6.06-E below, no mark-up shall be allowed for overhead, profit or bond premiums for use of equipment if the equipment is supplied by an equipment rental firm. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to District than holding it at the Site, it shall be returned, unless Contractor elects to keep it at the Site at no expense to District. Costs incurred while equipment is inoperative due to breakdowns, regular maintenance, or for non-Working Days shall not be allowed. The rental time shall include the time required to move the equipment to the Work from the nearest available source for rental of such equipment and to return it to the source. If such equipment is not moved by its own power, then loading and transportation will be allowed. Neither moving time nor loading and transportation costs will be paid if the equipment is for use on the Project unrelated to the Extra Work. All equipment shall be acceptable to District, in good working condition, and suitable for the purpose for which it is to be used.
6. **Royalties, Permits.** Additional or saved costs of royalties and permits due to the performance of the Extra Work or deleted work.
7. **Insurance, Bonds.** Additional or saved costs of insurance and bonds, provided, however, that for Extra Work such costs shall not exceed one percent (1%) of Items 1 through 6 above.

D. **Costs Not Allowed**

Allowable Costs shall not include any of the following:

1. Wages, salaries, fringe benefits and payroll taxes of Contractor's and all Subcontractor's non-craft labor (above a Foreman level);

2. Overhead, administrative or general expenses of any kind including clerical, engineering, estimating, scheduling, drafting, detailing, etc. incurred in connection with Extra Work;
3. Vehicles not dedicated solely for the performance of the extra of deleted work;
4. Small tools (replacement value not exceeding \$500);
5. Office expenses, including secretarial and administrative staff, materials and supplies;
6. On-site and off-site trailer and storage rental and expenses;
7. Site fencing;
8. Utilities, including gas, electric, sewer, water, telephone, facsimile, copier equipment;
9. Computer and data processing personnel, equipment and software;
10. Federal, state or local business income and franchise taxes;
11. Losses of efficiency or productivity; and
12. Costs and expenses of any kind or item not specifically and expressly included in Section 6.06-C.

E. Allowable Mark-ups

1. If the Net Cost of Extra Work is less than or equal to \$25,000, the Allowable Mark-up shall be computed as follows:
 - (a) For Extra Work performed directly by the Contractor's forces, the added cost for all expenses, overhead, profit, bond and insurance shall not exceed fifteen percent (15%) of the net cost of the Extra Work.
 - (b) For Extra Work performed by a Subcontractor, the cost of combined expenses, overhead, profit, bond and insurance of both the Contractor and all Subcontractor(s) and sub-subcontractor(s) shall not exceed twenty percent (20%) of the net cost of all subcontractor-performed Extra Work.
2. If the net cost of Extra Work is greater than \$25,000 and less than or equal to \$100,000, the Allowable Mark-up shall be computed as follows:
 - (a) For Extra Work performed directly by the Contractor's forces the added cost for all expenses, overhead, profit, bond and insurance shall not exceed twelve percent (12%) of the net cost of the Extra Work.
 - (b) For Extra Work performed by a Subcontractor, the cost of combined expenses, overhead, profit, bond and insurance of both the Contractor and all Subcontractor(s) and sub-subcontractor(s) shall not exceed seventeen percent (17%) of the net cost of all subcontractor-performed Extra Work.
3. If the net cost of Extra Work is greater than \$100,000, the Allowable Mark-up shall be computed as follows:
 - (a) For Extra Work performed directly by the Contractor's forces the added cost for all expenses, overhead, profit, bond and insurance shall not exceed ten percent (10%) of the net cost of the Extra Work.

- (b) For Extra Work performed by a Subcontractor, the cost of combined expenses, overhead, profit, bond and insurance of both the Contractor and all Subcontractor(s) and sub-subcontractor(s) shall not exceed fifteen percent (15%) of the net cost of all subcontractor-performed Extra Work.

F. Net Allowable Costs

If any one scope change involves both Extra Work and deleted work in the same portion of the Work and the additive allowable costs exceed the deductive allowable costs, the Allowable Mark-ups on the Extra Work will be only the difference between the two amounts.

6.07 OWNER ORIGINATED PROPOSAL REQUEST

District may issue a request, in writing, to Contractor, describing a proposed change to the Work and requesting the Contractor submit an itemized proposal in a format acceptable to District within ten (10) calendar days after District issues the request. The Contractor's proposal shall include an analysis of impacts to cost and time, if any, to perform additional work, or delete Work, as applicable, including the effects and impacts, if any, on unchanged Work, estimates of costs (broken down by the cost categories listed in this Section), and Contractor's proposed methods to minimize costs, delay, and disruption to the performance of the Work. If Contractor fails to submit a written proposal within such period of time, it shall be presumed that the change described in the District's original proposal request will not result in an increase to the Contract Sum or Contract Time and the change shall be performed by Contractor without additional compensation. District's proposal request does not authorize the Contractor to commence performance of the change, unless otherwise specified in writing. If District desires that the proposed change be performed, the Work shall be authorized according to the Change Order or Unilateral Change Order procedures set forth above.

6.08 CONTRACTOR ORIGINATED CHANGE ORDER REQUEST (COR)

If the Contractor believes that instructions issued by the District after the effective date of the Contract will result in changes to the Contract Sum or Contract Time or if the Contractor otherwise becomes aware of the need for or desirability of a change in the Work, Contractor may submit a written Change Order Request ("COR") to the District in writing, in a format acceptable to District and in accordance with the notice provisions and other requirements of Article 6 for Claims. The COR must specify the reasons for the proposed change, cost impacts and relevant circumstances and impacts on the Project Schedule. The document shall be complete in its description of the Work, its material and labor quantities and detail, and must support and justify the costs and credits claimed by the Contractor. A CPM schedule fragment is required to support and justify any additional time of performance requested by the Contractor. The District will not review any COR which is incomplete. The Contractor may request additional compensation and/or time through a COR but not for instances that occurred more than ten (10) calendar days prior to the notice date. Contractor's failure to initiate a COR within this ten-day period or to provide detailed back-up documentation to substantiate the COR within thirty (30) calendar days of the initial written notice shall be deemed a waiver of the right to adjustment of the Contract Sum or the Contract Time for the alleged change. Any COR that is approved by the District shall be incorporated in a Change Order or Unilateral Change Order. If the COR is denied but the Contractor believes that it does have merit, the Contractor shall proceed with the disputed Work and may submit a Claim in accordance with the procedures set forth in Article 15.

[END OF ARTICLE]

ARTICLE 7

CONTRACT PAYMENTS

7.01 GENERAL

- A. Payment will be made at the price for each item listed on the bidding form or as Extra Work as provided in the General Conditions.
- B. Initial progress payment will not be made prior to approval by the Engineer of the Schedule of Values, the Schedule Update, and any Schedule of Submittals.
- C. No subsequent progress payment will be made prior to receipt by the Engineer of the monthly revision of the Schedule Update.

7.02 SCHEDULE OF VALUES FOR PAYMENTS

A. Submission

Contractor shall furnish, on forms approved by Engineer, within seven (7) calendar days after receiving the Notice of Award of the Construction Contract a detailed Schedule of Values giving a complete breakdown of the Contract Sum for each component of the Work.

B. Content

The Schedule of Values shall be in sufficient detail as the Engineer may, in its discretion, deem necessary to evaluate progress at any point in the performance of the Work. Unless otherwise specified in the Contract Documents, the Schedule of Values shall include, without limitation, a breakdown of the general categories of subcontractor work, direct overhead, profit and contingency, and a further breakdown of the general categories of subcontractor work into separate trade line items of costs for subcontractor services, labor and material, which is based on actual subcontract, purchase order or vendor prices. If requested by Engineer, Contractor shall revise the Schedule of Values to allocate sums for Contractor overhead, profit and/or contingency among the individual line items for trade portions of the Work. No amounts shall be reflected in the Schedule of Values or Application for Payment for Extra Work or Deleted Work for which a Change Order has not been executed by Contractor and District or for which a Unilateral Change Order has not been issued by District. Amounts that have been mutually agreed to by Change Order or unilaterally determined by District pursuant to a Unilateral Change Order shall, at the direction of the Engineer, be either separately listed by line item in the Schedule of Values or incorporated into the existing line item(s) of the trade(s) performing such Work. The Schedule of Values must be prepared in sufficient detail and supported by sufficient data to substantiate its accuracy as the Engineer may require.

C. Applications for Payment

The Schedule of Values, when approved by the Engineer, shall be used as a basis for Contractor's Applications for Payment and will not be considered as fixing a basis for adjustments to the Contract Sum.

D. Revisions

If, at any time, it is determined that the Schedule of Values does not allocate the Contract Sum in a manner that reasonably and fairly reflects the actual costs anticipated to be progressively incurred by Contractor, it shall be revised and resubmitted for approval by the Engineer.

7.03 APPLICATIONS FOR PAYMENT

A. Marked Schedule of Values

Five (5) calendar days prior to the date set forth in Section 7.03-B below for the monthly progress payment meeting, Contractor shall submit to Engineer a copy of the proposed Schedule of Values, marked to show the percentage of completion certified by Contractor for each line item in the Schedule of Values, including any stored materials approved for payment by District pursuant to Section 7.03-D, below and any withholdings from Contractor proposed by Engineer.

B. Monthly Review

For the purpose of expediting the progress payment procedure, Contractor shall meet with the Engineer on or before the twentieth (20th) day of each month to review the Contractor's marked Schedule of Values prepared in accordance with Section 7.03-A, above. The Engineer shall revise as appropriate and sign the marked Schedule of Values to verify such review. If any item in the marked Schedule of Values submitted for payment is disputed during this review, Contractor agrees to use its best efforts to resolve the disputed items with the Engineer before submitting its Application for Payment. If the Engineer and Contractor cannot agree, then the percentage completion shall be established at such percentage as the Engineer, in good faith, determines is appropriate to the actual progress of the Work. No inaccuracy or error in the Engineer's good faith estimate shall operate to release Contractor or Surety from any responsibility or liability arising from or related to performance of the Work. The Engineer shall have the right subsequently to correct any error and dispute any item submitted in Contractor's Application for Payment, regardless of whether an item was identified as disputed in the review process provided for herein.

C. Certification

Each Application for Payment shall be signed by Contractor with a certification by Contractor to District that:

1. the data comprising the Application for Payment is accurate and the Work has progressed to the point indicated;
2. to the best of Contractor's knowledge, information and belief, the Work is in accordance with the Contract Documents;
3. Contractor is entitled to payment in the amount certified; and
4. all sums previously applied for by Contractor on account of Work performed by Subcontractors and that have been paid by District have been paid to the Subcontractors performing such Work, without any retention, withholding or back charge by Contractor.

D. Stored Materials

Payments may be made by District, at its discretion, on account of materials or equipment not incorporated into the Work but delivered on the ground at the Site and suitably stored by Contractor or stored off-site in a facility under the control of District. Such payments shall only be considered upon submission by Contractor of satisfactory evidence that it has acquired title to same, that the material or equipment will be utilized in the Work and that the material is satisfactorily stored, protected and insured, and that such other procedures are in place satisfactory to District to protect District's interests. To be considered for payment, materials or equipment stored off-site shall, in addition to the above requirements and unless otherwise specifically approved by District in writing, be stored in a bonded warehouse, fully

insured, and available to District for inspection. District shall have sole discretion to determine the amount of material and equipment that may be stored on the Site at any given time.

7.04 PROGRESS PAYMENTS

A. Conditions to Progress Payments

Contractor shall submit its Application for Payment to the Engineer, using such forms as approved by District, once a month on or before the first (1st) day of the month following the month in which the Work that is the subject of such Application for Payment was performed. Without limitation to any other provisions of the Contract Documents, the following shall be conditions precedent to a proper submission and to the Engineer approval of each Application for Payment:

1. submission of a Schedule of Values that reflects the percentages of completion either agreed to or determined by Engineer in accordance with Section 7.03-B, above;
2. submission of the Contractor's certification required by Section 7.03-C, above;
3. submission of conditional releases of stop notice, if any, and bond rights upon progress payment, complying with California Civil Code Section 3262(d)(1), for all Work performed during the time period covered by the current Application for Payment, signed by Contractor, its Subcontractors of every tier, and all material suppliers to each, and (2) forms of unconditional release of stop notice and bond rights upon progress payment, complying with California Civil Code Section 3262(d)(2), for all Work performed during the time period covered by the previous Application for Payment, signed by Contractor, its Subcontractors of every tier and all material suppliers to each;
4. compliance by Contractor with its obligation for maintenance of as-builts as required by Article 1 above;
5. compliance by Contractor with its obligation for submission of daily reports as required by Article 1 above;
6. compliance by Contractor with its obligations for submission of scheduling information and updating of the Project Schedule as required by Article 4 above and other provisions of the Contract Documents pertaining to preparation or updating of schedule information;
7. submission of certified payroll records as required by Article 14 and other provisions of the Contract Documents;
8. submission of certifications by Contractor and each Subcontractor as required by applicable collective bargaining agreements certifying that all employee benefit contributions due and owing pursuant to any applicable collective bargaining agreement have been paid in full; and
9. compliance by Contractor with all of its other obligations for submission of documentation or performance of conditions which, by the terms of the Contract Documents, constitute conditions to Contractor's right to receive payment for Work performed.

B. Payments by District

Pursuant to California Public Contract Code Section 20104.50, District shall make progress payment of undisputed sums due within thirty (30) days after receipt by Engineer of an undisputed and properly submitted Application for Payment, calculated on the basis of ninety-five percent (95%) [unless the Project

was deemed substantially complex at a public hearing, then the calculation would be made on the basis of ninety percent (90%)] of value determined pursuant to Section 7.03-B above of the following:

1. the portion of the Work permanently installed and in place;
2. plus, the value of materials delivered on the ground or in storage as approved by District pursuant to Section 7.03-D, above;
3. less the aggregate of previous payments; and
4. less any other withholdings authorized by the Contract Documents.

C. Rejection by District

Any Application for Payment determined to be disputed, improper and/or not suitable for payment shall be returned to Contractor as soon as practicable, but not later than seven (7) days, after receipt by District accompanied by a written explanation of the reasons why the payment request was rejected. Failure by District or Engineer to either timely reject an Application for Payment or specify any grounds for rejection shall not constitute a waiver of any rights by District. Applications for Payment that are rejected shall be corrected and resubmitted within seven (7) days after receipt by Contractor.

D. Interest

If District fails to make a progress payment to Contractor as required by Section 7.04-B, above, District shall pay interest to Contractor equivalent to the legal rate set forth in subdivision (a) of California Code of Civil Procedure Section 685.010. The number of days available to District to make payment pursuant to Section 7.04-B, above without incurring interest pursuant to this Paragraph shall be reduced by the number of days by which District exceeds the seven (7) day return requirement applicable to District as set forth in Section 7.04-C above,

7.05 FINAL PAYMENT

A. Retention

In addition to withholdings permitted by Section 7.09 below, a sum equal to five percent (5%) [unless the Project was deemed substantially complex at a public hearing then the calculation would be made on the basis of ten percent (10%)] of all sums otherwise due to Contractor as progress payments shall be withheld by District pursuant to Section 7.04-B from each progress payment and retained until such time as it is due as described in Section 7.06 below.

B. Conditions to Final Payment

Contractor shall submit its Application for Final Payment (exclusive of retention as discussed in Section 7.06 below) using such forms as required by Engineer, on or before the first day of the month following Final Completion of the Work. Such Application for Payment shall be accompanied by all the following:

1. an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Project for which District or District's property or funds might be liable have been paid or otherwise satisfied;
2. Contractor's certification as required by Section 7.03-C, above;
3. consent of surety, if any, to Final Payment;

4. a certificate evidencing that the insurance required by the Contract Documents is in force;
5. conditional releases and waivers of stop notice and bond rights upon final payment in the form required by California Civil Code Section 3262(d)(3) executed by Contractor, all Subcontractors of every tier and by all material suppliers of each;
6. all Record Documents (including, without limitation, complete and accurate As-Built drawings which shall be kept up to date during the performance of the Work);
7. certifications by Contractor and each Subcontractor as required by applicable collective bargaining agreements that all employee benefit contributions due and owing pursuant to any applicable collective bargaining agreement have been paid in full;
8. releases of rights and claims relating to patents and trademarks, as required by the Contract Documents; and
9. any other documents or information required by the Contract Documents as a condition of Final Payment or Final Completion.

C. Final Payment

Within thirty-five (35) days after District approves the Notice of Completion and/or accepts the Project as complete, Final Payment shall become due to Contractor.

7.06 RETENTION PAYMENT

- A. Pursuant to the California Public Contract Code Section 7107, within sixty (60) days after District approves the Notice of Completion and/or accepts the Project as complete, the Retention withheld shall be released to Contractor. Contractor is not required to submit a payment request for release of the Retention amounts. Further, as conditions precedent to the District's obligation to disburse Retention, the District must have received all documents and other items in Section 7.05-B above.

B. Disputed Amounts

Pursuant to California Public Contract Code 7107, District may deduct and withhold from the Retention due under Section 7.06-A above, an amount up to 150% of any disputed amounts, including, without limitation, amounts to protect District against any loss caused or threatened as a result of Contractor's failing to fully perform all of those obligations that are required to be fulfilled by Contractor as a condition to Final Completion and Final Payment. Alternatively, District may elect, in its sole discretion, to accept the Work without correction or completion and adjust the Contract Sum pursuant to the Contract Documents.

C. Acceptance of Retention Payment

Acceptance of Retention payment by Contractor shall constitute a waiver of all rights by Contractor against District for recovery of any loss, excepting only those Claims that have been submitted by Contractor in the manner required by the Contract Documents prior to or at the time of the Retention payment.

7.07 MISCELLANEOUS

A. Joint Payment

District shall have the right, if deemed necessary in its sole discretion, to issue joint checks made payable to Contractor and any Subcontractor(s) of any tier. The joint check payees shall be solely responsible for the allocation and disbursement of funds included as part of any such joint payment. Endorsement on such check by a payee shall be conclusively presumed to constitute receipt of payment by such payee. In no event shall any joint check payment be construed to create any contract between District and a Subcontractor of any tier, any obligation from District to such Subcontractor or any third party rights against District or Engineer.

B. Withholding

Neither the payment nor withholding or the retention of all or any portion of any payment claimed to be due and owing to Contractor shall operate in any way to relieve Contractor from its obligations under the Contract Documents. Contractor shall continue diligently to prosecute the Work without reference to the payment, withholding or retention of any payment. The partial payment, withholding or retention by District in good faith of any disputed portion of a payment, whether ultimately determined to be correctly or incorrectly asserted, shall not constitute a breach by District of the Contract and shall not be grounds for an adjustment of the Contract Sum or Contract Time.

C. No Acceptance

No payment by District or partial or entire use of the Work by District shall be construed as approval or acceptance of the Work, or any portion thereof.

D. Contractor Payment Warranty

Submission of an Application for Payment shall constitute a representation and warranty by Contractor that:

1. title to Work covered by an Application for Payment will pass to District either by incorporation into the construction or upon receipt of payment by Contractor, whichever occurs first; and
2. work covered by previous Applications for Payment are free and clear of liens, stop notices, claims, security interests or encumbrances imposed by the Contractor or any other person.

E. Corrections

No inaccuracy or error in any Application for Payment provided by Contractor shall operate to release Contractor from the error, or from losses arising from the Work, or from any obligation imposed by the Contract Documents. District retains the right to subsequently correct any error made in any previously approved Application for Payment or progress payment issued, by adjustments to subsequent payments.

7.08 PAYMENTS BY CONTRACTOR

Contractor shall not include in its Applications for Payment sums on account of any Subcontractor's portion of the Work that it does not intend to pay to such Subcontractor. Upon receipt of payment from District, Contractor shall pay the Subcontractor performing Work on the Project, out of the amount paid to Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled in accordance with the terms of its contract with Contractor and applicable laws, including, without limitation, California Public Contract Code Section 7107. Contractor shall remain responsible notwithstanding a withholding by District pursuant to the

terms of these Contract Documents, to promptly satisfy from its own funds sums due to all Subcontractors who have performed Work that is included in Contractor's Application for Payment. Contractor shall, by appropriate agreement, require each Subcontractor to make payments to its sub-subcontractors and material suppliers in similar manner. District shall have no obligation to pay or be responsible in any way for payment to a subcontractor of any tier or material supplier.

7.09 PAYMENTS WITHHELD

A. Withholding by District

In addition to any other amounts which District may have the right to retain under the Contract Documents, District may withhold a sufficient amount of any payment otherwise due to Contractor as District, in its sole discretion, may deem necessary to cover actual or threatened loss due to any of the following:

1. Third Party Claims. Third-party claims or stop notices filed or reasonable evidence indicating probable filing of such claims or stop notices.
2. Defective Work. Defective Work not remedied.
3. Nonpayment. Failure of Contractor to make proper payments to its subcontractors or suppliers for services, labor, materials or equipment.
4. Inability to Complete. Reasonable doubt that the Work can be completed for the then unpaid balance of the Contract Sum or within the Contract Time.
5. Violation of Applicable Laws. Failure of Contractor or its Subcontractors to comply with applicable laws or lawful orders of governmental authorities.
6. Penalty. Any claim or penalty asserted against District by virtue of Contractor's failure to comply with applicable laws or lawful orders of governmental authorities (including, without limitation labor laws).
7. Failure to Meet Contract Time. Any damages which may accrue as a result of Contractor failing to meet the Construction Schedule or failing to perform within the Contract Time.
8. Setoff. Any reason specified elsewhere in the Contract Documents as grounds for a withholding offset or set off or that would legally entitle District to a set-off or recoupment.
9. Consultant Services. Additional professional, consultant or inspection services required due to Contractor's failure to comply with the Contract Documents.
10. Liquidated Damages. Liquidated damages assessed against Contractor
11. Materials. Materials ordered by District pursuant to the Contract Documents.
12. Damages. Loss caused by Contractor or Subcontractor to District, separate contractors or any other person or entity under contract to District.
13. Clean Up. Clean up performed by District and chargeable to Contractor pursuant to the Contract Documents.
14. Employee Benefits. Failure of Contractor to pay contributions due and owing to employee benefits funds pursuant to any applicable collective bargaining agreement or trust agreement.

15. Required Documents. Failure of Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, Schedule Updates, "look ahead" schedules, submittals, Schedules of Values, information on Subcontractors, change orders, certifications, payroll reports for prevailing wage compliance, and other required reports or documentation.

16. Other Breach. A breach of any obligation or provision of the Contract Documents.

B. Release of Withholding

If and when District determines, in its sole discretion, that the above grounds for withholding have been removed and that all losses incurred or threatened have been paid, credited or otherwise satisfied, then payment shall be made for amounts withheld because of them.

C. Application of Withholding

District may apply sums withheld pursuant to Section 7.09-A, above, in payment of any loss or threatened loss as District determines, in its sole discretion, to be appropriate. Such payments may be made without a prior judicial determination of District's actual rights with respect to such loss. Contractor agrees and hereby designates District as its agent for such purposes, and agrees that such payments shall be considered as payments made under Construction Contract by District to Contractor. District shall not be liable to Contractor for such payments made in good faith. District shall submit to Contractor an accounting of such funds disbursed on behalf of Contractor. As an alternative to such payment, District may, in its sole discretion, elect to exercise its right to adjust the Contract Sum as provided in the Contract Documents.

D. Continuous Performance

Provided District pays the undisputed portion, if any, of funds withheld in good faith, Contractor shall maintain continuous and uninterrupted performance of the Work during the pendency of any disputes or disagreements with District.

7.10 SUBSTITUTION OF SECURITIES

A. Public Contract Code

Pursuant to the requirements of California Public Contract Code Section 22300, upon Contractor's request, District will make payment to Contractor of any funds withheld from payments to ensure performance under the Contract Documents if Contractor deposits with District, or in escrow with a California or federally chartered bank in California acceptable to District ("Escrow Agent"), securities eligible for the investment of State Funds under Government Code Section 16430, or bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the District, upon the following conditions:

1. Contractor shall be the beneficial owner or any securities substituted for monies withheld for the purpose of receiving any interest thereon.
2. All expenses relating to the substitution of securities under said Public Contract Code Section 22300 and under this Section 7.10, including, but not limited to District's overhead and administrative expenses, and expenses of Escrow Agent shall be the responsibility of Contractor.
3. Securities or certificates of deposit substituted for monies withheld shall be of a value of at least equivalent to the amounts of retention to be paid to Contractor pursuant to the Contract Documents.

4. If Contractor shall choose to deposit securities in lieu of monies withheld with an Escrow Agent, Contractor, District and Escrow Agent shall, as a prerequisite to such deposit, enter into an escrow agreement. Such escrow agreement shall be in the form "Escrow Agreement for Security Deposits in Lieu of Retention" set forth in Public Contract Code Section 22300(f).
5. Contractor shall obtain the written consent of Surety to such agreement.
6. Securities, if any, shall be returned to Contractor only upon satisfactory Final Completion of the Work.

B. Substitute Security

To minimize the expense caused by such substitution of securities, Contractor shall, prior to or at the time Contractor requests to substitute security, deposit sufficient security to cover the entire amount to be withheld. Should the current market value of such substituted security fall below the amount for which it was substituted, or any other amounts which the District withholds pursuant to the Contract Documents, Contractor shall immediately and at Contractor's expense and at no cost to District deposit additional security qualifying under said Public Contract Code Section 22300 until the current market value of the total security deposited is no less than the amount subject to withholding under the Contract Documents. Securities shall be valued as often as conditions of the securities market warrant, but in no case less frequently than once per month.

C. Deposit of Retentions

Alternatively, subject to the conditions set forth in Section 7.10A above upon request of Contractor, District shall make payment of retentions directly to Escrow Agent at the expense of Contractor, provided that Contractor, District and Escrow Agent shall, as a prerequisite such payment, enter into an escrow agreement in the same form as prescribed in Part 4 of Section A, above. At the expense of Contractor and at no cost to District, Contractor may direct the investment of the payments into securities and interest bearing accounts, and Contractor shall receive the interest earned on the investments. Escrow Agent shall hold such direct payments by District under the same terms provided herein for securities deposited by Contractor. Upon satisfactory Final Completion of the Work, Contractor shall receive from Escrow Agent all securities, interest and payments received by Escrow Agent from District, less escrow fees and charges of the Escrow Account, according to the terms of said Public Contract Code Section 22300 and the Contract Documents.

D. Time for Election of Substitution of Securities

Notwithstanding the provisions of Sections 7.10 A, B, and C above and California Public Contract Code Section 22300, the failure of Contractor to request the substitution of eligible securities for monies to be withheld by District within ten (10) days of the award of Contract to Contractor shall be deemed to be a waiver of all such rights.

[END OF ARTICLE]

ARTICLE 8

MATERIALS AND EQUIPMENT

8.01 GENERAL

- A. The Contractor shall furnish all materials and equipment needed to complete the Work and installations required under the terms of this Contract, except those materials and equipment specified to be furnished by the District.
- B. The Contractor shall submit satisfactory evidence that all materials and equipment to be furnished and used in the work are in compliance with the Specifications. Materials and equipment incorporated in the Work and not specifically covered in the Specifications shall be the best of their kind. Unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new.

8.02 QUALITY AND WORKMANSHIP

All materials and equipment must be of the specified quality and equal to approved samples, if samples have been required. All Work shall be done and completed in a thorough, workmanlike manner, notwithstanding any omission from the Specifications or Drawings, and it shall be the duty of the Contractor to call attention to apparent errors or omissions and request instructions before proceeding with the Work. The Engineer may, by appropriate instructions, correct errors and supply omissions, which instructions shall be binding upon the Contractor as though contained in the original Specifications or Drawings. All Work performed under the Specifications will be inspected by the Engineer as provided in Section 8.04. All materials and equipment furnished and all Work done must be satisfactory to the Engineer. Work, material, or equipment not in accordance with the Specifications, in the opinion of the Engineer shall be made to conform thereto. Unsatisfactory materials and equipment will be rejected, and if so ordered by the Engineer, shall, at the Contractor's expense, be immediately removed from the vicinity of the Work.

8.03 APPROVAL OF MATERIALS

- A. The Contractor shall furnish without additional cost to the District such quantities of construction materials as may be required by the Engineer for test purposes. He/she shall place at the Engineer's disposal all available facilities for and cooperate with him in the sampling and testing of all materials and workmanship. The Contractor shall prepay all shipping charges on samples. No samples are to be submitted with the bids unless otherwise specified.
- B. Each sample submitted shall be labeled. A letter, in duplicate, submitting each shipment of samples shall be mailed to the Engineer by the Contractor. Both the label on the sample and the letter of transmittal shall indicate the material represented, its place of origin, the names of the producer and the Contractor, the Specifications number and title, and a reference to the applicable Drawings and Specifications paragraphs.
- C. Materials or equipment of which samples are required shall not be used on the Work until approval has been given by the Engineer in writing. Approval of any sample shall be only for the characteristics of the uses named in such approval and no other. No approval of a sample shall be taken in itself to change or modify any Contract requirement.
- D. Failure of any material to pass the specified tests, including life cycle maintenance data may be sufficient cause for refusal to consider under this Contract, any further sample of the same brand or make of that material.

8.04 ORDERING MATERIALS AND EQUIPMENT

One copy of each of the Contractor's purchase orders for materials and equipment forming a portion of the Work must be furnished to the Engineer, if requested. Each such purchase order shall contain a statement that the materials and equipment included in the order are subject to inspection by the District. Materials and equipment purchased locally will, at the District's discretion, be inspected at the point of manufacture or supply, and materials and equipment supplied from points outside the Los Angeles area will be inspected upon arrival at the job, except when other inspection requirements are provided for specific materials in other sections of the Contract Documents.

8.05 AUTHORITY OF THE ENGINEER

- A. On all questions concerning the acceptability of materials or machinery, the classification of materials, the execution of the Work, and conflicting interests of Contractors performing related work, the decision of the Engineer shall be final and binding.
- B. The Engineer will make periodic observations of materials and completed work to observe their compliance with Plans, Specifications, and design and planning concepts, but he/she is not responsible for the superintendence of construction processes, site conditions, operations, equipment, personnel, or the maintenance of a safe place to work or any safety in, on, or about the site of work.

8.06 INSPECTION

All materials furnished and work done under this Contract will be subject to rigid inspection. The Contractor shall furnish, without extra charge, the necessary test pieces and samples, including facilities and labor for obtaining them, as requested by the Engineer. The Engineer, or his/her authorized agent or agents, at all times shall have access to all parts of the shop and the works where such materials under his/her inspection is being manufactured or the work performed. Work or material that does not conform to the Specifications, although accepted through oversight, may be rejected at any stage of the Work. Whenever the Contractor is permitted or directed to do night work or to vary the period during which work is carried on each day, he/she shall give the Engineer due notice, so that inspection may be provided. Such work shall be done under regulations to be furnished in writing by the Engineer.

8.07 INFRINGEMENT OF PATENTS

The Contractor shall hold and save the District, its officers, agents, servants, and employees harmless from and against all and every demand or demands, of any nature or kind, for or on account of the use of any patented or patent pending invention, process, equipment, article, or appliance employed in the execution of the Work or included in the materials or supplies agreed to be furnished under this Contract, and should the Contractor, his/her agents, servants, or employees, or any of them, be enjoined from furnishing or using any invention, process, equipment, article, materials, supplies or appliance supplied or required to be supplied or used under this Contract, the Contractor shall promptly substitute other inventions, processes, equipment, articles, materials, supplies, or appliances in lieu thereof, of equal efficiency, quality, finish, suitability, and market value, and satisfactory in all respects to the Engineer. Or in the event that the Engineer elects, in lieu of such substitution, to have, supplied, and to retain and use, any such invention, process, equipment, article, materials, supplies, or appliances, as may by this Contract be required to be supplied and used, in that event the Contractor shall at his/her expense pay such royalties and secure such valid licenses as may be requisite and necessary to enable the District, its officers, agents, servants, and employees, or any of them, to use such invention, process, equipment, article, materials, supplies, or appliances without being disturbed or in way interfered with by any proceeding in law or equity on account thereof. Should the Contractor neglect or refuse promptly to make the substitution hereinbefore required, or to pay such royalties and secure such licenses as may be necessary and requisite for the purpose aforesaid, then in that event the Engineer shall have the right to make such substitution, or the District may pay such royalties and secure such licenses and charge the cost thereof against any money due the Contractor from the District, or recover the amount thereof from him/her and his/her surety, notwithstanding final payment under this Contract may have been made.

[END OF ARTICLE]

ARTICLE 9

SUBMITTALS

9.01 GENERAL

- A. The Contractor shall submit samples, drawings, and data for the Engineer's approval which demonstrate fully that the construction, and the materials and equipment to be furnished will comply with the provisions and intent of these Plans and Specifications.
- B. Specific items to be covered by the submittals shall include, as a minimum, the following:
 - 1. For structures, submit all shop, setting, equipment, miscellaneous iron and reinforcement drawings and schedules necessary.
 - 2. For conduits, submit a detailed layout of the conduit with details of bends and fabricated specials and furnish any other details necessary. Show location of shop and field welds.
 - 3. For equipment which requires electrical service, submit detailed information to show power supply requirements, wiring diagrams, control and protection schematics, shop test data, operation and maintenance procedures, outline drawings, and manufacturer's recommendation of the interface/interlock among the equipment.
 - 4. For mechanical equipment submit all data pertinent to the installation and maintenance of the equipment including shop drawings, manufacturer's recommended installation procedure, detailed installation drawings, test data and curves, maintenance manuals, and other details necessary.
 - 5. Samples
 - 6. Colors
 - 7. Substitutions
 - 8. Manuals
 - 9. As-built drawings
 - 10. Safety plans required by Article 10

9.02 PRODUCT HANDLING

- A. Submittals shall be accompanied by a letter of transmittal and shall be in strict accordance with the provisions of this section.
- B. Submit priority of processing when appropriate.

9.03 SCHEDULE OF SUBMITTALS

- A. The Contractor shall prepare and submit a schedule of submittals. The schedule of submittals shall be in the form of a submittal log. Refer to Section 9.11.

9.04 SHOP DRAWINGS

- A. All shop drawings shall be produced to a scale sufficiently large to show all pertinent features of the item and its method of connection to the Work.
- B. All shop drawing prints shall be made in blue or black line on white background. Reproductions of District/Contract Drawings are not acceptable.
- C. The overall dimensions of each drawing submitted to the Engineer shall be equal to one of the District's standard sheet sizes as listed below. The title block shall be located in the lower right hand corner of each drawing and shall be clear of all line Work, dimensions, details, and notes.

Sheet Sizes
Height x Width
8½" x 11"
11" x 17" (half size)
22" x 34" (full size)

9.05 COLORS

Unless the precise color and pattern are specified elsewhere, submit accurate color charts and pattern charts to the Engineer for his/her review and selection whenever a choice of color or pattern is available in a specified product. Label each chart naming the source, the proposed location of use on the project, and the project.

9.06 MANUFACTURERS' LITERATURE

Where contents of submitted literature from manufacturers include data not pertinent to the submittal, clearly show which portions of the contents are being submitted for review.

9.07 SUBSTITUTION OF MATERIALS, PROCESS OR EQUIPMENT

- A. Whenever any particular material, process, or equipment is indicated in the Contract Documents by patent, proprietary, manufacturer or brand name, with or without the words "or equal", only such items shall be provided unless the District's prior written approval is obtained for the substitution. The burden of proving the quality of any material, process, or equipment proposed for substitution shall rest with the Contractor.
- B. If any substitution request offered by the Contractor is not found to be equivalent or cannot be delivered to the Site in compliance with the Project Schedule, Contractor shall furnish and install the material specified in the Contract Documents.
- C. Proposals for substitutions shall be submitted to the District using an approved format. Unless otherwise approved in writing by District, no substitution will be considered or allowed by the District without Contractor's delivery of the following to District:
 - 1. A full explanation of the proposed substitution and submittal of all supporting data including technical information, complete manufacturers catalogs, brochures, drawings, samples, warranties, certified copies of test results, installation instructions, operating procedures, and other descriptive information to substantiate Contractor's claim of equivalent quality and necessary for a complete evaluation of the proposal;
 - 2. A complete description of the difference between the requirements of the Contract Documents and the proposed substitution, the comparative advantages and disadvantages of each, and the

reasons the substitution is advantageous and necessary, including the benefits to the District and the Work in the event the substitution is acceptable;

3. A description of aspects of the Contract Documents affected by the proposal;
 4. The adjustment, if any, in the Contract Sum in the event the substitution is acceptable;
 5. The adjustment, if any, in the Contract Time and impact to the Construction Schedule;
 6. The estimated cost of any engineering, design, or agency fees required for Work of all trades directly or indirectly affected by the substitution;
 7. A list of projects, to the extent known, where the subject of the request was used and the results; and
 8. Other information reasonably necessary to fully evaluate the proposal request.
- D. By submitting a substitution request, Contractor will be deemed to certify to the District that (i) the proposed substitution is equal to or exceeds all requirements of the pertinent Contract Documents as reasonably determined by Contractor; (ii) Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified; (iii) the cost data presented is complete and includes all related costs under Contract, including an estimate of the redesign costs, (iv) Contractor will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects; (v) Contractor waives all claims for additional costs related to the substitution which subsequently become apparent; and (vi) Contractor accepts all responsibility for direct or indirect costs and/or time impacts as result of the substitution including impacts to Work not identified in the proposal.
- E. Contractor shall submit all requests for substitutions, together with substantiating data, within forty-five (45) days of the Notice to Proceed. Following commencement of construction or such other time indicated in the Agreement, substitutions requested by the Contractor will be considered only when one or more of the following conditions are met and documented by Contractor:
1. Specified item fails to comply with regulatory requirements; or
 2. Specified item has been discontinued by the manufacturer; or
 3. Specified item, through no fault of the Contractor, is unavailable in the time frame required to meet the Project Schedule; or
 4. Specified item, through subsequent information disclosure, will not perform properly or fit in designated space; or
 5. Manufacturer declares specified product to be unsuitable for intended use or refuses to warrant installation of product.
- F. The District has reviewed the technical and aesthetic qualities of materials specified, and in no case will the District accept a substitution of a product with a lower cost which does not extend credit to the District.
- G. No incomplete request for substitution will be considered by the District, and products for which insufficient information is submitted will be disapproved by the District for lack of substantiating data.

- H. Failure of the Contractor to submit proposed substitutions for approval in the manner described may be deemed sufficient cause for disapproval by the District of any substitution otherwise proposed.
- I. Contractor shall proceed with performance of the Work as required by the Contract Documents and shall not modify such requirements in accordance with any value engineering proposal or substitution request unless the District approves such request in a written order. In the event District approves a value engineering or substitution request and Contractor furnishes a material, process or article more expensive than that specified, the difference in cost shall be borne entirely by Contractor. Any engineering, design fees or agency fees required to make adjustments in material or work of all trades directly or indirectly affected by the approved substituted item shall be borne entirely by Contractor.

9.08 MANUALS

- A. When manuals are required to be submitted covering items included in this Work, prepare and submit such manuals in approximately 8½" x 11" format in durable plastic binders. In addition, manuals shall be submitted in electronic format. Manuals shall contain at least the following:
 - 1. Identification on or readable through, the front cover stating general nature of the manual.
 - 2. Neatly typewritten index near the front of the manual, furnishing immediate information as to location in the manual of all emergency data regarding the installation.
 - 3. Complete instructions regarding operation and maintenance of all equipment involved.
 - 4. Complete nomenclature of all replaceable parts, their part numbers, current cost, and name and address of nearest vendor of parts.
 - 5. Copy of all guarantees and warranties issued.
 - 6. Copy of drawings with all data concerning changes made during construction.
- B. Where contents of manuals include manufacturers' catalog pages, clearly indicate the precise items included in this installation and delete, or otherwise clearly indicate, all manufacturers' data with which this installation is not concerned.

9.09 SUBMITTALS QUANTITIES

- A. Submit seven (7) copies of all data and drawings unless specified otherwise.
- B. Submit all samples, unless specified otherwise, in the quantity to be returned, plus two, which will be retained by the Engineer.

9.10 IDENTIFICATION OF SUBMITTALS

Completely identify each submittal and re-submittal by showing at least the following information:

- A. Name and address of submitter, plus name and telephone number of the individual who may be contacted for further information.
- B. Name of project as it appears in the Contract Documents and Specifications No.
- C. Drawing number and Specifications section number other than this section to which the submittal applies.

D. Whether this is an original submittal or re-submittal.

E. For samples, indicate the source of the sample.

9.11 SCHEDULE OF SUBMITTALS

A. Submit initial schedule of submittals within five (5) Working Days after issuance of Notice to Proceed.

B. Submit revised schedule of submittals within five (5) Working Days after date of request from the Engineer.

C. The Engineer will review schedule of submittals and will notify Contractor that schedule is acceptable or not acceptable within five (5) Working Days after receipt.

9.12 COORDINATION OF SUBMITTALS

A. Prior to submittal for the Engineer's review, use all means necessary to fully coordinate all material, including the following procedures:

1. Determine and verify all field dimensions and conditions, materials, catalog numbers, and similar data.
2. Coordinate as required with all trades and with all public agencies involved.
3. Secure all necessary approvals from public agencies and others and signify by stamp, or other means, that they have been secured.
4. Clearly indicate all deviations from the Specifications.

B. Unless otherwise specifically permitted by the Engineer, make all submittals in groups containing all associated items; the Engineer may reject partial submittals as not complying with the provisions of the Specifications.

9.13 TIMING FOR SUBMITTALS

A. Make all submittals far enough in advance of scheduled dates of installation to provide all required time for reviews, for securing necessary approvals, for possible revision and re-submittal, and for placing orders and securing delivery.

B. In scheduling, allow at least 15 Working Days for the Engineer's review, plus the transit time to and from the District office.

C. Manuals shall be submitted prior to performing functional tests.

9.14 APPROVAL BY DISTRICT

A. Up to three (3) copies of each submittal, except manuals, schedule of costs for progress payments, and as-built drawings will be returned to the Contractor marked "No Exceptions Taken," "Make Corrections Noted - Do Not Resubmit," or "Make Corrections Noted - Resubmit." Manuals, schedule of costs, and as-built drawings will be returned for re-submittal if incomplete or unacceptable.

B. Submittals marked "Approved as Noted" need not be resubmitted, but the notes shall be followed.

C. If submittal is returned for correction, it will be marked to indicate what is unsatisfactory.

- D. Resubmit revised drawings or data as indicated, in five (5) copies.
- E. Approval of each submittal by the Engineer will be general only and shall not be construed as:
 - 1. Permitting any departures from the Specifications requirements.
 - 2. Relieving the Contractor of the responsibility for any errors and omissions in details, dimensions, or of other nature that may exist.
 - 3. Approving departures from additional details or instructions previously furnished by the Engineer.

9.15 CHANGES TO APPROVED SUBMITTALS

- A. A re-submittal is required for any proposed change to an approved submittal. Changes which require re-submittal include, but are not necessarily limited to, drawing revisions, changes in materials and equipment, installation procedures and test data. All re-submittals shall include an explanation of the necessity for the change.
- B. Minor corrections to an approved submittal may be accomplished by submitting a "Corrected Copy".

[END OF ARTICLE]

ARTICLE 10

SAFETY

10.01 PROTECTION OF PERSONS AND PROPERTY

Notwithstanding any other provision(s) of the Contract Documents, the Contractor shall be solely and completely responsible for working conditions at the job site, including the safety of all persons and property, during performance of the Work. This requirement will apply continuously and will not be limited to normal working hours. Safety and sanitary provisions shall conform to all applicable federal, state, county, and local laws, regulations, ordinances, standards, and codes. Where any of these are in conflict, the more stringent requirement shall be followed. All costs associated with the maintaining the safety of persons and property during the course of the Project are the responsibility of the Contractor, including adhering to any additional safety improvements required by the District, any governmental agency or law enforcement entity.

10.02 PROTECTION FROM HAZARDS

A. Trench Excavation

Excavation for any trench four (4) feet or more in depth shall not begin until the Contractor has received approval from the Engineer of the Contractor's detailed plan for worker protection from the hazards of caving ground during the excavation of such trench. Such plan shall show the details of the design of shoring, bracing, sloping or other provisions to be made for worker protection during such excavation. No such plan shall allow the use of shoring, sloping or protective system less effective than that required by the Construction Safety Orders of the Division of Occupational Safety and Health, and if such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared and signed by an engineer who is registered as a civil or structural engineer in the State of California.

B. Confined Spaces

Contractor shall comply with all of the provisions of General Industry Safety Orders of the California Code of Regulations. Entry of a confined space shall not be allowed until the Contractor has received approval from the Engineer of the Contractor's program for confined space entry. Confined space means a space that (1) Is large enough and so configured that an employee can bodily enter and perform assigned Work; and (2) Has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry); and (3) Is not designed for continuous employee occupancy. Failure to submit a confined space entry program may result in actions as provided in Article 5: "Suspension or Termination of Contract".

C. Material Safety Data Sheet

Contractor shall comply with all of the provisions of General Industry Safety Orders of the California Administrative Code. The Contractor shall submit to the Engineer a Material Safety Data Sheet (MSDS) for each hazardous substance proposed to be used, ten (10) days prior to the delivery of such materials to the job site or use of such materials at a manufacturing plant where the Engineer is to perform an inspection. For materials which are to be tested in District laboratories, the MSDS shall be submitted with the sample(s). Hazardous substance is defined as any substance included in the list (Engineer's List) of hazardous substances prepared by the Engineer, California Department of Industrial Relations, pursuant to Labor Code Section 6382. Failure to submit an MSDS for any hazardous substance may result in actions as provided in Article 5, "Suspension or Termination of Contract".

10.03 TRAFFIC REGULATION

- A. During the performance of the Work the Contractor shall erect and maintain necessary temporary fences, bridges, railings, lights, signals, barriers, or other safeguards at his/her own expense as shall be appropriate under the circumstance in his/her judgment for the prevention of accidents; and he/she shall take other precautions as necessary for public safety including, but not limited to, traffic control. Traffic control shall be conducted in accordance with the latest edition of the Work Area Traffic Control Handbook ("WATCH"), published by BNi Books, and as directed and approved by the District Traffic and Transportation Administrator.
- B. Contractor shall submit at least ten (10) Working Days prior to Work a detailed traffic control plan, that is approved by all agencies having jurisdiction and that conforms to all requirements of the Specifications.
- C. No changes or deviations from the approved detailed traffic control plan shall be made, except temporary changes in emergency situations, without prior approval of the District Traffic and Transportation Administrator and all agencies having jurisdiction.

Contractor shall immediately notify the Engineer, the District Traffic and Transportation Administrator and the agencies having jurisdiction of occurrences that necessitate modification of the approved traffic control plan.

- D. Contractor's failure to comply with this provision may result in actions as provided in Article 5: "Suspension or Termination of Contract" of these General Conditions.

10.04 TRAFFIC CONTROL DEVICES

- A. Traffic signs, flashing lights, barricades and other traffic safety devices used to control traffic shall conform to the requirements of the WATCH handbook or the manual of traffic control, whichever is more stringent, and as approved by the District Traffic and Transportation Administrator.
 - 1. Portable signals shall not be used unless permission is given in writing by the agency having jurisdiction.
 - 2. Warning signs used for nighttime conditions shall be reflectorized or illuminated. "Reflectorized signs" shall have a reflectorized background and shall conform to the current State of California Department of Transportation specification for reflective sheeting on highway signs.

10.05 EXECUTION

- A. The Contractor shall provide written notification to San Bernardino County or applicable city, Public Works Department at least two (2) weeks prior to the beginning of construction at any particular location. Notification will include the specific location, project dates, what lanes of the roadway will be closed (if any) and when. Also, the construction project manager's name and business phone number and the construction inspector's name and business phone number.
- B. The Contractor shall notify, by telephone, the applicable city Public Works Department at the completion of the posting of temporary no parking signs. Notification will include the times, dates and locations of the posting. When vehicles must be towed for violation of temporary no parking signs, the person who actually posted the signs, or on-view supervisor of that posting, will be present to answer pertinent questions that may be asked by the parking enforcement officer or police officer towing the vehicles.
- C. The Contractor shall notify the applicable Fire Department on a daily basis during the entire period that construction is in progress whenever roadways are reduced in width or blocked. Notification shall be made

to the Fire Dispatch and the Contractor shall provide the information required to identify which roadways would have accessibility problems due to his/her operations. The Contractor shall submit to Fire Division schedule of Work for their use and files.

- D. Roads subject to interference from the Work covered by this Contract shall be kept open, and the fences subject to interference shall be kept up by the Contractor until the Work is finished. Except where public roads have been approved for closure, traffic shall be permitted to pass through designated traffic lanes with as little inconvenience and delay as possible.
- E. Where alternating one-way traffic has been authorized, the maximum time that traffic will be delayed shall be posted at each end of the one-way traffic section. The maximum delay time shall be approved by the agency having jurisdiction.
- F. Contractor shall install temporary traffic markings where required to direct the flow of traffic and shall maintain the traffic markings for the duration of need. Contractor shall remove the markings by abrasive blasting when no longer required.
- G. Convenient access to driveways and buildings in the vicinity of Work shall be maintained as much as possible. Temporary approaches to, and crossing of, intersecting traffic lanes shall be provided and kept in good condition.
- H. When leaving a Work area and entering a roadway carrying public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic.

10.06 FLAGGING

- A. Contractor shall provide flaggers to control traffic where required by the approved traffic control plan.
 - 1. Flaggers shall perform their duties and shall be provided with the necessary equipment in accordance with the current "Instructions to Flaggers" of the California Department of Transportation.
 - 2. Flaggers shall be employed full time on traffic control and shall have no other duties.

10.07 PEDESTRIAN CANOPIES OR BARRICADE PAYMENTS

Refer to the Permit Services for requirements for building or access road safety improvements to be constructed during construction period. These devices or improvements deemed necessary, as part of permit application, will be included in Contractor's cost.

10.08 EMERGENCY WORK

- A. During Working Hours:

In case of an emergency which threatens loss or injury of property, personal injury and/or safety of life during working hours, the Contractor shall act, without previous instructions from the District, as the situation may warrant. He/she shall notify the Engineer of the emergency and the action taken immediately thereafter. Any compensation claimed by the Contractor, together with substantiating documents in regard to expense, shall be submitted to the Engineer within 15 calendar days after the emergency. Compensation, if allowed, will be paid for as Extra Work.

- B. Outside of Working Hours:

Whenever, in the opinion of the District, there shall arise outside of the regular Working hours on the Contract Work of an emergency nature which threatens loss or injury of property, or danger to public safety, the Contractor shall act, without previous instructions from the District as the situation may warrant. He/she shall notify the Engineer of the emergency and the action taken immediately thereafter. Any compensation claimed by the Contractor, together with substantiating documents in regard to expense, shall be submitted to the Engineer within 15 calendar days after the emergency. Compensation, if allowed, will be paid for as Extra Work. In the event the Contractor is not able to respond to an emergency outside of regular working hours, the District's forces will handle such emergency Work. If such emergency arises out of or is the result of operations by the Contractor, the cost of the corrective measures will be billed to the Contractor and deducted from his/her payment as provided in the Contract Documents. The performance of emergency Work by District forces will not relieve the Contractor of any of his/her responsibilities, obligations, or liabilities under the Contract.

[END OF ARTICLE]

ARTICLE 11

INDEMNITY

11.01 INDEMNITY

To the maximum extent permitted by law, the Contractor shall fully indemnify, hold harmless, protect, and defend the District, its officers, employees, agents, representatives and their successors and assigns ("Indemnitees") from and against any and all demands, liability, loss, suit, claim, action, cause of action, damage, cost, judgment, settlement, decree, arbitration award, stop notice, penalty, loss of revenue, and expense (including any fees of accountants, attorneys, experts or other professionals, and costs of investigation, mediation, arbitration, litigation and appeal), in law or in equity, of every kind and nature whatsoever, arising out of or in connection with, resulting from or related to, or claimed to be arising out of the Work performed by Contractor, or any of its officers, agents, employees, Subcontractors, sub-subcontractors, design consultants or any person for whose acts any of them may be liable, regardless of whether such claim, suit or demand is caused, or alleged to be caused, in part, by an Indemnatee, including but not limited to:

- A. Bodily injury, emotional injury, sickness or disease, or death to any persons;
- B. Infringement of any patent rights, licenses, copyrights or intellectual property which may be brought against the Contractor or District arising out of Contractor's Work, for which the Contractor is responsible;
- C. Stop notices and claims for labor performed or materials used or furnished to be used in the Work, including all incidental or consequential damages resulting to District from such stop notices and claims;
- D. Failure of Contractor or its Subcontractors to comply with the provisions for insurance;
- E. Failure to comply with any applicable law, statute, code, ordinance, regulation, permit, or order;
- F. Misrepresentation, misstatement, or omission with respect to any statement made in or any document furnished by the Contractor in connection therewith;
- G. Breach of any duty, obligation, or requirement under the Contract Documents;
- H. Failure to provide notice to any party as required under the Contract Documents;
- I. Failure to protect the property of any utility provider or adjacent property owner; or
- J. Failure to make payment of all employee benefits.

This indemnity provision is effective regardless of any prior, concurrent, or subsequent active or passive negligence by Indemnitees, except that, to the limited extent mandated by California Civil Code Section 2782, the Contractor shall not be responsible for liabilities to the extent arising from the sole negligence or willful misconduct of Indemnitees or to the extent arising from the active negligence of District.

11.02 ENFORCEMENT

Contractor's obligations under this Article extend to claims occurring after termination of the Contractor's performance of the Contract or Final Payment to Contractor. The obligations apply regardless of any actual or alleged negligent act or omission of Indemnitees. Contractor, however, shall not be obligated under this Agreement to indemnify an Indemnatee for claims arising from the sole active negligence or willful misconduct of the Indemnatee or independent contractors who are directly responsible to Indemnitees. Contractor's obligations under this Article are in addition to any other rights or remedies which the Indemnitees may have under the law or under the Contract Documents. In the

event of any claim, suit or demand made against any Indemnitees, the District may in its sole discretion reserve, retain or apply any monies due to the Contractor under the Contract for the purpose of resolving such claims; provided, however, that the District may release such funds if the Contractor provides the District with reasonable assurance of protection of the District's interests. The District shall in its sole discretion determine whether such assurances are reasonable.

11.03 NO LIMITATIONS

Contractor's indemnification and defense obligations set forth in this Article are separate and independent from the insurance provisions set forth in Article 12 herein; and do not limit, in any way, the applicability, scope, or obligations set forth in those insurance provisions. In claims, suits, or demands against any Indemnatee by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the Contractor's indemnification and defense obligations shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefits acts or other employee benefits acts.

[END OF ARTICLE]

ARTICLE 12

INSURANCE

12.01 CONDITION TO COMMENCEMENT

Contractor shall not commence Work under this Contract until Contractor has obtained all insurance required in this Article from a company or companies acceptable to District and complied with the insurance requirements set forth in this Article. Contractor shall also not allow any Subcontractor to commence Work on the Project until the Subcontractor has complied with its obligations regarding insurance as set forth in this Article. Proof of insurance, including certificates and endorsements, must be submitted by the Contractor prior to the District's execution of the Contract and prior to the commencement of any Work.

12.02 INSURANCE REQUIREMENTS

A. Required Insurance Policies

At its own expense, Contractor shall obtain, pay for, and maintain for the duration of the Contract, policies of insurance meeting the following requirements:

1. Workers' Compensation/Employer's Liability Insurance. Contractor shall provide workers' compensation benefits as required by state law and any applicable federal statutes.
 - (a) Workers' Compensation insurance shall be in an amount not less than:
 - (i) ONE MILLION DOLLARS (\$1,000,000) per accident for bodily injury or disease;
 - (ii) ONE MILLION DOLLARS (\$1,000,000) per employee for bodily injury or disease; and
 - (iii) ONE MILLION DOLLARS (\$1,000,000) policy limit.
2. Commercial General Liability ("CGL") (primary). District and its employees, agents and board members shall be added as additional insureds for both ongoing operations and completed operations using ISO forms 2010 07 04 and 2037 07 04 or equivalent. Contractor shall cause the completed operations coverage to be renewed annually for a period of ten (10) years or the expiration of the applicable statute of repose, whichever is longer, following the completion of the Work. Coverage shall apply on a primary, non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to District or any employee, representative or agent of District. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Coverage shall contain no contractors' limitation or other endorsement limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.
 - (a) CGL insurance must not be written for less than the limits of liability specified as follows:
 - (i) ONE MILLION DOLLARS (\$1,000,000) per occurrence for bodily injury (including accidental death) to any one person;
 - (ii) ONE MILLION DOLLARS (\$1,000,000) per occurrence for personal and advertising injury to any one person;
 - (iii) ONE MILLION DOLLARS (\$1,000,000) per occurrence for property damage; and
 - (iv) TWO MILLION DOLLARS (\$2,000,000) general aggregate limit.

- (b) CGL insurance must include all major divisions of coverage and must cover:
 - (i) Premises Operations (including Explosion, Collapse, and Underground ["X,C,U"] coverages as applicable);
 - (ii) Independent Contractor's Protective;
 - (iii) Independent Contractors;
 - (iv) Products and Completed Operations
 - (v) Personal and Advertising Injury (with Employer's Liability Exclusion deleted);
 - (vi) Contractual Liability; and
 - (vii) Broad Form Property Damage.
- (c) Umbrella or Excess Liability Insurance (over primary) shall be written with limits of at least FIVE MILLION DOLLARS (\$5,000,000) and shall be at least as broad as any underlying coverage. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion and no contractor's limitation endorsement. The policy shall have starting and ending dates concurrent with the underlying coverages. The Named Insured may determine the layering of primary and excess liability insurance provided that if such layering differs from that described here, the actual coverage program meets the minimum total required limits and complies with all other requirements listed here.

3. Business Automobile Liability Insurance

- (a) Business Automobile Liability Insurance must cover all vehicles, whether rented, leased, hired, scheduled, owned or non-owned. If Contractor does not own any vehicles, this requirement may be satisfied by a non-owned vehicle endorsement to the general and umbrella liability policies. Business Automobile Liability Insurance coverage amounts shall not be less than the following:
 - (i) FIVE MILLION DOLLARS (\$5,000,000) per occurrence for bodily injury (including accidental death) to any one person; and
 - (ii) FIVE MILLION DOLLARS (\$5,000,000) per occurrence for property damage; or
 - (iii) FIVE MILLION DOLLARS (\$5,000,000) combined single limit.

4. Contractors Pollution Liability Insurance ("CPL")

- (a) Contractors Pollution Liability insurance may be required at District's option and shall provide coverage for liability caused by pollution conditions arising out of the operations of the Contractor. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using Subcontractors, the policy must include work performed "by or on behalf" of the insured.
- (b) The policy limit shall provide coverage of no less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and TWO MILLION DOLLARS (\$2,000,000) in the aggregate. Coverage shall apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs; and costs of defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

- (c) All activities contemplated in the Contract shall be specifically scheduled on the CPL policy as “covered operations.” In addition, the policy shall provide coverage for the hauling of waste from the Project site to the final disposal location, including non-owned disposal sites.
- (d) The policy shall specifically provide for a duty to defend on the part of the insurer. District, its officers, employees and agents shall be added to the policy as additional insureds by endorsement.

5. Professional Liability Insurance

If any portion of the Work under the Contract requires the performance of professional services (including design services) by Contractor or any of its Subcontractors, Contractor shall maintain professional liability insurance with minimum limits of \$1,000,000 per claim and \$2,000,000 in the aggregate. All professional liability policies shall provide coverage retroactive to the date of this Contract or the commencement of professional services in relation to the Project, and the coverage shall be maintained for a period of five (5) years after the date of final payment to the Contractor.

6. Builder's Risk Insurance

Builder's Risk Insurance covering all real and personal property for “all risks” of loss or “comprehensive perils” coverage including, but not limited to, the following perils: earth movement (including earthquake), collapse, fire, lightning, theft, vandalism and malicious mischief, water damage, damage caused by frost and freezing, debris removal, and demolition occasioned by enforcement of laws and regulations, for all buildings, structures, fixtures, materials, supplies, machinery and equipment to be used in or incidental to the construction at the site, off site, or in transit, for the full replacement value of such properties. Coverage shall be included for property of others in the care, custody or control of the insured for which any insured may be liable. At its sole discretion, District may elect to purchase a Builder's Risk policy for the Project instead of a Contractor purchased policy, in which case the Contract Price shall be reduced accordingly.

B. General Requirements—All Policies

- 1. Qualifications of Insurer. At all times during the term of this Contract, Contractor's insurance company must meet all of the following requirements:
 - (a) “Admitted” insurer by the State of California Department of Insurance or be listed on the California Department of Insurance's “List of Surplus Line Insurers”;
 - (b) Domiciled within, and organized under the laws of, a State of the United States; and
 - (c) Carry an A.M. Best Company minimum rating of no less than “A:IX”.
- 2. Continuation of Coverage. For insurance coverages that are required to remain in force after the Final Payment, and if reasonably available, Contractor shall submit to District, with the Final Application for Payment, all certificates and additional insured endorsements evidencing the continuation of such coverage.
- 3. Deductibles or Self-Insured Retentions. All deductibles or self-insured retentions are subject to District's review and approval, in its sole discretion.
- 4. Commercial General Liability and Business Automobile insurance policies must be written on an “occurrence” basis and must add the District and its officers, agents, employees and

representatives as additional insureds.

5. Contractor's Insurance Primary. Other insurance (whether primary, excess, contingent or self-insurance, or any other basis) available to District, or its representatives, or both, is excess over Contractor's insurance. District's insurance or self-insurance, or both, will not contribute with Contractor's insurance policy.
6. Waiver of Subrogation. Contractor and Contractor's insurance company waive and shall not exercise any right of recovery or subrogation that Contractor or the insurer may have against District, or its representatives, or both. The Workers' Compensation insurance policy shall be endorsed with a waiver of subrogation in favor of the District for all work performed by the Contractor, its employees, agents and Subcontractors.
7. Separation of Insureds. Contractor's insurance policy applies separately to each insured or additional insured who is seeking coverage, or against whom a claim is made or suit is brought, except that the naming of multiple insureds will not increase an insurance company's limits of liability.
8. Claims by Other Insureds. Contractor's insurance policy applies to a claim or suit brought by an additional insured against a Named Insured or other insured, arising out of bodily injury, personal injury, advertising injury, or property damage.
9. Premiums. District is not liable for a premium payment, deductible or another expense under Contractor's policy.
10. At any time during the duration of this Contract, District may do any one or more of the following:
 - (a) Review and modify this Contract's insurance coverage requirements;
 - (b) Require complete, certified copies of all required insurance policies, including endorsements effecting coverage required by this Contract at any time;
 - (c) Require that Contractor obtain, pay for, and maintain more insurance depending on District's assessment of any one or more of the following factors:
 - (i) District's risk of liability or exposure arising out of, or in any way connected with, the services of Contractor under this Contract;
 - (ii) The nature or number of accidents, claims, or lawsuits arising out of, or in any way connected with, the services of Contractor under this Contract; or
 - (iii) The availability, or affordability, or both, of increased liability insurance coverage.
 - (d) Obtain, pay for, or maintain a bond (as a replacement for any insurance coverage) from a California corporate surety, guaranteeing payment to District for liability, or costs, or both, that District incurs during District's investigation, administration, or defense of a claim or a suit arising out of this Contract.
11. Contractor shall maintain the insurance policy without interruption, from the Project's commencement date to the Final Payment date, or until a date that District specifies for any coverage that Contractor must maintain after the Final Payment.
12. Contractor shall not allow any insurance to expire, cancel, terminate, lapse, or non-renew. Contractor's insurance company shall mail District written notice at least thirty (30) days in

advance of the policy's expiration, cancellation, termination, non-renewal, or reduction in coverage (ten (10) days' notice if the cancellation is due to non-payment of premium). Ten (10) days before the scheduled expiration, cancellation, termination, or non-renewal of a policy, Contractor shall deliver to District evidence of the required coverage as proof that Contractor's insurance policy has been renewed or replaced with another insurance policy which, during the duration of this Agreement, meets all of this Agreement's insurance requirements.

13. At any time, upon District's request, Contractor shall furnish satisfactory proof of each type of insurance coverage required - including a certified copy of the insurance policy or policies; certificates, endorsements, renewals, or replacements; and documents comprising Contractor's self-insurance program - all in a form and content acceptable to the District's Attorney or District's Risk Manager.
14. If Contractor hires, employs, or uses one or more Subcontractor(s) to perform work, services, operations, or activities on Contractor's behalf, Contractor shall ensure that the Subcontractor complies with the following:
 - (a) Meets, and fully complies with, this Contract's insurance requirements, except that (i) the Subcontractor shall not be required to provide Umbrella or Excess Liability insurance unless required by District, (ii) the Subcontractor's Business Automobile Liability insurance may have a combined single limit of \$1,000,000; and (iii) only Subcontractors providing professional services (including design services) shall be required to maintain Professional Liability insurance, and
 - (b) Furnishes District at any time upon its request, with a complete copy of the Subcontractor's insurance policy or policies for District's review, or approval, or both. Failure of District to request copies of such documents shall not impose any liability on District, or its employees.
15. Contractor's failure to comply with an insurance provision in this Contract constitutes a material breach upon which District may immediately terminate or suspend Contractor's performance of this Contract, or invoke another remedy that this Contract or the law allows. At its discretion and without waiving any other rights it may have pursuant to law, District has the right but not a duty to obtain or renew the insurance and pay all or part of the premiums. Upon demand, Contractor shall repay District for all sums or monies that District paid to obtain, renew, or reinstate the insurance, or District may offset the cost of the premium against any sums or monies that District may owe Contractor.

C. Contractor's Submittal of Certificates and Endorsements

1. Contractor shall have its insurance carrier(s) or self-insurance administrator(s) complete and execute the following insurance documents and shall deliver said documents at the same time Contractor delivers this Contract to District. District will neither sign this Contract nor issue a "Notice to Proceed" until the District's Attorney or District's Risk Manager has reviewed and approved all insurance documents. District's decision as to the acceptability of all insurance documents is final.
2. Required Submittals for Commercial General Liability, Business Automobile Insurance and Contractor's Pollution Liability Insurance. The following submittals must be on forms satisfactory to the District's Attorney or District's Risk Manager, and signed by the insurance carrier or its authorized representative - which fully meet the requirements of, and contain provisions entirely consistent with, all of the insurance requirements set forth herein.

- (a) "Certificate of Insurance"
- (b) "Additional Insured Endorsement"
- (c) Subrogation Endorsement: "Waiver of Transfer to Rights of Recover Against Others"

Both Certificates of Insurance and Additional Insured Endorsements must read as follows: "The San Bernardino Valley Municipal Water District, and its officers, agents, employees and representatives are included as additional insureds under the policy(s). This insurance is primary to all other insurance of the District. The District's insurance and self-insurance will apply in excess of, and will not contribute with this insurance. This insurance applies separately to each insured or additional insured who is seeking coverage, or against whom a claim is made or a suit is brought. The issuing company shall mail thirty (30) days advance notice to the District for any policy cancellation, termination, non-renewal, or reduction in coverage (ten (10) days advance notice for cancellation based on non-payment of premium)."

3. Required Submittals for Workers' Compensation Insurance. Contractor shall provide District with a certificate of insurance and a subrogation endorsement on forms satisfactory to the District's Attorney or District's Risk Manager, and signed by the insurance carrier or its authorized representative – which fully meet the requirements of, and contain provisions entirely consistent with, this Contract's workers compensation insurance requirements. If Contractor is self-insured for workers' compensation, a copy of the "Certificate of Consent to Self-insure" from the State of California; or if Contractor is lawfully exempt from workers' compensation laws, an "Affirmation of Exemption from Labor Code §3700" form.
4. Required Evidence of Builder's Risk Coverage. Contractor shall provide District with a certificate of insurance and a declarations page on a form satisfactory to the District's Attorney or District's Risk Manager, and signed by the insurance carrier or its authorized representative. The policy terms must fully meet the requirements of, and contain provisions entirely consistent with, all of the insurance requirements set forth herein. The District shall be named as a loss payee on the insurance policy for the full replacement value of all buildings, structures, fixtures and materials to be constructed, maintained, repaired or supplied pursuant to this Contract.
5. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that all required coverage is provided. Contractor agrees to obtain certificates evidencing such coverage.
6. Contractor agrees to provide immediate notice to District of any claim or loss against Contractor that includes District or any other Indemnitee as a defendant. District assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve District.
7. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or Subcontractor.
8. Any "self-insured retention" must be declared and approved by District. District reserves the right to require the self-insured retention to be eliminated, replaced by a deductible or guaranteed by an irrevocable letter of credit. Self-funding, policy fronting or other mechanisms to avoid risk transfer are not acceptable. If Contractor has such a program, Contractor must fully disclose such program to District.

12.03 CONDITIONS REGARDING INSURANCE COVERAGE AND LIMITS

District and Contractor agree as follows:

1. All insurance coverage and limits provided pursuant to the Contract Documents shall apply to the full extent of the policies involved, available or applicable. Nothing contained in the Contract Documents or any other agreement relating to District or its operations limits the application of such insurance coverage.
2. None of the policies required by this Contract shall be in compliance with these requirements if they include any limiting endorsement that has not been first submitted to District and approved in writing by the District's Attorney or District's Risk Manager.

12.04 INSURANCE OBLIGATION SEPARATE FROM INDEMNITY OBLIGATION

This Agreement's insurance provisions are separate and independent from the indemnification and defense provisions in Article 11 of the Agreement. Further, this Agreement's insurance provisions do not limit, in any way, the applicability, scope, or obligations of the indemnification and defense provisions in Article 11 of the Agreement.

[END OF ARTICLE]

ARTICLE 13

BONDS

13.01 REQUIRED BONDS

A. Contractor shall furnish the following bonds:

1. A Performance Bond in an amount equal to one hundred percent (100%) of the Contract price in the form shown in Exhibit "1" attached to the Agreement.
2. A Payment Bond (Labor and Material) in an amount equal to one hundred percent (100%) of the total Contract price in the form shown in Exhibit "2" attached to the Agreement.

13.02 POWER OF ATTORNEY

All bonds shall be accompanied by a power of attorney from the surety company authorizing the person executing the bond to sign on behalf of the company. If the bonds are executed outside the State of California, all copies of the bonds must be countersigned by a California representative of the surety. The signature of the person executing the bond shall be acknowledged by a Notary Public as the signature of the person designated in the power of attorney.

13.04 APPROVED SURETY

All the bonds shall be executed by a California admitted surety with an A.M. Best's Company rating satisfactory to the District. If an A.M. Best's rating is not available, the proposed surety must meet comparable standards of another rating service satisfactorily to District. Bonds issued by a California admitted surety listed in the latest versions of the U.S. Department of Treasury Circular 570 must be accompanied by all of the documents enumerated in California Code of Civil Procedure § 995.660(a).

13.05 REQUIRED PROVISIONS

Every bond must display the surety's bond number and incorporate the Contract for construction of the Work by reference. The terms of the bonds shall provide that the surety agrees that no change, extension of time, alteration, or modification of the Contract Documents or the Work to be performed thereunder shall in any way affect its obligations and shall waive notice of any such change, extension of time, alteration, or modification of the Contract Documents.

13.06 NEW OR ADDITIONAL SURETIES

If, during the continuance of the Contract, any of the sureties, in the opinion of the District, are or become non-responsible or otherwise unacceptable to District, District may require other new or additional sureties, which the Contractor shall furnish to the satisfaction of District within ten (10) days after notice, and in default thereof the Contract may be suspended and the materials may be purchased or the Work completed as provided in Article 5 herein.

13.07 WAIVER OF MODIFICATIONS AND ALTERATIONS

No modifications or alterations made in the Work to be performed under the Contract or the time of performance shall operate to release any surety from liability on any bond(s) required to be given herein. Notice of such events shall be waived by the surety.

13.08 APPROVAL OF BONDS

The Contract will not be executed by District nor the Notice to Proceed issued until the required bonds have been received and approved by District in the forms attached to the Contract. District's decision as to the acceptability of all sureties and bonds is final. No substitution of the form of the documents will be permitted without the prior written consent of District.

[END OF ARTICLE]

ARTICLE 14

LABOR PROVISIONS

14.01 NORMAL HOURS OF WORK

Normal hours of work (7:00 a.m. to 5:00 p.m. Monday through Friday) for Contractor's operations, which are located within city limits, must comply with city ordinances or other requirements of the city. Contractor's operations in the unincorporated areas or areas which border a city, town or other county must comply with requirements of San Bernardino County, CA or requirements adopted by other jurisdictions, whichever are more stringent. In case of conflict between the requirements of a city, the County of San Bernardino, and the requirements of the Contract Documents, the most restrictive requirements will govern.

14.02 SATURDAY, SUNDAY, HOLIDAY AND OVERTIME WORK

- A. No construction Work shall be done on Saturdays, Sundays or legal holidays recognized by the District and no Work shall be performed outside of normal hours of work (7:00 a.m. to 7:00 p.m.) without the prior consent of the Engineer, unless required in the Contract Documents.
- B. Whenever the Contractor intends to perform overtime work or work on Saturday, Sunday, or a legal holiday recognized by the District, the Contractor must request permission by giving written notice to the Engineer at least 2 working days prior to performing work.
- C. Unless specifically provided or required by the Contract Documents, Contractor shall receive no additional compensation for any overtime work (i.e., work in excess of eight (8) hours in any one day; forty (40) hours in any one calendar week; or evening, night, legal holidays observed by the District, or weekend work).
- D. Prior to the start of such Work, when necessary, the Contractor must arrange with the District for the continuous or periodic inspection of the Work and tests of materials.
- E. Should the Contractor find it necessary in order to complete the Work according to the Project Schedule to perform certain of Contractor's operations on Saturdays, Sundays, holidays or during the overtime hours, these operations will be performed as part of the Work included in the Contract Sum and do not constitute a basis for additional compensation. At the District's option the Contractor may be required to compensate the District for inspection, testing, security or management costs during Work performed outside of the normal hours of work as defined herein. District has the right and authority to deduct the cost of all such inspections, testing, security or management costs from any payments due or that become due to Contractor.
- F. The District has the right to order Contractor to perform Work outside the normal hours of work. District will issue such Order in writing. If the District orders the Contractor to perform Work outside the normal hours of work, the Contractor must make all arrangements to supply an adequate Work force for the task to be accomplished and will be compensated for the premium portion of the wages paid, plus labor burdens applicable to the premium portion only of the wages paid. Contractor must submit copies of Contractor's payrolls indicating the premium wages actually paid, and the District will issue a Change Order to reimburse the Contractor for Contractor's actual costs only. The District will pay all extra expense of the District's inspection.

14.03 DIR REGISTRATION

Strict compliance with all DIR registration requirements in accordance with Labor Code Sections 1725.5 and 1771.1 is a material obligation of the Contractor and all of its subcontractors (of any tier) under the Contract Documents. The foregoing includes, without limitation, compliance with DIR registration requirements at all times during

performance of the Work by the Contractor and all of its subcontractors of any tier. The failure of the Contractor and all subcontractors of any tier to be properly registered with DIR at all times during performance of the Work is a material breach of the Contract and subject to termination for cause.

An affirmative and ongoing obligation of the Contractor under the Contract Documents is the verification that all subcontractors of any tier are at all times during performance of the Work are in full and strict compliance with the DIR registration requirements and Contractor shall immediately notify District of the name and registration number of anyone subject to the DIR registration requirements before allowed to work on the Project. Contractor shall provide a Certification of Contractor and Subcontractor Department of Industrial Relations Registration form for each subcontractor subject to the DIR Registration. The Contractor shall not permit or allow any subcontractor of any tier to perform any Work without the Contractor's verification that all subcontractors are in full and strict compliance with the DIR registration requirements. Any subcontractors of any tier not properly registered with DIR shall be substituted in accordance with Labor Code section 1771.1. Contractor or its subcontractors of any tier shall not be entitled to any additional costs or time arising from or in any way related to compliance with the DIR registration requirements.

14.04 WAGE RATES

- A. Contractor acknowledges that this Project constitutes a public works project and is subject to the requirements of Article 2 (commencing at Section 1720), Chapter 1, Part 7, Division 2, of the Labor Code, the District has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public works project is to be performed for each craft, classification, or type of worker needed for this Project from the Director of the Department of Industrial Relations. These rates are on file at the administrative office of the District and are also available from the Director of the Department of Industrial Relations. Copies will be made available to any interested party on request. The Contractor shall post a copy of such wage rates at appropriate, conspicuous, weatherproof points at the Site.
- B. The Contractor shall pay and shall cause to be paid to each worker employed by the Contractor or any Subcontractor, of any tier, to execute the Work on the Project per diem wages including, but not limited to, employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided for in Labor Code Section 1773.1.
- C. Any worker employed to perform work on the Project, but such work is not covered by any classification listed in the published general prevailing wage rate determinations or per diem wages determined by the Director of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the employment of such person in such classification.
- D. The Contractor shall pay and shall cause to be paid each worker engaged in the execution of the Work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such workers.

14.05 HOURS OF LABOR

Eight hours labor constitutes a legal day's work. Contractor shall forfeit as a penalty to the District \$25.00 for each worker employed in the execution of the Contract by Contractor or any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day or forty (40) hours in any one calendar week in violation of the provisions of the California Labor Code, and in particular, Section 1810 through Section 1815 thereof, except that work performed by employees of Contractor or any Subcontractor in excess of eight (8) hours per day or forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day or forty (40) hours per week, at not less than one and one-

half (1½) times the basic rate of pay as provided in Section 1815. If the prevailing wage determination requires a higher rate of pay for overtime work than is required under Labor Code Section 1815, then that higher rate of pay for overtime rate must be paid.

14.06 RECORDS OF WAGES PAID

- A. Pursuant to §1776 of the Labor Code, the Contractor and each Subcontractor shall keep an accurate payroll record showing the name, address, social security number, work classification 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 him or her in connection with the Project.
- B. All payroll records as specified in Labor Code §1776 of the Contractor and all Subcontractors shall be certified and furnished directly to the Labor Commissioner in accordance with Labor Code §1771.4(a)(3) on a monthly basis (or more frequently if required by the District or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. Payroll records as specified in Labor Code §1776 shall be certified and submitted to the District with each application for payment. All payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - 1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
 - 2. A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of District, the Division of Labor Standards Enforcement or the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - 3. A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to Paragraph (2) above, the requesting party shall, prior to being provided the records, reimburse the costs, according to law for the preparation by the Contractor, Subcontractor(s), and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.
- C. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division of Labor Standards Enforcement.
- D. The Contractor or Subcontractor(s) shall file a certified copy of all payroll records with the entity that requested such records within ten (10) calendar days after receipt of a written request.
- E. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or the Subcontractor(s) performing the Contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of the social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment

Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.

- F. The Contractor shall inform the District of the location of all 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.
- G. The Contractor or Subcontractor(s) shall have ten (10) calendar days in which to comply subsequent to receipt of a written notice requesting payroll records. In the event that the Contractor or Subcontractor(s) fails to comply within the 10-day period, the Contractor or Subcontractor(s) shall, as a penalty to the District, forfeit One Hundred Dollars (\$100.00) 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.

Responsibility for compliance with this Article shall rest upon the Contractor.

14.07 MONITORING AND ENFORCEMENT BY LABOR COMMISSIONER

- A. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE). The Contractor and all subcontractors shall be required to furnish, at least monthly, certified payroll records directly to the Labor Commissioner in accordance with Labor Code section 1771.4. All payroll records shall be furnished in a format required by the Labor Commissioner. The Contractor and all subcontractors must register for, and utilize, the Labor Commissioner's electronic certified payroll records submission system. The District will have direct and immediate access to all certified payroll reports for the Project that are submitted through the Labor Commissioner's system. The District can use this information for any appropriate purpose, including monitoring compliance, identifying suspected violations, and responding to Public Records Act requests.
- B. The Labor Commissioner/DLSE may conduct various compliance monitoring and enforcement activities including, but not limited to, confirming the accuracy of payroll records, conducting worker interviews, conducting audits, requiring submission of itemized statements prepared in accordance with Labor Code section 226, and conducting random in-person inspections of the Project site (On-Site Visits). On-Site Visits may include inspections of records, inspections of the Work site and observation of work activities, interviews of workers and others involved with the Project, and any other activities deemed necessary by the Labor Commissioner/DLSE to ensure compliance with prevailing wage requirements. The Labor Commissioner/DLSE shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner/DLSE.
- C. Any lawful activities conducted or any requests made by the Labor Commissioner/DLSE shall not be the basis for any delays, claims, costs, damages or liability of any kind against the District by the Contractor. Contractor and all subcontractors shall cooperate and comply with any lawful requests by the Labor Commissioner/ DLSE. The failure of the Labor Commissioner, DLSE, or any other entity related to the Department of Industrial Relations to comply with any requirement imposed by the California Code of Regulations, Title 8, Chapter 8 shall not of itself constitute a defense to the failure to pay prevailing wages or to comply with any other obligation imposed by Division 2, Part 7, Chapter 1 of the Labor Code.
- D. Prior to commencing any Work on the Project, the Contractor shall post the required notice/posters required under the California Code of Regulations and Labor Code section 1771.4 in both English and Spanish at a conspicuous, weatherproof area at the Project site. The required notice/poster is available on the Labor Commissioner's website.

14.08 APPRENTICES

A. Employment of Apprentices

Contractor agrees to comply with the requirements of Labor Code Section 1777.5. The Contractor awarded the Project, or any Subcontractor under him or her, when performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall employ apprentices in the ratio set forth in Labor Code Section 1777.5. The Contractor or any Subcontractor must apply to any apprenticeship program in the craft or trade that can provide apprentices to the Project site for a certificate approving the Contractor or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor upon the Contractor's or Subcontractor's request. "Apprenticeable craft or trade" as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The ratio of work performed by apprentices to journeyman employed in a particular craft or trade on the Project shall be in accordance with Labor Code Section 1777.5.

B. Apprentice Wages and Definitions

All apprentices employed by the Contractor to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which he or she is employed, and as determined by the Director of the Department of Industrial Relations, and shall be employed only at the craft or trade to which he or she is registered. Only apprentices, as defined in Section 3077 of the Labor Code, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprenticeship agreements under Chapter 4 (commencing with Section 3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training, or in accordance with the rules and regulations of the California Apprenticeship Council.

C. Submission of Contract Information

Prior to commencing work on the Project, the Contractor and Subcontractors shall submit contract award information to the applicable apprenticeship program(s) that can supply apprentices to the Project and make the request for the dispatch of apprentices in accordance with the Labor Code. The information submitted shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the District if requested. Within 60 days after concluding work on the Project, the Contractor and Subcontractors shall submit to the District, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Project.

D. Apprentice Fund

The Contractor or any Subcontractor, of any tier, who, in performing any of the Work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the Director determines is the prevailing amount of apprenticeship training contributions in the area of the Project. The Contractor and Subcontractors may take as a credit for payments to the California Apprenticeship Council any amounts paid by the Contractor or Subcontractor to an approved apprenticeship program that can supply apprentices to the Project. The

Contractor and Subcontractors may add the amount of the contributions in computing his or her bid for the Contract.

E. Prime Contractor Compliance

The responsibility of compliance with this Article and Section 1777.5 of the Labor Code for all apprenticeable occupations is with the Contractor. Any Contractor or Subcontractor that knowingly violates the provisions of this Article or Labor Code Section 1777.5 shall be subject to the penalties set forth in Labor Code Section 1777.7.

14.09 LABOR LAWS AND STANDARDS [APPLICABLE IF PROJECT FINANCED IN WHOLE OR IN PART WITH FEDERAL FUNDS INCLUDING WIFIA]

A. Compliance with Davis-Bacon and Related Acts

- (a) In any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 C.F.R. § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, provided that such modifications are first approved by the Department of Labor) shall apply to the Contract:

(1) Minimum wages

- (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The Water Infrastructure Finance and Innovation Act ("WIFIA") assistance recipient, the District, on behalf of the U.S. Environmental Protection Agency (EPA), shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The WIFIA assistance recipient shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the WIFIA assistance recipient agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent to the Administrator of the Wage and Hour Division (WHD Administrator), U.S. Department of Labor, Washington, DC 20210. The WHD Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the WIFIA assistance recipient or will notify the WIFIA assistance recipient within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the WIFIA assistance recipient do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the WIFIA assistance recipient shall refer the questions, including the views of all interested parties and the recommendation of the WIFIA assistance recipient, to the WHD Administrator for determination. The WHD Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the WIFIA assistance recipient or will notify the WIFIA assistance recipient within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program,

provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

- (2) Withholding. The District shall, upon written request of the WIFIA Director or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the WIFIA Director may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

- (3) Payrolls and Basic Records.

- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (ii) {no text here}

- (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the District. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from

the Wage and Hour Division website at <https://www.dol.gov/agencies/whd/forms/wh347> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the District, for transmission to the EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the District.

- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; and
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
 - (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
 - (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
 - (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the District, EPA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the EPA may, after written notice to the District, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- (4) Apprentices and Trainees
- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered

in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the WHD Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the WHD Administrator determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no

longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act Requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract Termination: Debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the District, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of Eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section shall be inserted in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or § 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
 - (3) Withholding for unpaid wages and liquidated damages. The District shall upon its own action or upon written request of an authorized representative of the Department of Labor, or the EPA, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
 - (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.
- (c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the EPA shall cause or require the District to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the District, EPA and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

14.10 PROHIBITION AGAINST USE OF DEBARRED CONTRACTORS

Pursuant to Public Contract Code Section 6109, the Contractor shall not perform Work on this Project with any Subcontractor who is ineligible to perform Work on a public works project pursuant to Section 1777.1 or Section 1777.7 of the Labor Code. Any contract on a public works project entered into between the Contractor and a

debarred Subcontractor is void as a matter of law. A debarred Subcontractor may not receive any public money for performing Work as a Subcontractor on a public works contract, and any public money that may have been paid to a debarred Subcontractor by the Contractor on this Project shall be returned to the District. The Contractor shall be responsible for the payment of wages to workers of a debarred Subcontractor who has been allowed to work on the Project.

14.11 CHARACTER OF WORKERS

The Contractor shall not allow his/her agents or employees, Subcontractors, or any agent or employee thereof, to trespass on premises or lands in the vicinity of the Work. Only skilled foremen and workers shall be employed on Work requiring special qualifications, and when required by the Engineer, the Contractor shall discharge any person who commits trespass, or in the opinion of the Engineer, acts in a disorderly, dangerous, insubordinate, incompetent, or otherwise objectionable manner. Any employee being intoxicated or bringing or having intoxicating liquors or controlled substances on the Work shall be discharged. Such discharge shall not be the basis of any claim for compensation of damages against the District or any of its officers, agents, and employees.

14.12 WORKER'S COMPENSATION

In accordance with the provisions of Section 3700 of the Labor Code, the Contractor and each Subcontractor is required to secure the payment of Workers' Compensation to its employees.

14.13 PROPOSITION 84 FUNDED PROJECTS

If the Project is funded in whole or in part by funds from Proposition 84 the Contractor and all Subcontractors will be subject to the District's statutory requirement to operate or enforce a labor compliance program or to contract with a third party to operate or enforce a labor compliance program, and for which, in lieu of contracting with another third party, the Awarding Body agrees to pay and the Labor Commissioner agrees to receive a fee for the monitoring and enforcement of prevailing wage requirements on that project.

[END OF ARTICLE]

ARTICLE 15

CLAIMS AND DISPUTE RESOLUTION

15.01 SUBMISSION OF CLAIMS

- A. Definition. The term "Claim" or "Claims" shall mean a separate demand by the Contractor for: (i) a time extension including, without limitation, for relief from damages or penalties for delay assessed by District under the Contract; (ii) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to this Contract and payment of which is not otherwise expressly provided or the Contractor is not otherwise entitled to; or (iii) an amount the payment of which is disputed by the District.
- B. Notification of Third-Party Claims. District shall provide Contractor with prompt written notice upon District's receipt of any third party claim relating to the Contract.
- C. Claims by Subcontractors. If a subcontractor or a lower tier subcontractor lacks legal standing to assert a Claim against the District because privity of contract does not exist, Contractor may elect to present the Claim to the District on behalf of the subcontractor or lower tier subcontractor. Any Claim presented by a subcontractor or lower tier subcontractor must comply with all requirements applicable to Claims by the Contractor, as well as the requirements set forth in Public Contract Code § 9204(d)(5). Contractor shall incorporate into all subcontracts a dispute resolution procedure that will permit Contractor to satisfy all time, notice, and backup documentation requirements of this Article with respect to Claims by a subcontractor or lower tier subcontractor, as well as all requirements of Public Contract Code § 9204 that are applicable to subcontractors and lower tier subcontractors.
- D. Notice and Time Limits on Claims. If the Contractor wishes to make a Claim for an increase in the Contract Sum or an extension of the Contract Time, the Contractor shall give the District written notice thereof within ten (10) calendar days after the occurrence of the event, giving rise to such Claim. The written notice must comply with all of the requirements of this Article 15 and Article 6, where applicable. This notice shall be given by the Contractor before proceeding to execute Work affected by the event, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Article 10.
- E. Continuing Contract Performance. Contractor shall not delay or postpone any Work pending resolution of any disputes or disagreements, except as the District and Contractor may otherwise agree in writing. Pending final resolution of a Claim, the Contractor shall proceed diligently with performance of the Contract and the District shall continue to make payments for undisputed Work in accordance with the Contract Documents. In the event of disputed Work, District shall have the right to unilaterally issue a Field Directive and Contractor shall continue performance pending resolution of the dispute and shall maintain the accounting and cost data described in Paragraph 7.4 herein.

15.02 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS

- A. The Contractor shall notify the District of the following Project site conditions in writing within two (2) working days upon their discovery and before they are disturbed;
 - 1. Subsurface or latent physical conditions differing materially from those indicated in the Contract Documents;
 - 2. Unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the Work of the character being performed; and

3. Material differing from that represented in the Contract Documents which the Contractor believes may be hazardous waste, as defined in Section 25316 of the California Health and Safety Code, which is required to be removed to a Class 1, Class 2, or Class 3 disposal site in accordance with the provisions of existing law.
- B. The District will promptly investigate unknown conditions or conditions which appear to be concealed. If the District determines that the conditions fall within one of the three categories set forth above and will materially affect the cost or time to complete the Work, a Change Order or Work Directive will be issued by the District adjusting the compensation for such portion of Work in accordance with the requirements of the Contract Documents. If the District determines that the conditions do not justify an adjustment in compensation or the Contract Time, the Contractor will be notified in writing. Should the Contractor disagree with the decision, Contractor may submit a written notice of potential claim to the District before commencing the disputed Work. In the event of such a dispute, the Contractor shall not be excused from any scheduled completion date provided by the Contract Documents and shall proceed with all Work to be performed under the Contract Documents. The Contractor's failure to give notice of changed conditions within ten (10) calendar days of their discovery and before they are disturbed shall constitute a waiver of all Claims in connection therewith.

15.03 CLAIMS FOR ADDITIONAL COST AND/OR TIME

If Contractor wishes to make a Claim for an increase in the Contract Sum and/or Contract Time, Contractor shall provide written notice within ten (10) calendar days, as provided in Section 15.01-C herein, before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Article 10. If the Contractor believes additional cost is involved for reasons including, but not limited to: (i) any written interpretation; (ii) a Change in the Work as more specifically described in Article 6; (iii) failure of payment by the District; or (iv) any order by the District to stop Work where the Contractor was not at fault, then Contractor shall file Claims in accordance with the procedures established herein. Compliance with the notice and Claim submission procedures described in this Section is a condition precedent to the right to commence litigation, file a Government Code Claim, or commence any other legal action. No claim or issues not raised in a timely notice and timely Claim submitted under this Paragraph may be asserted in any Government Code Claim, subsequent litigation, or legal action.

15.04 CERTIFICATION OF CLAIM

- A. Contractor, under penalty of perjury under the laws of the State of California, shall submit with the Claim its and its Subcontractors' certification that:

The Claim is made in good faith;

 1. Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and
 2. The amount requested accurately reflects the Contract adjustment for which the Contractor believes the District is liable.
- B. The certification shall be executed by an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.
- C. If a false claim is knowingly submitted (as the terms "claim" and "knowingly" are defined in the California False Claims Act, California Government Code Sections 12650 et seq.), the District will be entitled to the remedies set forth in the California False Claims Act in addition to all other remedies provided by law. The Contractor may be subject to criminal prosecution.

- D. In regard to any Claim or portion of a Claim for subcontractor work, the Contractor shall fully review said Claim and certify said Claim, under penalty of perjury under the laws of the State of California, to have been made in good faith and in accordance with this Contract.
- E. Failure to furnish certification as required hereinbefore will result in the Contractor waiving its rights to the subject the Claim.

15.05 CONTENT OF WRITTEN NOTICE

Contractor shall waive all rights to assert a Claim for Additional Cost and/or Time unless such notice is given as required in this Paragraph. The written notice shall be transmitted by registered mail or certified mail, return receipt requested, and shall set forth the following information:

1. The date of the event or occurrence giving rise to the claim and, if applicable, the date when the event ceased;
2. The nature of the event or occurrence and reasons for which the Contractor believes additional cost and/or time will or may be due;
3. The quantification of the costs involved, together with the supporting accounting and cost data for all labor, materials and/or equipment;
4. A CPM schedule analysis supporting any request for any additional time; and
5. Contractor's plan for mitigating such costs and/or delay.

Contractor understands that the value of the Claim for Additional Cost and/or Time expressly includes any and all of Contractor's costs and expenses, both direct, and indirect, resulting from the Work performed on the Project, additional time required on the Project, and/or resulting from delay to the Project. Any costs, expenses, damages or time extensions not included are deemed waived.

15.06 BACK-UP DOCUMENTATION

In addition to the initial ten (10) day written notice required herein, Contractor shall submit detailed backup documentation for its Claim including, but not limited to, contract provisions, specifications, drawings, Request for Information, correspondence, meeting minutes, and the like, within thirty (30) calendar days from Contractor's initial written notice. Failure to provide either this backup documentation or an explanation acceptable to the District for the cause of the Contractor's delay in submitting this documentation as herein indicated shall constitute Contractor's waiver of any and all rights associated with the Claim. For the purpose of Paragraph 15.08, no time period running from the District's "receipt" of a Claim shall begin to run until and unless the Contractor has submitted all required backup documentation within the time and in accordance with the requirements prescribed by this Paragraph.

Except where provided by law, the District shall not be liable for special or consequential damages, and claims shall not include special or consequential damages.

15.07 REMEDIES RELATED TO DELAYS

- A. For Claims relating to extensions of Contract Time, due to compensable District-caused delays, as described in Article 3 herein, Contractor may be entitled to an equitable adjustment of the Contract Sum and Contract Time provided Contractor otherwise complies with this Article 15.
- B. For Claims relating to extensions of Contract Time due to non-compensable Force Majeure events, as described in Article 3 herein, Contractor may be entitled to an equitable adjustment of the Contract Time,

subject to the limitations set forth in Article 3 below, but shall not be entitled to adjustment of the Contract Sum.

- C. For Claims relating to extensions of the Contract Time due to rain delays/inclement weather, Contractor shall not be entitled to adjustment of the Contract Time unless and until the number of unworkable days due to the effects of rain/inclement weather exceed the number of days set forth in Section 4.01-C. In such event, the Contract Time shall be equitably adjusted, but Contractor shall not be entitled to adjust of the Contract Sum.

15.08 CLAIMS RESOLUTION

Pursuant to Public Contract Code § 9204, all Claims shall be handled in accordance with the following procedure:

- A. District shall respond in writing within forty-five (45) days of receipt of a Claim presented in accordance with this Article or may request in writing within thirty (30) days of receipt of the Claim any additional documentation supporting the Claim.
- B. The written statement provided by District shall identify the disputed and undisputed portions of the Claim. District and Contractor can extend the 45-day period by mutual agreement. If District needs approval from its governing body to provide a written statement, and that body does not meet within the 45 days or within the mutually agreed to extension of time, District shall have up to three (3) days following the next duly publicly noticed meeting of the governing body after the 45-day period or extension expires to provide said written statement identifying the disputed portion and undisputed portion of the Claim.
- C. Any payment due on an undisputed portion of the Claim will be processed by District within sixty (60) days. If District fails to issue said written statement, then the Claim is deemed rejected in its entirety.
- D. If Contractor disputes District's written response or District fails to respond to Claim within the time set forth herein, Contractor may demand an informal conference to meet and confer for settlement of the issues in dispute. Contractor shall make any such demand in writing and by registered or certified mail. Upon receipt of Contractor's written demand pursuant to this Paragraph 15.08(D), the District will schedule a meet and confer conference within thirty (30) days for settlement of the dispute.
- E. Within ten (10) business days following the conclusion of the meet and confer conference, if the Claim or any portion of it remains in dispute, District shall provide a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment in the undisputed portion shall be processed and made within 60 days after the issuance of a written statement.
- F. Any disputed portion of the Claim that remains after the meet and confer conference will be subject to nonbinding mediation, as defined in Public Contract Code § 9204(d)(2)(C), with the District and Contractor sharing the associated costs equally. The District and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing, or, if no such identification is made within the time period prescribed by Paragraph 15.08(E), then within 20 days after the conclusion of the meet and confer conference. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If the mediation is unsuccessful, the parts of the Claim that remain in dispute shall be subject to Article 15.09. After the District's receipt of a Claim, the District and Contractor may mutually agree to waive the mediation requirements established by this Paragraph 15.08(F), or to substitute another form of alternative dispute resolution in lieu of mediation.

- G. A Claim that is deemed rejected by reason of the District's failure to act within the time requirements specified in this Paragraph shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the Contractor.

15.09 DISPUTE RESOLUTION

- A. Claims between the District and the Contractor of \$375,000.00 or less shall be resolved in accordance with the procedures established in Part 3, Chapter 1, Article 1.5 of the California Public Contract Code Sections 20104 et seq.; provided however that California Public Contract Code Section 20104.2(a) shall not supersede the requirements of the Contract Documents with respect to the Contractor's notification to the District of such claim or extend the time for giving of such notice as provided in the Contract Documents.
- B. Any other claims, disputes or other matters in controversy which cannot be resolved between the Parties shall be resolved through litigation in a court of competent jurisdiction of the State of California. Venue for any such litigation concerning this Project or Agreement shall be in the County of San Bernardino, State of California and Contractor agrees to incorporate this provision into all subcontracts.
- C. Completion of mediation under Paragraph 15.08(D), or other alternative dispute resolution procedure to which the District and Contractor have mutually agreed after the District's receipt of a Claim, is a condition precedent to the commencement and maintenance of litigation in connection with the Claim.
- D. Compliance with the provisions of this Article shall not relieve Contractor of responsibility for presenting a written Government Code Claim pursuant to California Government Code Sections 910, et seq., and other provisions of applicable law relating to litigating claims against the District. Timely presentation of a Government Code Claim is a prerequisite to filing and maintaining any suit for monies or damages against the District.

[END OF ARTICLE]

ARTICLE 16

DOCUMENTS AND RECORDS

16.01 MAINTENANCE OF RECORDS

Contractor shall keep, and shall include in its contracts with its Subcontractors, provisions requiring its Subcontractors to keep full and detailed books and records in accordance with the requirements of the Contract Documents, including the following: all information, materials and data of every kind and character (hard copy, as well as computer readable data if it exists), that have any bearing on or pertain to any matters, rights, duties or obligations relating to the Project or the performance of the Work, including, without limitation, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, change orders, change order requests, estimates, field orders, schedules, diaries, logs, reports, shop drawings, samples, exemplars, drawings, specifications, invoices, delivery tickets, receipts, vouchers, cancelled checks, memoranda; accounting records; job cost reports; job cost files (including complete documentation covering negotiated settlements); back charges; general ledgers; documentation of cash and trade discounts earned; insurance rebates and dividends, and other documents relating in way to Claims or Change Orders, Unilateral Change Orders, Field Orders or other charges or time extensions related to the Project asserted by Contractor or any Subcontractor. Contractor shall exercise such controls as may be necessary for proper financial management of the Work. Such accounting and control systems shall comply with prevailing custom and practice for similar projects, be satisfactory to District and shall include preservation of such records for a period of five (5) years after Final Completion of the Work or for such longer period as may be required by applicable laws.

16.02 ACCESS TO RECORDS

Contractor shall allow, and shall include in its contracts with its Subcontractors provisions requiring its Subcontractors to allow, District and its authorized representative(s), auditors, attorneys and accountants, upon twenty-four (24) hours notice to Contractor, full access to inspect and copy all books and records relating to the Project that Contractor is required to maintain pursuant to Section 16.01.

16.03 CONTRACTOR NONCOMPLIANCE

Contractor's compliance with Sections 16.01 and 16.02 shall be a condition precedent to maintenance of any legal action or arbitration by Contractor against District. In addition to and without limitation upon District's other rights and remedies for breach, including any other provisions for withholding set forth in the Contract Documents, District shall have the right, exercised in its sole discretion, to withhold from any payment to Contractor due under a current Application for Payment an additional sum of up to ten percent (10%) of the total amount set forth in such Application for Payment, until Contractor and its Subcontractors have complied with any outstanding and unsatisfied request by District under this Article 16. Upon such compliance with this Article 16, any additional monies withheld pursuant to this Section 16.03 shall be released to Contractor.

16.04 SPECIFIC ENFORCEMENT BY DISTRICT

Contractor agrees that any failure by Contractor or any Subcontractor to provide access to its books and records as required by this Article 16 shall be specifically enforceable by issuance of a preliminary and/or permanent mandatory injunction by a court of competent jurisdiction based on affidavits submitted to such court and without the necessity of oral testimony, to compel Contractor to permit access, inspection, audit and/or reproduction of such books and records or to require delivery of such books and records to District for inspection, audit and/or reproduction.

16.05 ESCROW BID DOCUMENTS

The District requires that the successful Bidder on this Contract submit its Escrow Bid Documents, (as defined herein below) for the future mutual use of the District and the Contractor in the event of claims being made by the Contractor for additional compensation under this Contract.

Submittal of Escrow Bid Documents is a mandatory condition of the Contract award. If the Bidder fails to make the submittal within the allowed time specified below: (1) the Bid shall be nonresponsive; (2) the Bidder will not be eligible for award or to enter into the Contract and the Bid will be rejected; and (3) the Bidder shall forfeit the amount of the Bid Bond, letter of credit or other security accompanying the Bid.

A. Submittals

1. Bidder shall submit to the District within five (5) calendar days after receipt of Notice of Award copies of documentary information received or generated in preparation of its Bid for this Contract (as further defined herein below) and include the same information from all Subcontractors named in its Bid. This material is hereinafter referred to as "Escrow Bid Documents".
2. The Escrow Bid Documents shall be in sealed containers, clearly marked on the outside with:
 - (i) Label "Escrow Bid Documents";
 - (ii) Bidder's name;
 - (iii) Date of submittal;
 - (iv) District's project name; and
 - (v) District's Specification Number.
3. Bidder shall submit one copy of all Escrow Bid Documents in all formats in which the documents exist as of the time of bid. The existing formats shall include, but not limited to, hard copy, computer printouts, computer disk, or any other electronic format in which the data exists at the time of the bid. The Bidder shall also provide a copy of all non-electronic Escrow Bid Documents on CD ROM.
4. The District shall pay the cost of storage of the Escrow Bid Documents for the duration of the Contract until the disposition of the Escrow Bid Documents as set forth in The Contract. Preparation and submittal of the Escrow Bid Documents shall be at the sole expense of the Bidder.
5. Upon the receipt of the Escrow Bid Documents, the District shall review those submitted by the Bidder to determine whether all the requested Escrow Bid Documents have been produced. The Escrow Bid Documents will be examined jointly by authorized representatives of the District and the Bidder. The joint examination shall be a condition of responsiveness and shall ensure that the Escrow Bid Documents are legible and complete. Examination and acceptance of the Escrow Bid Documents by the District shall not constitute a waiver of any claim by the District that the Escrow Bid Documents are incomplete.
6. If the District determines that the Escrow Bid Documents are not complete, it shall notify the Bidder in writing, certified mail return receipt requested which documents are missing from the Escrow Bid Documents and request their submission to the District within forty-eight (48) hours from the date of receipt of such notice. The District will deem the Bid non-responsive if, within forty-eight (48) hours, the Bidder does not submit the requested documents or does not submit

a certification that the additional requested documents do not exist. The District may grant extension of time to submit the requested documents for good cause state by the Bidder, but time being of the essence, any such extension shall be in the District's sole and absolute discretion.

B. Bidder's Warranties and Representations

By executing its Bid, Bidder represents warrants and agrees, as a condition of the award of the Contract, that:

1. The Escrow Bid Documents constitute all written information used in the preparation of its Bid.
2. No other written preparation information shall be considered in resolving change orders, claims, disputes, or other requests for additional compensation.
3. Nothing in the Escrow Bid Documents shall change or modify the terms of conditions of the Contract Documents.

C. Content of Escrow Bid Documents

The Escrow Bid Documents shall be placed in clearly identified categories, which categories shall be labeled with the headings of "1" through "36" below. A separate Table of Contents shall also accompany the Escrow Bid Documents, listing each named category and its location in the Escrow Bid Documents. If there are no documents of a category listed below in existence at the time of the bid, the category shall be listed on the Table of Contents with the statement made thereon that "No Such Documents Exist". Content of Escrow Bid Documents shall include, without limitation:

1. All of the starting estimates on bid day by contract division and/or specification section
2. Cut/add sheets and total cut/add sheets reflecting final bid price
3. All "plug" numbers and work ups for those numbers
4. All telephonic confirmation and/or clarification memorandum
5. Take-offs; production rates and/or productivity calculations
6. Schedule assumptions
7. Scheduling data
8. Overtime plans
9. Overhead calculations
10. Indirect cost calculations
11. Quantity take-offs
12. Labor and equipment rates
13. Labor wage rates
14. Equipment cost or rental rates
15. Site inspection notes
16. Construction duration assumptions
17. Anticipated production and productivity levels (including historical support for such levels)
18. Adjustments made to estimated costs in preparation of the formal bid submittal
19. Owned equipment cost assumptions
20. Crew/equipment configurations
21. Feasibility and/or final bid check
22. Make/buy analysis
23. Self-perform/subcontract analysis
24. Rent/owned equipment analysis
25. All spread sheets, take-offs and pricing

26. Reports and/or analyses that reflect comparisons of estimated, bid, budgeted and actual levels of man-hours, wage rates, quantities, equipment usage rates, unit production and/or productivity rates
27. Material costs or other elements of project costs
28. Plant and support equipment
29. Environmental compliance
30. Mobilization/demobilization
31. Allocation of indirect costs such as contingencies, overhead, markup
32. Permits/licensing costs
33. Administrative costs and other elements of cost included in the bid
34. Subcontract quotations
35. Scope letters from subcontractors, materials and suppliers
36. Any and all information which reflects any assumptions made in developing the bid.

D. Certification

An authorized Officer or Director of the Bidder shall execute and submit along with the Escrow Bid Documents a Certification of Escrow Bid Documents, which shall state the following:

"I certify under penalty of perjury and pursuant to the laws of the State of California that the Escrow Bid Documents constitute all the information used in the preparation of the Bid and I further certify I have personally examined the contents of the Escrow Bid Documents and found that the documents herewith submitted as complete and that no other bid preparation documents exist."

E. Not Part of Contract

The Escrow Bid Documents are not part of the Contract Documents, and nothing in the Escrow Bid Documents shall change or modify any term or condition of the Contract.

16.06 FAILURE TO PROVIDE REQUIRED ESCROW BID DOCUMENTS

IF THE CONTRACTOR DID NOT SUBMIT THE ESCROW BID DOCUMENTS THAT RELATE TO ANY REQUESTS FOR CHANGES, MODIFICATIONS, CLAIMS OR DISPUTES THAT IT WAS REQUIRED TO SUBMIT PURSUANT TO THIS ARTICLE AS A PART OF THE BID FOR THIS CONTRACT, IN ADDITION TO ALL OTHER REMEDIES PROVIDED UNDER THE CONTRACT AND BY LAW, THE DISTRICT WILL HAVE THE RIGHT TO REJECT THE CONTRACTOR'S RELATED REQUESTS FOR CHANGES OR MODIFICATIONS, ITS NOTICES OF INTENT TO CLAIM, ITS CLAIMS AND ALL OTHER RELATED SUBMITTALS, INCLUDING ALL RELATED CLAIMS FOR PAYMENT.

16.06 OWNERSHIP OF ESCROW BID DOCUMENTS

The Escrow Bid Documents are not public records but are, and shall always remain, the property of the Contractor, subject to review as set forth in this Article.

16.07 USE OF ESCROW BID DOCUMENTS

A. Use by the District and Contractor.

Escrow Bid Documents may be examined and used by the authorized representatives of the District and the Contractor, as provided herein, at any time deemed necessary, to assist in the:

1. Negotiation of change orders, extensions of time, and other modifications; and

2. Resolution of claims, disputes, and other contractual matters, No information used in the preparation of the Bid, other than the information contained in the Escrow Bid Documents may be used for the above purposes.

B. Preserving Proprietary Nature of Documents

If used in any proceedings, whether contractual or legal, steps shall be taken to preserve the proprietary nature of the Escrow Bid Documents, including a protective order where appropriate.

16.08 SUBSTITUTION OR ADDITION OF SUBCONTRACTORS

If, during the period of performance, the Contractor wishes to Subcontract any portion of the Work, the Contractor shall submit Escrow Bid Documents for the Subcontractor before the Subcontract is approved.

16.09 STORAGE, EXAMINATION AND FINAL DISPOSITION OF ESCROW BID DOCUMENTS

A. Escrow

The Escrow Bid Documents shall be placed in escrow in an independent commercial storage facility designated by the District and, once there, segregated from other documents to assure the maintenance of their confidential and proprietary nature.

B. Right of Access.

Each Party shall have the individual right of access and examination of the Escrow Bid Documents. Such access and examination is subject to the following conditions:

1. Prior to examination of Escrow Bid Documents, the District and the Contractor shall provide notice in writing as provided in this Contract to the other's authorized representative of its intention to examine the Escrow Bid Documents a minimum of three (3) working days prior to examination, stating the proposed date of examination and designating its authorized representatives who will examine the Escrow Bid Documents.
2. If either party fails or refuses to respond to the notice, or to be present at the designated time, the examining party may proceed to examine the Escrow Bid Documents without further notice.

16.10 RETURN OF ESCROW BID DOCUMENTS

The Contractor's Escrow Bid Documents shall be returned to the Contractor after all the following have occurred:

1. The District determines that the Contract Work has been completed and has issued a Certificate of Final Acceptance;
2. Notice of Completion has been recorded (if required); and
3. All claims, disputes, regulatory and law enforcement matters (if any) have been fully resolved, including the expiration of the time for appeal of their final determination or adjudication.

[END OF ARTICLE]

ARTICLE 17

MISCELLANEOUS PROVISIONS

17.01 COMPLIANCE WITH APPLICABLE LAWS

A. Notices, Compliance

Contractor shall give all notices required by governmental authorities and comply with all applicable laws and lawful orders of governmental authorities, including but not limited to the provisions of the California Code of Regulations applicable to contractors performing construction and all laws, ordinances, rules, regulations and lawful orders relating to safety, prevailing wage and equal employment opportunities.

B. Taxes, Employee Benefits

Contractor shall pay at its own expense, at no cost to the District and without adjustment to the Contract Sum, all local, state and federal taxes, including, without limitation all sales, consumer, business license, use and similar taxes on materials, labor or other items furnished for the Work or portions thereof provided by Contractor or Subcontractors, all taxes arising out of its operations under the Contract Documents and all benefits, insurance, taxes and contributions for social security and unemployment insurance which are measured by wages, salaries or other remuneration paid to Contractor's employees. If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to meat for its exclusive use, then District, upon request, will execute documents necessary to show that is a political subdivision of the State for the purposes of such exemption and that the sale is for the exclusive use of the District, in which case no excise tax for such materials shall be included in the Bid or Contract Sum.

C. Notice of Violations

Contractor shall immediately notify the District and Engineer in writing of any instruction received from the District, Engineer, Architect or other person or entity that, if implemented, would cause a violation of any applicable law or lawful order of a governmental authority. If Contractor fails to provide such notice, then Engineer and Architect shall be entitled to assume that such instruction is in compliance with applicable laws and lawful orders of governmental authorities. If Contractor observes that any portion of the Drawings and Specifications or Work are at variance with applicable laws or lawful orders of governmental authorities, or should Contractor become aware of conditions not covered by the Contract Documents which will result in Work being at variance therewith, Contractor shall promptly notify Engineer in writing. If, without such notice to Engineer, Contractor or any Subcontractor performs any Work which it knew, or through the exercise of reasonable care should have known, was contrary to lawful orders of governmental authorities or applicable laws, then Contractor shall bear all resulting losses at its own expense, at no cost to District and without adjustment to the Contract Sum.

17.02 OWNERSHIP OF DESIGN DOCUMENTS

A. Property of District

All Design Documents, Contract Documents and Submittals (including, without limitation, all copies thereof) and all designs and building designs depicted therein are and shall remain the sole and exclusive property of the District and the District shall solely and exclusively hold all copyrights thereto. Without derogation of the District's rights under this section, the Contractor and Subcontractors are granted a limited, non-exclusive license, revocable at will of District, to use and reproduce applicable portions of the Contract Documents and Submittals as appropriate to and for use in the execution of the Work and for no other purpose.

B. Documents on Site

Contractor shall keep on the Project site, at all times and for use by District, Engineer, Inspectors of Record and District's Consultants, a complete set of the Contract Documents that have been approved by applicable Governmental Authorities.

C. Delivery to District

All Design Documents, Contract Documents and Submittals in the possession of Contractor or Subcontractors shall be returned to the District upon the earlier of Final Completion or termination of the Construction Contract; provided, however, that Contractor and each Subcontractor shall have the right to retain one (1) copy of the Contract Documents and Submittals for its permanent records

D. Subcontractors

Contractor shall take all necessary steps to assure that a provision is included in all subcontracts with Subcontractors, of every tier, who perform Work on the Project establishing, protecting and preserving the, District's rights set forth in this section.

17.03 AMENDMENTS

The Contract Documents may be amended only by a written instrument duly executed by the parties or their respective successors or assigns.

17.04 WAIVER

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both parties, such interpretation and implementation thereof will not be binding in the event of any future disputes.

17.05 INDEPENDENT CONTRACTOR

Contractor is an independent contractor, and nothing contained in the Contract Documents shall be construed as constituting any relationship with District other than that of Project owner and independent contractor. In no event shall the relationship between District and Contractor be construed as creating any relationship whatsoever between District and Contractor's employees. Neither Contractor nor any of its employees is or shall be deemed to be an employee of District. Except as otherwise specified in the Contract Documents, Contractor has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors and for all other Persons that Contractor or any Subcontractor hires to perform or assist in performing the Work.

17.06 SUCCESSORS AND ASSIGNS

The Contract Documents shall be binding upon and inure to the benefit of District and Contractor and their permitted successors, assigns and legal representatives.

- A. District may assign all or part of its right, title and interest in and to any Contract Documents, including rights with respect to the Payment and Performance Bonds, to (a) any other governmental person as

permitted by governmental rules, provided that the successor or assignee has assumed all of District's obligations, duties and liabilities under the Contract Document then in effect; and (b) any other person with the prior written approval of Contractor.

- B. Contractor may collaterally assign its rights to receive payment under the Contract Documents. Contractor may not delegate any of its duties hereunder except to Subcontractors or as expressly otherwise permitted in the Contract Documents. Contractor's assignment or delegation of any of its Work under the Contract Documents shall be ineffective to relieve Contractor of its responsibility for the Work assigned or delegated, unless District, in its sole discretion, has approved such relief from responsibility.

Any assignment of money shall be subject to all proper set-offs and withholdings in favor of District and to all deductions provided for in the Contract. All money withheld, whether assigned or not, shall be subject to being used by District for completion of the Work, should Contractor be in default.

- C. Except for the limited circumstances set forth in Section 17.06-B, above, Contractor may not, without the prior written consent of District in its sole discretion, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber its rights or interests under the Contract Documents. No partner, joint venturer, member or shareholder of Contractor may assign, convey, transfer, pledge, mortgage or otherwise encumber its ownership interest in Contractor without the prior written consent of District, in District's sole discretion.

17.07 SURVIVAL OF TERMS

Any indemnity, warranty or guarantee given by the Contractor to District under the Contract Documents and all dispute resolution provisions contained herein shall survive the expiration or termination of the Contract Documents and shall be binding upon Contractor until any action thereunder is barred according to the terms in the Contract Documents or by the applicable statute of limitations or statute of repose.

17.08 LIMITATION ON THIRD PARTY BENEFICIARIES

It is not intended by any of the provisions of the Contract Documents to create any third party beneficiary hereunder or to authorize anyone not a party hereto to maintain a suit for economic loss, personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. The duties, obligations and responsibilities of the parties to the Contract Documents with respect to such third parties shall remain as imposed by law. The Contract Documents shall not be construed to create a contractual relationship of any kind between District and a Subcontractor or any other person or entity except Contractor.

17.09 PERSONAL LIABILITY OF DISTRICT EMPLOYEES

District's authorized representatives are acting solely as agents and representatives of District when carrying out the provisions of or exercising the power or authority granted to them under the Contract. They shall not be liable either personally or as employees of District for actions in their ordinary course of employment. No agent, consultant, Board member, officer or authorized employee of District, shall be personally responsible for any liability arising under the Contract.

17.10 NO ESTOPPEL

District shall not, nor shall any officer thereof, be precluded or estopped by any measurement, estimate or certificate made or given by the District representative or other officer, agent, or employee of District under any provisions of the Contract from at any time (either before or after the final completion and acceptance of the Work and payment

therefor) pursuant to any such measurement, estimate or certificate showing the true and correct amount and character of the work done, and materials furnished by Contractor or any person under the Contract or from showing at any time that any such measurement, estimate or certificate is untrue and incorrect, or improperly made in any particular, or that the work and materials, or any part thereof, do not in fact conform to the Contract Documents. Notwithstanding any such measurement, estimate or certificate, or payment made in accordance therewith, District shall not be precluded or estopped from recovering from Contractor and its sureties such damages as District may sustain by reason of Contractor's failure to comply or to have complied with the Contract Documents.

17.11 GOVERNING LAW

The Contract Documents shall be governed by and construed in accordance with the laws of the State of California, without regard to conflict of law principles. Pursuant to California Code of Civil Procedure Section 394, proper and exclusive venue for any legal action arising out of this Contract shall be in the County of San Bernardino, State of California. Both Parties hereto agree that personal and subject matter jurisdiction is proper in San Bernardino County, California.

17.12 FURTHER ASSURANCES

Contractor shall promptly execute and deliver to District all such instruments and other documents and assurances as are reasonably requested by District to further evidence the obligations of Contractor hereunder, including assurances regarding assignments of Subcontractors contained herein.

17.13 SEVERABILITY

If any clause, provision, section or part of the Contract is ruled invalid by a court having proper jurisdiction, then the parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the parties, including an equitable adjustment to the Contract Price to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of the Contract, which shall be construed and enforced as if the Contract did not contain such invalid or unenforceable clause, provision, section or part.

17.14 HEADINGS

The captions of the sections of the Contract are for convenience only and shall not be deemed part of the Contract or considered in construing the Contract.

17.15 ENTIRE AGREEMENT

The Contract Documents contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to its subject matter.

17.16 COUNTERPARTS

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[END OF ARTICLE]

TECHNICAL SPECIFICATIONS

APPENDIX A



THE ORIGINAL™

0.8 GPF Single Flush Toilet Elongated Bowl with 12" Rough-In



THE ORIGINAL™

0.8 GPF SINGLE FLUSH TOILET

Elongated Bowl with 12" Rough-In

FEATURES

- Quiet, powerful flush delivered with a patented Stealth® flush chamber and air transfer system
- Reliable standard Fluidmaster fill valve
- One flush thoroughly evacuates the bowl every time, eliminating double flushing
- Smooth, low friction ceramic surface helps achieve a clear bowl every time
- Two-piece toilet
- Stylish, inconspicuous and durable flush button
- No flapper to cause leakage
- ADA Compliant*

SPECIFICATIONS



Materials: Vitreous China **Finish Color:** White

Codes/Standards:

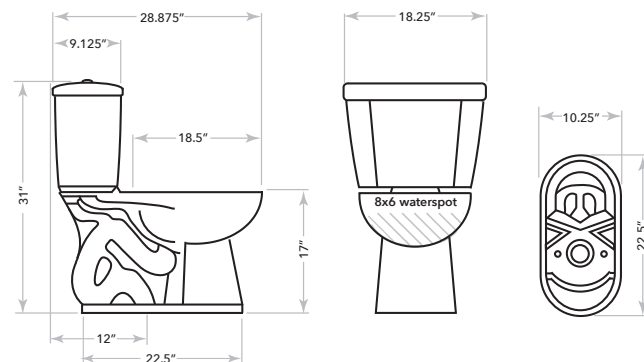
ASME A112.19.2/CSA B45.1

DOE - Energy Policy Act 1992

California Energy Commission (CEC)

ICC/ANSI A117.1

MEASUREMENTS



BULK PACKAGING

N7717 Elongated Bowl

UPC Code 732291771733

Packaging Type Kraft Corrugated

Packaging Dimensions 16" W
17.5" H
29.5" D

Packaging Weight 53 lbs

Skid Quantity 18 or 12

N7714 Tank

UPC Code 732291771429

Packaging Type Kraft Corrugated

Packaging Dimensions 9.5" W
17" H
19" D

Packaging Weight 37 lbs

Skid Quantity 30

*Pending final installation factors. **LIMITED LIFETIME WARRANTY on vitreous china products. Toilet tank trim: fill valve and flush valve assembly and plumbing fittings are warranted for a period of fifteen (15) years to the purchaser from the date of purchase. Call Niagara Conservation® for complete warranty details.

CORPORATE HQ 1200 Lakeside Parkway, Suite 450, Flower Mound, Texas 75028 USA

© 2020 Niagara Conservation June 19, 2020 3:33 PM

To place an order, please contact:

(p) 888.733.0197 (f) 682.200.6962 (e) info@niagaracorp.com

niagaracorp.con 174

Handshower

+ ShowerStart® TSV

CERTIFIED SUPERIOR PERFORMANCE

part number	max flow at 80 psi	min flow at 45 psi
EV3031-CP150	1.5gpm (5.7 L/min)	1.1gpm (4.2 L/min)
EV3031-CP175	1.75gpm (6.6 L/min)	1.3gpm (4.9 L/min)
EV3031-CP200	2.0gpm (7.6 L/min)	1.5gpm (5.7 L/min)
EV3041-CP150	1.5gpm (5.7 L/min)	1.1gpm (4.2 L/min)
EV3041-CP175	1.75gpm (6.6 L/min)	1.3gpm (4.9 L/min)
EV3041-CP200	2.0gpm (7.6 L/min)	1.5gpm (5.7 L/min)



Installation

1 Wrap Teflon Tape in a clockwise direction tightly around the screw threads on the shower pipe. The tape will stretch. This is OK and is desired. Wrapping the tape creates a solid seal to prevent water leakage.

2 Hand tighten Evolve Handshower Mount clockwise onto the shower pipe.

3 Attach hose ends to Mount and Handshower.

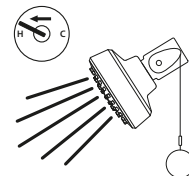
Cleaning Nozzles

To remove mineral deposits simply glide your finger along the nozzle tips while the showerhead is running.

HOW SHOWERSTART WORKS

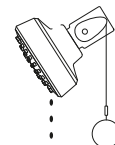
1. Turn on shower

Cold water exits.



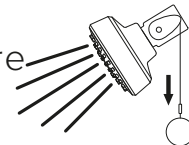
2. ShowerStart® kicks in

When water gets hot, flow reduces to a trickle.



3. Ready when you are

Pull cord to begin showering.



Maximizing Your Savings

- Rotate shower's valve to the hottest setting available when turning on the shower. This allows the shower to become warm in shortest period of time.
- Return to the shower as soon as possible once the trickle begins.

Codes / Standards

WaterSense



Conforms to A112.18.1M. For use with automatic compensating valves rated at 1.1 gpm (4.2 L/min) or less.

IMPORTANT SAFETY INFORMATION:
ShowerStart TSV is NOT an anti-scald device.

- Lower water heater temperature to prevent scalding accidents. Water temperatures above 120° F can cause severe burns or even death.
- Always resume water flow and check water temperature before entering shower.
- Not designed for use with tankless hot water heaters.

Trouble Shooting

Things to check if the handshower won't resume normal flow.

1. Try pulling the cord. The water may have already been warm or someone may have recently taken a shower. Either of these events may have placed the handshower in trickle mode.

2. A washer from your previous showerhead may be blocking the water's flow. Remove the handshower and check the valve by inspecting the end that connects to the shower arm. If the valve is clear, you will see a set of circular holes creating a flower pattern around a copper stem. If the valve is blocked, remove the obstruction and re-install the handshower.



3. Your water pressure may be below 30 psi. This can happen in homes that have lower water pressures or if you are on a well. The showerhead requires static water pressure of at least 30 psi to function properly.

Warranty

3 Year Limited Lifetime Warranty

For warranty claims please contact us at www.thinkevolve.com or call 480-496-2294

Evolve Technologies warrants this product to be free from defects in materials and workmanship for a period of three years from the date of purchase. This warranty is limited to repairing or replacing, at Evolve Technologies' sole option, any such defective products. To obtain service under warranty you must obtain a Return Material Authorization (RMA) number from an Evolve Technologies representative. The product must be returned with transportation charges prepaid and must be accompanied by a brief description of the problem encountered and proof of date and place of purchase. This warranty does not apply to equipment which has been damaged by accident, negligence, or misapplication or has been altered or modified in any way. This warranty applies to the original purchaser. EXCEPT AS PROVIDED HEREIN, Evolve Technologies MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Some countries do not permit limitation or exclusion of implied warranties; therefore, the aforesaid limitation(s) or exclusion(s) may not apply to the purchaser. EXCEPT AS PROVIDED ABOVE, IN NO EVENT SHALL Evolve Technologies BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF THIS PRODUCT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. Specifically, Evolve Technologies is not liable for any costs, such as lost products or revenue, loss of equipment, loss of use of equipment, costs of substitutes, claims by third parties, or otherwise. This warranty gives you specific legal rights and you may also have other rights which may vary from location to location.

Regadera

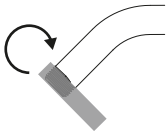
+ ShowerStart® TSV



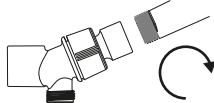
DESEMPEÑO SUPERIOR CERTIFICADO

número de parte	flujo máximo a 80 psi	flujo mínimo a 45 psi
EV3031-CP150	1.5gpm (5.7 L/min)	1.1gpm (4.2 L/min)
EV3031-CP175	1.75gpm (6.6 L/min)	1.3gpm (4.9 L/min)
EV3031-CP200	2.0gpm (7.6 L/min)	1.5gpm (5.7 L/min)
EV3041-CP150	1.5gpm (5.7 L/min)	1.1gpm (4.2 L/min)
EV3041-CP175	1.75gpm (6.6 L/min)	1.3gpm (4.9 L/min)
EV3041-CP200	2.0gpm (7.6 L/min)	1.5gpm (5.7 L/min)

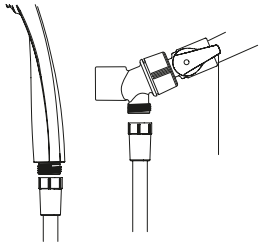
INSTALACIÓN



1 Envuelva la cinta de teflón en dirección a las manecillas del reloj de manera ajustada alrededor de la tubería. La cinta se estirará. Esto está bien y es deseado. Al envolver la cinta se crea un sello sólido para prevenir goteos.



2 Apriete manualmente la Base para Regadera Manual Evolve en dirección a las manecillas del reloj sobre la tubería.



3 Conecte los extremos de la manguera a la Base y a la Regadera.

LIPIANDO LAS BOQUILLAS ROCIADORAS



Para remover los depósitos minerales, simplemente deslice su dedo a través de las puntas de las boquillas mientras la regadera esté funcionando.

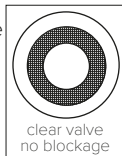
LOCALIZANDO Y CORRIGIENDO FALLAS

Cosas que debe revisar si la regadera no reanuda su flujo normal.

1. **Pruebe jalar el cordón.** Quizás el agua ya estaba caliente o alguien puede haberse duchado recientemente. Cualquiera de estos eventos pudo haber puesto a la regadera en la modalidad de goteo.

2. **Un empaque de la regadera previa puede estar bloqueando el flujo del agua.** Remueva la cabeza de la regadera y revise la válvula inspeccionando la terminal que se conecta al tubo de la regadera. Si la válvula está despejada, usted verá un juego de hoyos circulares creando un patrón de flujo en forma de flor alrededor de un vástago de cobre. Si la válvula está bloqueada, remueva la obstrucción y vuelva a instalar la cabeza de la regadera.

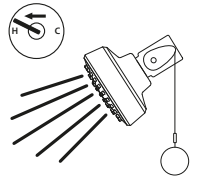
3. **La presión de su agua puede ser menos de 30 psi.** Esto puede suceder en hogares que tienen baja presión de agua o que reciben agua de un pozo. La regadera requiere una presión de por lo menos 30 psi estáticas para funcionar apropiadamente.



Cómo Funciona esta Regadera ShowerStart® TSV

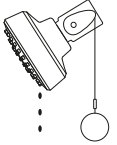
1. ÁBRALE A LA REGADERA

Ábrale al agua de su regadera, y continúe con su rutina típica – haciendo las cosas que hace mientras espera que el agua de la regadera se caliente.



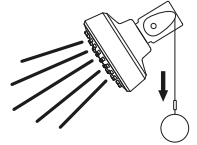
2. SHOWERSTART™ COMIENZA A FUNCIONAR

Cuando el agua llega a 95°F, ShowerStart automáticamente baja el flujo del agua a un goteo - ahorrando agua caliente hasta que usted esté listo/a para meterse.



3. LISTA CUANDO USTED LO ESTÉ

Usted sabe que su regadera está caliente, así que jálele al cordón para reanudar la presión completa de su regadera y empiece a ducharse.



MAXIMIZANDO SUS AHORROS

- Al abrir la llave de la regadera, muévela a la posición más caliente disponible. Esto permite que la regadera se caliente en el periodo más corto de tiempo.
- Regrese a la regadera tan pronto como sea posible una vez que comience a gotear.

CÓDIGOS / ESTÁNDARES

WaterSense



Cumple con A112.18.1M. Para su uso con válvulas automáticas compensadoras clasificadas a 1.1 gpm (4.2 L/min) ó menos.



IMPORTANTE INFORMACIÓN DE SEGURIDAD:

ShowerStart TSV NO es un dispositivo contra el agua demasiado calle.

- Bájale a la temperatura de su calentador de agua para prevenir accidentes de quemaduras con agua caliente. Las temperaturas del agua más altas de 120°F pueden causar quemaduras severas o hasta la muerte.
- Siempre reanude el flujo del agua y revise la temperatura del agua antes de meterse a la regadera.
- No está diseñada para usarse con calentadores de agua sin tanque.

GARANTÍA

Garantía de por Vida Limitada de 3 Años

Para reclamaciones de garantía por favor comuníquese con nosotros en www.thinkevolve.com ó llame al 480-496-2294

Evolve Technologies garantiza que este producto está libre de defectos en materiales y mano de obra durante un periodo de tres años de la fecha de compra. Esta garantía está limitada a la reparación o el reemplazo, a la discreción única de Evolve Technologies, de cualquier producto defectuoso. Para obtener servicio bajo garantía usted debe obtener un número de Autorización de Devolución del Material (RMA por sus siglas en inglés) de un representante de Evolve Technologies. El producto debe ser devuelto con los gastos de transporte pre-pagados y debe ser acompañado por una breve descripción del problema encontrado y el comprobante de la fecha y el lugar de compra. Esta garantía no es aplicable al equipo que haya sido dañado por accidente, negligencia, o mala aplicación o que haya sido alterado o modificado de cualquier manera. Esta garantía es aplicable al comprador original. SALVO COMO SE ESTIPULE EN ÉSTA, Evolve Technologies NO OFRECE GARANTÍAS, EXPRESAS O IMPLÍCITAS, INCLUYENDO GARANTÍAS DE COMERCIABILIDAD Y APTITUD PARA UN PROPÓSITO EN PARTICULAR. Algunos países no permiten la limitación o exclusión de garantías implícitas; por lo tanto, las limitaciones o exclusiones antes mencionadas pueden no ser aplicables al comprador. SALVO COMO SE ESTIPULA ANTERIORMENTE, EN NINGUN CASO Evolve Technologies DEBERÁ SER RESPONSABLE POR DAÑOS DIRECTOS, INDIRECTOS, ESPECIALES, INCIDENTALES O RESULTANTES QUE SURJAN DEBIDO AL USO DE ESTE PRODUCTO, AÚN SI ES ADVERTIDO DE LA POSIBILIDAD DE DICHOS DAÑOS. Específicamente, Evolve Technologies no es responsable por cualquier costo, tal como productos o ingresos perdidos, pérdida de equipo, pérdida del uso del equipo, costo de sustitutos, reclamaciones de terceros, o de otra forma. Esta garantía le otorga derechos legales específicos y usted también puede tener otros derechos que pueden variar de un lugar a otro.

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Patent <http://www.thinkevolve.com/patents>

Otras patentes pendientes en los E.U.A. y el extranjero. Diseñada y desarrollada en los E.U.A. Fabricada en China. Mod-0319.



Single Function Handshower

FEATURES

- Single function, full-body spray
- 54 rub-clean, anti-clog spray nozzles
- Pressure compensating flow regulation
- Stainless steel hose
- Shower arm mounting bracket
- 3 year warranty

PHYSICAL CHARACTERISTICS

- Handshower:
 - impact resistant ABS body
 - full body spray pattern
 - 54 rub-clean, anti-clog spray nozzles
- Hose: 59" stainless steel with ABS fittings
- Mount: ABS ½" NPT fittings (female)
- Weights:
 - hand shower: 5.0 oz. (.14 kg)
 - mounting bracket: 1.85 oz (.05 kg)
 - hose: 6.65 oz. (.19 kg)
- Spray face diameter: 3.125" (8 cm)
- Length: 9" (23 cm)

CODES / STANDARDS APPLICABLE

SPECIFIC MODEL MEETS OR EXCEEDS THE FOLLOWING:

- WaterSense & Uniform Plumbing Codes (cUPC): IAPMO IGC 244-2007a & ASME A112.18.1 / CSA B125.1-11
- Conforms to A112.18.1M. For use with automatic compensating valves rated at 1.1 gpm (4.2 L/min) or less.



SPECIFIED MODEL

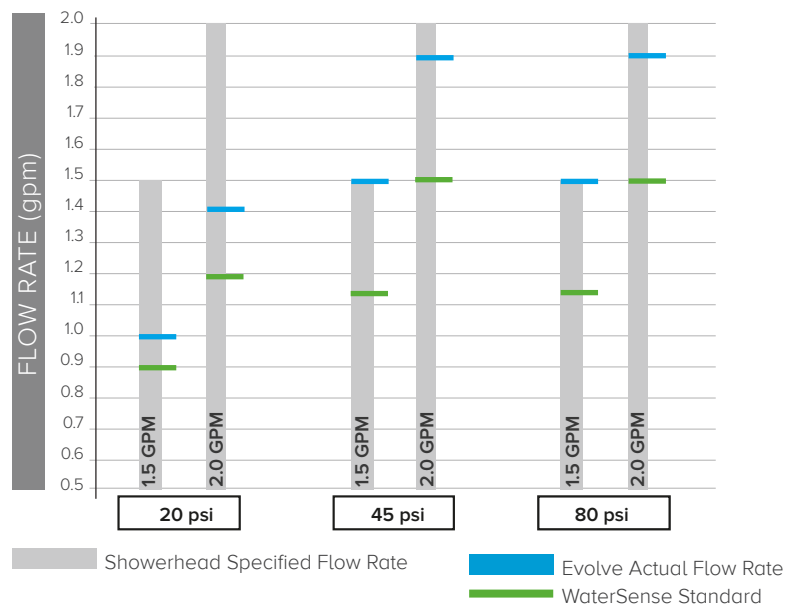
CERTIFIED SUPERIOR PERFORMANCE		
part	max flow at 80 psi	min flow at 45 psi
1.5 gpm Showerhead	1.5gpm (5.7 L/min)	1.1gpm (4.2 L/min)
1.75 gpm Showerhead	1.75gpm (6.6 L/min)	1.3gpm (4.9 L/min)
2.0 gpm Showerhead	2.0gpm (7.6 L/min)	1.5gpm (5.7 L/min)

PRODUCT SPECIFICATION

The Single Function Handshower shall attach to shower arms with ½" NPT male fittings. The handshower includes a shower arm mounting bracket and 59" stainless steel hose with ABS fittings; has a 54 nozzle full body spray and is both WaterSense and cUPC certified.

PERFORMANCE VS. WATERSENSE STANDARD

WaterSense was created by the EPA to establish minimum performance requirements for efficient showerheads with the goal of improving user satisfaction. This showerhead exceeds the WaterSense standard and, as a result, users receive a great feeling, water and energy saving shower regardless of their home's water pressure.



MODEL	DESCRIPTION	FINISH	SPRAY PATTERN	FLOW RATE	PKG
EV3030-CP150-SB	WaterSense Handshower	chrome	full body	1.5 gpm (5.7 L/min)	single
EV3030-CP175-SB	WaterSense Handshower	chrome	full body	1.75 gpm (6.6 L/min)	single
EV3030-CP200-SB	WaterSense Handshower	chrome	full body	2.0 gpm (7.6 L/min)	single
EV3030-CP150-BP	WaterSense Handshower	chrome	full body	1.5 gpm (5.7 L/min)	bulk
EV3030-CP175-BP	WaterSense Handshower	chrome	full body	1.75 gpm (6.6 L/min)	bulk
EV3030-CP200-BP	WaterSense Handshower	chrome	full body	2.0 gpm (7.6 L/min)	bulk

PCA® Perlator®

Faucet Aerator - 1.0 gpm max Pressure Compensating Regular Size

NEOPERL®

flow, stop and go®

Features and Benefits

- Watercolours® design: Color coding to identify flow rate and stream pattern.
- Patented construction provides a splash-free stream, well-aerated and soft to the touch.
- Pressure compensating for constant flow from 20 to 80 psi.
- Integrated anti-liming honeycomb replaces conventional wire mesh screens prone to lime build up.
- Anti-clogging dome screen filters sediment and particles.
- Compatible with regular and vandal proof M22 & M24 metric housings.
- Available housing finishes: chrome, polished brass, brushed nickel, and oil rubbed bronze.
- Laser marked housings with statutory marks.

Certifications

ANSI/ NSF® -61-372
ASME A112.18.1M and CSA B125
Meets **WaterSense** requirements
WaterSense



Thread & Part Number

Part #	Designation	Thread Size
TSA-100INST-P	Insert only	
TSA-100MST-P	Regular male	15/16"-27
TSA-100FST-P	Regular female	55/64"-27
TSA-100DTST-P	Regular dual thread	15/16"-27 x 55/64"-27
TSA-100MVPST-P	Vandal proof regular male	15/16"-27
TSA-100FVPST-P	Vandal proof regular female	55/64"-27
TSA-100DTPST-P	Vandal proof regular dual thread	15/16"-27 x 55/64"-27

Other product combinations available.

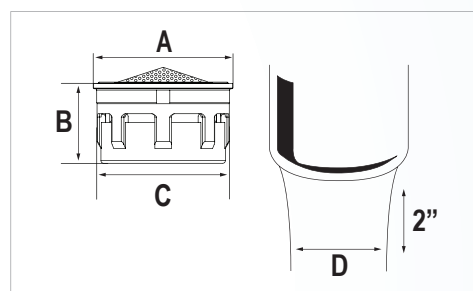
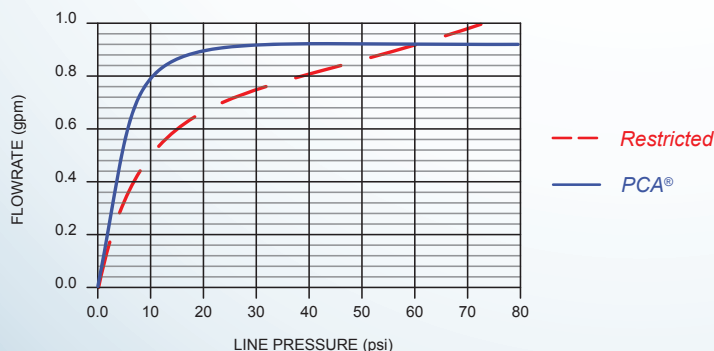
Packaging:

Inserts 1 pc (bag), 6 pcs (bag), 50 pcs (bag)
Reg. male/female/dual thread 1 pc (bag), 6 pcs (tube), 50 pcs (tray)
Reg. vandal proof male/female/dual thread 1 pc (bag), 6 pcs (tube), 40 pcs (tray)

Color Code

Dome	Flow Regulator	Basket
Natural	Blue	Dark Gray

Flow Rate Curve



Dimensions

No	mm	In
A	20.88	.822
B	12.00	.472
C	19.97	.786
D	≈ 13	≈ 1/2

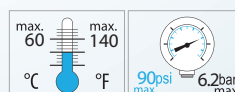
Housings



Technical Data

Materials: Body Acetal
O-ring EPDM
Washer EPDM

Continuous



Short-term (5 minutes max.) Per ASME A112.18.1 testing requirements.



Laminar Stream - 1.0 to 2.2 gpm Pressure Compensating Regular Size M24x1

Features and Benefits

- Watercolours® design: Color coding to identify flow rate and stream pattern.
- Patented construction provides a splash-free, crystal clear (non-aerated) stream.
- Pressure compensating for constant flow from 20 to 80 psi.
- Anti-clogging dome screen filters sediment and particles.
- Threads directly into the faucet spout. Virtually invisible once installed.
- Vandal resistant by design (install and remove with a special key).

Certifications

ANSI/ NSF® -61-372

ASME A112.18.1M and CSA B125

Meets **CALGreen** requirements

WaterSense (1.0, 1.2, & 1.5 gpm)

1.8, 2.2 gpm not applicable for WaterSense

Complies with CEC Amendment to CCR Title 20, section 1605.3 (1.2 & 1.8 gpm)



Options Available

Part #	Color	gpm	L/min
CCL-100ST-P	Blue / Light Gray	1.0	3.8
CCL-120ST-P	Pink / Light Gray	1.2	4.5
CCL-150ST-P	Green / Light Gray	1.5	5.7
CCL-180ST-P	Light Blue / Light Gray	1.8	6.6
CCL-220ST-P	Yellow / Light Gray	2.2	8.3
CCT-060	Caché® Key (Gray)		

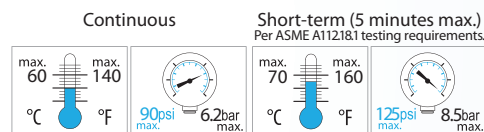
Packaging:

Threaded Insert

1 pc (bag), 6 pcs (bag), 50 pcs (bag)

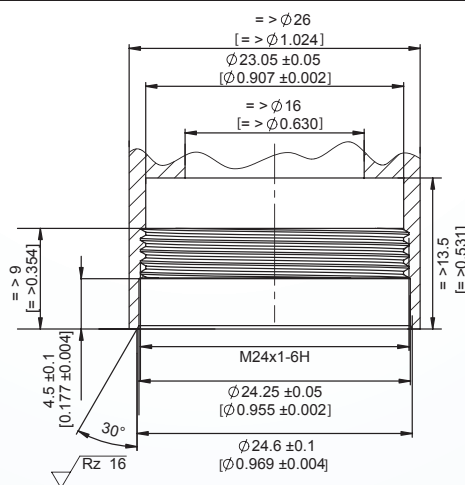
Technical Data

Materials:	Body	Acetal
	Int. O-ring	EPDM
	Ext. O-ring	Silicone

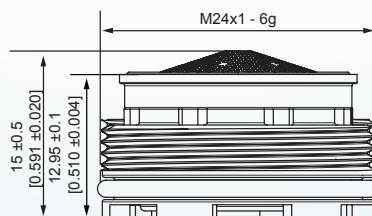


Dimensions

Mounting Dimensions



Dimensions



APPENDIX B

General Landscaping Specifications

Pre-approved professional landscape design for the area to be converted from turfgrass to climate-appropriate landscaping

- Existing turf removal and disposal and replacement with a climate-appropriate landscaping.
- Irrigation upgrades that may include drip irrigation conversion, smart irrigation controllers, and/or high efficiency nozzles.
- Climate appropriate plants approved by San Bernardino Valley, including native and near-native plantings.
- Ample plant material with a minimum of three climate appropriate plants per 100 square feet.
- Up to two climate-appropriate trees for every 1,000 square feet, as applicable.
- Three-inch-deep mulch groundcover, where appropriate.
- Parkway landscaping, unless local jurisdiction requires special permits.
- Small boulders in stream beds and/or in landscape areas.
- Decomposed granite paths or areas, if pre-approved by San Bernardino Valley.
- Post installation walk-through and tailgate training to transfer maintenance to site representatives and their landscapers for continued landscape success.

ADDENDUM 'A'



7/24/26

To: All Bidders

Subject: **Direct Installation Program Turf Removal and Indoor Water Fixture Replacement**

Specification #: **26-01**

Addendum 'A' - Dated 7/24/26

The following changes, omissions, and/or additions to the specifications and/or drawings shall apply to proposals made for and to the execution of the various parts of the work affected thereby, and all other conditions shall remain the same. Careful note of the Addendum shall be taken by all parties of interest so that the proper allowances may be made in strict accordance with the Addendum, and that all trades affected shall be fully advised in the performance of the work which will be required of them. In case of conflict between drawings, specifications, and this addendum, this Addendum shall govern.

Revisions to Drawings:

No revisions to drawings.

The following questions were submitted and answered in **bold-face** below:

Question #1:

Please clarify the District's definition of Substantial Completion for this contract. Is Substantial Completion achieved when:

1. All available contract funds have been expended, or
2. All installations identified on the project list provided during the job walk have been completed?
3. We understand final closeout documentation may be required by December 31, 2026, but would appreciate clarification regarding the milestone used to determine Substantial Completion.

Response:

Substantial completion for this contract will be achieved once installation for identified properties has been completed within the contract budget and a post completion inspection has taken place. In the event that all identified projects cannot be completed within the grant close out schedule, the Agency may authorize a reduction of approved project locations to maintain the December 31, 2026 deadline.

Question #2:

Will the District consider accepting bid submissions electronic (online/email) in lieu of hard-copy delivery? Obtaining and delivering the original bid bond is often the most time-sensitive part of the bid process, and an electronic submission option could help streamline bid delivery for all parties.

Response:

Bids may be submitted through an electronic link provided to the Agency at bids@sbvmwd.com. Bids must be submitted before the bid deadline. Electronic bids must include all required bid documents, including the bid security in the amount and form required by the Contract Documents. Bidders may continue to submit sealed hard-copy bids in accordance with the original solicitation requirements. Regardless of the submission method, the complete bid and required bidder security must be received by the stated bid deadline.

Question #3:

The total budget is \$3,000,000 (3 million) for this project.

Does the Contractor have flexibility on the proportion of turf removal work and plumbing work? The Bid Schedule lists square footages of turf to remove. Are the square footage figures flexible, thereby increasing or decreasing the proportion of turf removal vs plumbing?

Response:

Upon contract award, the Contractor and Agency may determine the final proportion of turf removal and plumbing activities. For the purposes of determining the lowest responsive bidder, the Contractors should provide a bid based on the approximate numbers included on the bid schedule, recognizing that the grant funding is for a total of \$3 million.

Question #4:

Section 1-9: Site Investigation and Conditions Affecting the Work: Will the District consider revising this section or adding a note that specific project locations are unknown? The contractor cannot acknowledge that it has ascertained the nature and location.

Section 1-15: Interpretation of Plans and Documents: Will the District consider rewording this section or adding a note that construction plans and documents have not been made available to the contractor?

Response:

The Agency has replaced language in the following sections:

I-9. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

~~The bidder acknowledges that it has ascertained the nature and location of the work and that it has investigated and assured itself as to the general and local conditions that can affect the work or its cost. The bidder also acknowledges that it is satisfied as to the character, quality and quantity of surface inspection of the site, including exploratory work done by the District, as well as from the drawings, plans, and specifications. Failure of the bidder to take actions will not relieve it from responsibility for estimating properly the difficulty and cost of~~

~~successfully completing the work, or for proceeding to successfully complete the work without additional cost to the District.~~

The District assumes no responsibility for conclusions or interpretations made by the bidder based on the information that the District makes available. The District assumes no responsibility for any understanding reached or representation made concerning conditions that can affect the work by any of its employees or agents before execution of the Contract, unless that understanding or representation is expressly stated in the drawings and specifications.

The quantities of work or material stated in the items of the Bid Schedule are given only as a basis for the comparison of bids, and the District does not expressly or by implication agree that the actual amount of work or material will correspond therewith, but reserves the right to increase or decrease the amount of any unit price item of the work as may be deemed necessary or expedient by the District or the Engineer.

I-15. INTERPRETATION OF PLANS AND DOCUMENTS

If any person contemplates submission of a bid for the proposed contract and is in doubt as to the true meaning of any documents, or finds discrepancies in, or omissions from, the drawings or specifications, he/she may submit to the Engineer of said District a written request (using the Bidder's Question Form) for an interpretation or correction thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation or correction of the proposed documents shall be made only by addendum duly issued and a copy of such addendum will be mailed or delivered to each person receiving a set of such documents. The Engineer will not be responsible for any other explanation or interpretation of the proposed documents and the bidder may not rely on any explanations, interpretations, corrections or other communications regarding the bid documents other than as given in accordance with this Section I-15. **It is noted that the District did not provide construction documents or plans with Specification 2026-01.**

Question #5:

Will the District consider lowering and/or removing the following insurance items.
Section 12.02, A, 3, a: Automobile Insurance, please reduce limits to 2 million.
Section 12.02, A, 2, c: Umbrella Insurance, please reduce limits to 2 million.
Section 12.02, A, 4: Please remove Contractors Pollution Liability Insurance.
Section 12.02, A, 6: Please remove Builder's Risk Insurance.

Response:

The Agency will retain the Contractors Pollution Liability Insurance as originally included in the Specification documents, however they agree to update the requested insurance requirements as revised below:

**The following language will replace section 12.02 INSURANCE REQUIREMENTS
A. Required Insurance Policies**

At its own expense, Contractor shall obtain, pay for, and maintain for the duration of the Contract, policies of insurance meeting the following requirements:

1. Workers' Compensation/Employer's Liability Insurance. Contractor shall provide workers' compensation benefits as required by state law and any applicable federal statutes.

(a) Workers' Compensation insurance shall be in an amount not less than:

(i) ONE MILLION DOLLARS (\$1,000,000) per accident for bodily injury or disease;

(ii) ONE MILLION DOLLARS (\$1,000,000) per employee for bodily injury or disease; and

(iii) ONE MILLION DOLLARS (\$1,000,000) policy limit.

2. Commercial General Liability ("CGL") (primary). District and its employees, agents and board members shall be added as additional insureds for both ongoing operations and completed operations using ISO forms 2010 07 04 and 2037 07 04 or equivalent. Contractor shall cause the completed operations coverage to be renewed annually for a period of ten (10) years or the expiration of the applicable statute of repose, whichever is longer, following the completion of the Work. Coverage shall apply on a primary, non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to District or any employee, representative or agent of District. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Coverage shall contain no contractors' limitation or other endorsement limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

(a) CGL insurance must not be written for less than the limits of liability specified as follows:

(i) ONE MILLION DOLLARS (\$1,000,000) per occurrence for bodily injury including accidental death) to any one person;

(ii) ONE MILLION DOLLARS (\$1,000,000) per occurrence for personal and advertising injury to any one person;

(iii) ONE MILLION DOLLARS (\$1,000,000) per occurrence for property damage; and

(iv) TWO MILLION DOLLARS (\$2,000,000) general aggregate limit.

(b) CGL insurance must include all major divisions of coverage and must cover:

(i) Premises Operations (including Explosion, Collapse, and Underground ["X,C,U"]

coverages as applicable);

(ii) Independent Contractor's Protective;

(iii) Independent Contractors;

(iv) Products and Completed Operations

(v) Personal and Advertising Injury (with Employer's Liability Exclusion deleted);

(vi) Contractual Liability; and

(vii) Broad Form Property Damage.

(c) Umbrella or Excess Liability Insurance (over primary) shall be written with limits of at least ~~FIVE~~**FOUR** MILLION DOLLARS (\$~~45,000,000~~) and shall be at least as broad as any underlying coverage. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion and no contractor’s limitation endorsement. The policy shall have starting and ending dates concurrent with the underlying coverages. The Named Insured may determine the layering of primary and excess liability insurance provided that if such layering differs from that described here, the actual coverage program meets the minimum total required limits and complies with all other requirements listed here.

3. Business Automobile Liability Insurance

(a) Business Automobile Liability Insurance must cover all vehicles, whether rented, leased, hired, scheduled, owned or non-owned. If Contractor does not own any vehicles, this requirement may be satisfied by a non-owned vehicle endorsement to the general and umbrella liability policies. Business Automobile Liability Insurance coverage amounts shall not be less than the following:

- (i) ~~FIVE~~**ONE** MILLION DOLLARS (\$~~51,000,000~~) per occurrence for bodily injury (including accidental death) to any one person; and
- (ii) ~~FIVE~~ **ONE** MILLION DOLLARS (\$~~51,000,000~~) per occurrence for property damage; or
- (iii) **TWO**~~FIVE~~ MILLION DOLLARS (\$~~25,000,000~~) combined single limit.

4. Contractors Pollution Liability Insurance (“CPL”)

(a) Contractors Pollution Liability insurance may be required at District’s option and shall provide coverage for liability caused by pollution conditions arising out of the operations of the Contractor. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using Subcontractors, the policy must include work performed “by or on behalf” of the insured.

(b) The policy limit shall provide coverage of no less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and TWO MILLION DOLLARS (\$2,000,000) in the aggregate. Coverage shall apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs; and costs of defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

(c) All activities contemplated in the Contract shall be specifically scheduled on the CPL policy as “covered operations.” In addition, the policy shall provide coverage for the hauling of waste from the Project site to the final disposal location, including non-owned disposal sites.

(d) The policy shall specifically provide for a duty to defend on the part of the insurer. District, its officers, employees and agents shall be added to the policy as additional insureds by endorsement.

5. Professional Liability Insurance

If any portion of the Work under the Contract requires the performance of professional services (including design services) by Contractor or any of its Subcontractors, Contractor shall maintain professional liability insurance with minimum limits of \$1,000,000 per claim and \$2,000,000 in the aggregate. All professional liability policies shall provide coverage retroactive to the date of this Contract or the commencement of professional services in relation to the Project, and the coverage shall be maintained for a period of five (5) years after the date of final payment to the Contractor.

6. Builder's Risk Insurance

~~Builder's Risk Insurance covering all real and personal property for "all risks" of loss or "comprehensive perils" coverage including, but not limited to, the following perils: earth movement (including earthquake), collapse, fire, lightning, theft, vandalism and malicious mischief, water damage, damage caused by frost and freezing, debris removal, and demolition occasioned by enforcement of laws and regulations, for all buildings, structures, fixtures, materials, supplies, machinery and equipment to be used in or incidental to the construction at the site, off site, or in transit, for the full replacement value of such properties. Coverage shall be included for property of others in the care, custody or control of the insured for which any insured may be liable. At its sole discretion, District may elect to purchase a Builder's Risk policy for the Project instead of a Contractor purchased policy, in which case the Contract Price shall be reduced accordingly.~~

Question #6:

Notice states that a Class A license or both C27 & C36 are required.

Can the District please consider changing the Class A license to Class B?

Class A is general engineering. Class B is general building, which is the correct one for this project.

Response:

Yes, the Agency will update the specifications to allow for either a Class A and C36 or Class B and both C27 & C36 licenses. Note that Section N-10 of the Notice inviting Bidders and section I-6 of the Instructions to Bidders should reflect the following changes in the specification documents:

Notice Inviting Bids

N-10. Any bidder is required to hold either an **a) Class A and C36 or b) a Class B and both C27 & C36 licenses**~~a Class A or both a C27 and C36 Contractors License~~ at the time the contract is awarded. Any bidder or Contractor not so licensed shall be subject to all legal penalties imposed by law, including but not limited to, any appropriate disciplinary action by the Contractors State License Board. Failure of the bidder to obtain proper and adequate licensing prior to an award of a contract shall constitute a failure to execute the contract and shall result in the forfeiture of the Bid Bond or check.

Instruction to Bidders

I-6. CONTRACTOR'S LICENSE AND REGISTRATION REQUIREMENTS

Pursuant to Section 7028.15 of the Business and Professions Code and Section 3300 of the Public Contract Code, all bidders must possess proper licenses for performance of this Contract. Subcontractors must possess the appropriate licenses for each specialty subcontracted. Pursuant to Section 7028.5 of the business and Professions Code, the District shall consider any Proposal submitted by a contractor not currently licensed in accordance with state law and pursuant to the requirements found in the Contract Documents to be nonresponsive, and the District shall reject the Proposal. The District shall have the right to request, and bidders shall provide within five (5) calendar days, evidence satisfactory to the District of all valid licenses(s) currently held by that bidder and each of the bidder's subcontractors, before awarding the Contract.

At the time of submitting a bid, the bidder shall possess either a valid **a) Class A and C36 or b) a Class B and both C27 & C36 licenses** ~~Class C27 and C36~~ Contractors License issued by the California Contractors State License Board. In the event a bid is submitted on behalf of a joint venture, each party to the bid shall possess a valid California Contractors License in the required classification at the time of the bid submission. If such joint venture is the successful bidder, an appropriate license in the name of the joint venture shall be obtained prior to award of the Contract.

A contractor and subcontractor shall not be qualified to bid or 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 the Labor Code, unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. It is not a violation of this Section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

Question #7:

Payment terms listed are Net 30 - District pays contractor within 30 days if all documentations and requirements are met.

140 calendar days to complete this project. Net 15 or Net 20 payment terms will help Will the District consider shortening the payment terms to Net 15 or Net 20 for progress payments? Normally, Net 30 payment terms are fine. However, the contractor only has the contractor with cash for this fast-tracked program.

Response:

The District will make a reasonable effort to provide payments in less than 30 days, however it will retain the original language of Net 30.

Question #8:

Can you please describe how final payment will be processed in relation to Retention? For this project specifically, can you please describe if Retention will apply? If so, please processed? The question assumes the contractor is not using an escrow account/deposit.

Will the District accept a Retention Bond in lieu of escrow account?

Response:

Please refer to General Conditions for Construction Agreement Sections 7.05 and 7.06. The Agency will work with the Contractor to release the retention as soon as reasonably possible, once retention requirements have been met.

Question #9:

Will the District consider revising this section to note that Specifications & Drawings are not available?

Section 1.07 Daily Reports: Will the District require Daily Reports from Contractor?

Section 1.14 Contractor's Operations/Storage: Is it a possibility that the District may allow the contractor to use a District facility for staging and storage during the project?

Response:

Yes, the Agency will revise the following specifications as follows:

1.04 Specifications and Drawings

A. The Contractor shall keep on the Work Site a copy of all Specifications, Drawings, and change orders pertaining to the Work and shall at all times give the Engineer access thereto. ~~Anything mentioned in the Specifications and not shown on the Drawings or shown on the Drawings and not mentioned in the Specifications shall be of like effect as though shown or mentioned in both~~ It is noted that the District did not provide construction documents or plans with Specification 2026-01.

~~1.07 DAILY REPORTS~~

~~Contractor shall maintain a daily report for each day containing a record of weather, Contractor's own forces working on site, Subcontractors working on the site, the number of workers for each Subcontractor equipment on site, materials delivered, Work accomplished, problems encountered and other similar relevant data as the District may reasonably require. The daily report shall be signed by Contractor's Superintendent, submitted within twenty-four (24) hours (next working day) to the Engineer, and shall be made available to others as directed by District.~~

Section 1.14 Contractor's Operations/Storage. The Agency may consider entering into a temporary license agreement for equipment and material staging.

Question #10:

There are many unknowns about the project and design review and approval time is not within full control. Will there be Liquidated Damages if the project is not

completed by December 31, 2026? What will happen if, for example, only a portion of the budget is expended? Will the contractor be penalized?

Follow-up question: Can the District please change the timeline from 140 calendar days to December 31, 2026?

Response:

Given the December 31, 2026 grant deadline, work not anticipated to be completed ahead of that deadline should be halted. The Contractor shall notify the Agency of any approved work not to be completed at the time of the invoice submitted on or around December 1. The contractor will not be penalized for the incomplete work however the District will not approve costs for services not rendered complete.

Note, that rather than 140 calendar days from Notice to Proceed, substantial completion, invoice issued to the Agency and final payment issued before December 31, 2026, with the exception of retention release.

Due to the strict time-based deadline requirement of this project, there will not be liquidated damages, since all work should be completed prior to the December 31, 2026 deadline. Section 3.07 shall be stricken:

3.07 LIQUIDATED DAMAGES

~~A. Contractor and District agree to liquidate damages in the amount of \$500 (Five Hundred Dollars) per day, with respect to Contractor's failure to achieve Substantial Completion of the Work within the Contract Time.~~

~~The Parties intend for the liquidated damages set forth herein to apply to this Contract as set forth in Government Code Section 53069.85. Contractor acknowledges and agrees that the liquidated damages are intended to compensate District solely for Contractor's failure to meet the deadline for Substantial Completion, shall not limit District's other, non-monetary remedies for Contractor delay, and shall not excuse Contractor from liability for any other breach, including any failure of the Work to conform to the requirements of the Contract Documents.~~

~~B. In the event that Contractor fails to achieve Substantial Completion of the Work within the Contract Time, Contractor agrees to pay District the amount specified herein for each calendar day that Substantial Completion is delayed.~~

~~C. Contractor and District acknowledge and agree that the foregoing liquidated damages have been set based on an evaluation of damages that the District will incur in the event of late completion of the Work. Contractor and District acknowledge and agree that the amount of such damages is impossible to ascertain as of the effective date hereof and have agreed to such liquidated damages to fix District's damages and to avoid later disputes. It is understood and agreed by Contractor that liquidated damages payable pursuant to this Contract are not a penalty and that such amount is not manifestly unreasonable under the circumstances existing as of the effective date of this Contract.~~

~~D. It is further mutually agreed that District shall have the right to deduct liquidated damages against progress payments or retainage and that the District will issue a Unilateral Change Order and reduce the Contract Sum accordingly. In the event the remaining unpaid Contract Sum is insufficient to cover the full amount of liquidated damages, Contractor shall be responsible for paying the difference to District.~~

Question #11:

Section 14.02, Saturday, Sunday, Holiday and Overtime Work

Will the District provide consent for work to be completed on Saturday, Sunday, Holiday, and Overtime in order to meet the short timeline?

It is very important to allow the contractor ample flexibility on the work schedule in order to complete the work on time.

Response:

Contractor may conduct work on weekends and/or holidays as allowed by the appropriate city or county jurisdiction.

Question #12:

Please clarify whether Bid Item 26, "Hourly Rate (by Clarification)," is intended to be based on the Turf Removal and Replacement scope or the Indoor Water Fixture scope.

Response:

Hourly rate should reflect both elements, and may be provided as separate rates line items if applicable.

Question #13:

Would the District consider extending the bid due date by 48 hours? The additional time would allow bidders to finalize pricing, secure the required bid security, and ensure proposal packages are completed and reviewed properly, helping to provide the most complete and competitive bids possible.

Response:

Due to the expedited timeline of this project, the District must maintain the current schedule. However, as noted above in Question 2, Bids may be submitted through an electronic link provided to the Agency at bids@sbvmwd.com.

Question #14:

The Bidder's Statement of Qualifications appears focused on traditional construction contracting experience. Given the scope of this program, can the District confirm that this is the intended qualifications form for this solicitation?

Response:

Yes, the Agency can confirm that this is the intended qualification form.

Question #15:

What Disadvantaged Community map is used within the grant guidelines?

Response:

The Disadvantaged Communities map that applies to the project grant can be accessed at <https://gis.water.ca.gov/app/dacs>.

San Bernardino Valley Municipal Water District							
SPECIFICATION 26-01 DIRECT INSTALLATION PROGRAM: TURF REMOVAL AND INDOOR WATER FIXTURE REPLACEMENT							
BID OPENING DATE: July 27, 2026							
Bid Tabulation							
Bid Item No.	Description	Quantity	Units	PRIDE Industries One, Inc.		EcoTech Services, Inc.	
				Unit Cost	Item Cost	Unit Cost	Item Cost
1	BONDING & INSURANCE	1	LS	\$ 1,600.00	\$ 1,600.00	\$ 113,400.00	\$ 113,400.00
2	SITE IDENTIFICATION AND CUSTOMER OUTREACH (LUMP SUM)	1	LS	\$ 3,400.00	\$ 3,400.00	\$ 12,000.00	\$ 12,000.00
3	TURF REMOVAL AND REPLACEMENT: MOBILIZATION & DEMOBILIZATION (LUMP SUM)	1	LS	\$ 11,434.00	\$ 11,434.00	\$ 56,750.00	\$ 56,750.00
4	COMMERCIAL/ INSTITUTIONAL SITE ASSESSMENT- TURF REMOVAL AND REPLACEMENT COST PER ASSESSMENT	15	Assessment	\$ 1,537.00	\$ 23,055.00	\$ 500.00	\$ 7,500.00
5	MULTI-FAMILY SITE ASSESSMENT- TURF REMOVAL AND REPLACEMENT COST PER ASSESSMENT	5	Assessment	\$ 2,022.00	\$ 10,110.00	\$ 500.00	\$ 2,500.00
6	HOMEOWNERS ASSOCIATION SITE ASSESSMENT	10	Assessment	\$ 1,294.00	\$ 12,940.00	\$ 500.00	\$ 5,000.00
7	500 - 1,000 SQUARE FEET PER SITE- TURF REMOVAL AND REPLACEMENT SITE DESIGN PRICE DESIGN	1,000	SF	\$ 3.12	\$ 3,120.00	\$ 3.50	\$ 3,500.00
8	1,001- 5,000 SQUARE FEET PER SITE- TURF REMOVAL AND REPLACEMENT SITE DESIGN PRICE DESIGN	10,000	SF	\$ 3.12	\$ 31,200.00	\$ 2.75	\$ 27,500.00
9	5,001- 10,000 SQUARE FEET PER SITE- TURF REMOVAL AND REPLACEMENT SITE DESIGN PRICE DESIGN	24,000	SF	\$ 1.87	\$ 44,880.00	\$ 2.50	\$ 60,000.00
10	10,001- 20,000 SQUARE FEET PER SITE- TURF REMOVAL AND REPLACEMENT SITE DESIGN PRICE DESIGN	60,000	SF	\$ 1.25	\$ 75,000.00	\$ 1.50	\$ 90,000.00
11	500-1,000 SQUARE FEET- TURF REMOVAL AND REPLACEMENT: SITE LANDSCAPE CONSTRUCTION PRICE	1,000	SF	\$ 1.55	\$ 1,550.00	\$ 18.00	\$ 18,000.00
12	1,001- 5,000 SQUARE FEET- TURF REMOVAL AND REPLACEMENT: SITE LANDSCAPE CONSTRUCTION PRICE	10,000	SF	\$ 1.45	\$ 14,500.00	\$ 18.00	\$ 180,000.00
13	5,001- 10,000 SQUARE FEET- TURF REMOVAL AND REPLACEMENT: SITE LANDSCAPE CONSTRUCTION PRICE	24,000	SF	\$ 1.37	\$ 32,880.00	\$ 17.00	\$ 408,000.00
14	10,001- 20,000 SQUARE FEET- TURF REMOVAL AND REPLACEMENT: SITE LANDSCAPE CONSTRUCTION PRICE	60,000	SF	\$ 1.32	\$ 79,200.00	\$ 17.00	\$ 1,020,000.00
15	TURF REMOVAL AND REPLACEMENT: DECOMPOSED GRANITE OR GRAVEL AS GROUND COVER (OPTIONAL)- TURF REMOVAL AND REPLACEMENT: SITE LANDSCAPE CONSTRUCTION PRICE	15000	SF	\$ 3.85	\$ 57,750.00	\$ 4.00	No charge. Cost included up to 15,000 SF
16	TURF REMOVAL AND REPLACEMENT: PROPERTY OWNER REPRESENTATIVE LANDSCAPE TRAINING	25	Training	\$ 243.00	\$ 6,075.00	\$ 500.00	\$ 12,500.00
17	INDOOR WATER FIXTURE: MOBILIZATION & DEMOBILIZATION	1	LS	\$ 2,000.00	\$ 2,000.00	\$ 56,750.00	\$ 56,750.00
18	INDOOR WATER FIXTURE: DISPATCH FEE	75	Dispatch	\$ 345.00	\$ 25,875.00	\$ 350.00	\$ 26,250.00
19	INDOOR WATER FIXTURE: ULTRA-HIGH EFFICIENCY TOILET	750	Toilet	\$ 836.00	\$ 627,000.00	\$ 850.00	\$ 637,500.00
20	INDOOR WATER FIXTURE: TOILET DISPOSAL	750	Disposal	\$ 68.00	\$ 51,000.00	\$ 100.00	\$ 75,000.00
21	INDOOR WATER FIXTURE: LOW FLOW SHOWERHEAD	500	Showerhead	\$ 130.00	\$ 65,000.00	\$ 150.00	\$ 75,000.00
22	INDOOR WATER FIXTURE: LOW FLOW AERATOR	500	Aerator	\$ 88.00	\$ 44,000.00	\$ 100.00	\$ 50,000.00
23	INDOOR WATER FIXTURE: ANGLE STOP VALVE	150	ASV	\$ 180.00	\$ 27,000.00	\$ 200.00	\$ 30,000.00
24	INDOOR WATER FIXTURE: FLANGE REPAIR	85	FR	\$ 260.00	\$ 22,100.00	\$ 370.00	\$ 31,450.00
25	INDOOR WATER FIXTURE: WATER SUPPLY LINE- FLEX LINE	750	WSL	\$ 47.00	\$ 35,250.00	\$ 25.00	No charge. Cost included.
26	OPTIONAL HOURLY RATE (BY CLARIFICATION)- ADDITIONAL AS-NEEDED SERVICES	80	Hourly	Plumber \$180; Turf/Landscape \$87.50	Plumber \$14,400; Turf/Landscape \$7,000	\$ 150.00	N/A
27	OPTIONAL MILEAGE- ADDITIONAL AS-NEEDED SERVICES	500	Mileage	\$ 0.83	\$ 415.00	\$ 0.76	N/A
28	OPTIONAL MATERIALS COST PLUS ____ %- ADDITIONAL AS-NEEDED SERVICES		Percentage	\$ 0.15	\$ -	15%	N/A
	TOTAL BID PRICE (NOT INCLUDING OPTIONAL ITEMS)				\$ 1,307,919	\$	2,998,600
	Turf Removal and Replacement (Estimated 100,000 square feet total)						

**SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
SAN BERNARDINO, CALIFORNIA**

BID SCHEDULE

**DIRECT INSTALLATION PROGRAM:
TURF REMOVAL AND INDOOR WATER FIXTURE REPLACEMENT**

NAME OF BIDDER: PRIDE Industries One, Inc.

The undersigned bidder hereby declares that it has carefully examined the location of the proposed Work and has read and examined the Contract Documents as identified in the form Agreement provided to bidders, including all plans, specifications, and all Addenda, if any, for the following Project:

Direct Installation Program: Turf Removal and Indoor Water Fixture Replacement, SPECIFICATION 26-01

Bidder hereby proposes to furnish all labor, materials, equipment, tools, transportation, appurtenances, and incidentals and services and to discharge all duties and obligations necessary and required to perform and complete the Project for the following UNIT COST BID PRICE:

BID ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT COST	BID ITEM COST
1.	Bonding & Insurance	1	\$1,600.00	\$1,600.00
2.	Site Identification and Customer Outreach (Lump Sum)	1	\$3,400.00	\$3,400.00
Turf Removal and Replacement (Estimated 100,000 square feet total)				
3.	Turf Removal and Replacement: Mobilization & Demobilization (Lump Sum)	1	\$11,434.00	\$11,434.00
Turf Removal and Replacement Cost Per Assessment				
4.	Commercial/ Institutional Site Assessment	15	\$1,537.00	\$23,055.00
5.	Multi-Family Site Assessment	5	\$2,022.00	\$10,110.00
6.	Homeowners Association Site Assessment	10	\$1,294.00	\$12,940.00
Turf Removal and Replacement Site Design Price Design				
7.	500 - 1,000 square feet per site	1,000 sq ft	\$3.12	\$3,120.00
8.	1,001- 5,000 square feet per site	10,000 sq ft	\$3.12	\$31,200.00
9.	5,001- 10,000 square feet per site	24,000 sq ft	\$1.87	\$44,880.00
10.	10,001- 20,000 square feet per site	60,000 sq ft	\$1.25	\$75,000.00

BID ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT COST	BID ITEM COST
Turf Removal and Replacement: Site Landscape Construction Price				
11.	500-1,000 square feet	1,000 sq ft	\$1.55	\$1,550.00
12.	1,001- 5,000 square feet	10,000 sq ft	\$1.45	\$14,500.00
13.	5,001- 10,000 square feet	24,000 sq ft	\$1.37	\$32,880.00
14.	10,001- 20,000 square feet	60,000 sq ft	\$1.32	\$79,200.00
15.	Turf Removal and Replacement: Decomposed Granite or Gravel as Ground Cover (Optional)	15,000	\$3.85	\$57,750.00
16.	Turf Removal and Replacement: Property Owner Representative Landscape Training	25	\$243.00	\$6,075.00
Indoor Fixtures				
17.	Indoor Water Fixture: Mobilization & Demobilization	1	\$2,000.00	\$2,000.00
18.	Indoor Water Fixture: Dispatch Fee	75	\$345.00	\$25,875.00
19.	Indoor Water Fixture: Ultra-High Efficiency Toilet	750	\$836.00	\$627,000.00
20.	Indoor Water Fixture: Toilet Disposal	750	\$68.00	\$51,000.00
21.	Indoor Water Fixture: Low Flow Showerhead	500	\$130.00	\$65,000.00
22.	Indoor Water Fixture: Low Flow Aerator	500	\$88.00	\$44,000.00
23.	Indoor Water Fixture: Angle Stop Valve	150	\$180.00	\$27,000.00
24.	Indoor Water Fixture: Flange Repair	85	\$260.00	\$22,100.00
25.	Indoor Water Fixture: Water Supply Line-Flex Line	750	\$47.00	\$35,250.00
Additional As-Needed Services				
26.	Hourly Rate (by Clarification) Plumber - \$ Turf/Landscape \$	80	Plumber - \$ 180.00 Turf/Landscape - \$ 87.50	Plumber - \$ 14,400 Turf/Landscape - \$ 7,000
27.	Mileage	500	\$0.83	\$415.00
28.	Materials Cost plus 15%			
	Total			

In case of discrepancy between the actual total of the bid item costs set forth above and the Total Base Bid Price, the total of the individual bid item costs shall prevail and be utilized as the basis for determining the lowest responsive, responsible bidder.

TOTAL BASE BID PRICE IN WORDS:

ONE MILLION THREE HUNDRED SEVEN THOUSAND NINE HUNDRED NINETEEN DOLLARS AND NO CENTS

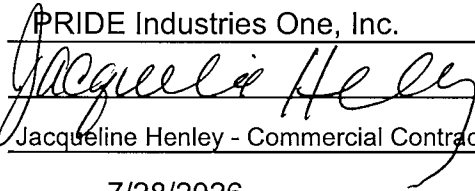
TOTAL BASE BID PRICE IN NUMBERS: \$ \$1,307,919.00

The undersigned agrees that this Bid Schedule constitutes a firm offer to the District which cannot be withdrawn for the number of calendar days indicated in the Notice Inviting Bids from and after the Bid opening, or until a Contract for the Work is fully executed by the District and a third party, whichever is earlier.

The Contract duration shall commence on the date stated in the District's Notice to Proceed and shall be completed by the Contractor in the time specified in the Contract Documents. In no case shall the Contractor commence construction prior to the date stated in the District's Notice to Proceed.

I hereby certify under penalty of perjury under the laws of the State of California that all of the information submitted in connection with this Bid and all of the representations made herein are true and correct.

Name of Bidder: PRIDE Industries One, Inc.

Signature: 

Name and Title: Jacqueline Henley - Commercial Contracts Director

Dated: 7/28/2026

[END OF DOCUMENT]