

**AGREEMENT FOR ON-CALL POTABLE WATER AND SANITARY SEWER REPAIR  
SERVICES BY INDEPENDENT CONTRACTOR  
PROJECT DIR # \_\_\_\_\_**

THIS AGREEMENT FOR ON-CALL POTABLE WATER AND SANITARY SEWER REPAIR SERVICES BY INDEPENDENT CONTRACTOR is made and effective as of **October 1, 2026** by and between the MISSION SPRINGS WATER DISTRICT, a County Water District (“DISTRICT”) whose address is 66575 Second Street, Desert Hot Springs, CA 92240, California, and **Tri-Star Contracting II, Inc., a California corporation** whose address is **15501 Little Morongo Road, Desert Hot Springs, CA 92240** (“CONTRACTOR”).

**RECITALS**

This Agreement is entered into on the basis of the following facts, understandings and intentions of the parties to this Agreement:

A. DISTRICT desires to engage CONTRACTOR to provide the following services: on-call potable water and sanitary sewer repair services and related facility maintenance, repair, and emergency services on an as-needed basis; and

B. CONTRACTOR has made a proposal (“Proposal”) to the DISTRICT to provide such services, which Proposal is attached hereto as **Exhibit “A”** and incorporated herein by this reference; and

C. CONTRACTOR represents that it has examined and is fully familiar with all of the provisions of the Agreement; that it has satisfied itself as to the nature and location of all Services (defined below), the general and local conditions to be encountered in the performance of any Services, and all other matters which can in any way affect the Services or the cost thereof; and

D. CONTRACTOR agrees to provide such Services pursuant to, and in accordance with, the terms and conditions of this Agreement, and represents and warrants to DISTRICT that CONTRACTOR possesses the necessary skills, licenses, certifications, qualifications, personnel and equipment to provide such services; and

E. The parties acknowledge that some or all of the Services may constitute “public works” or “maintenance” under California Labor Code section 1720 et seq.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals and mutual covenants contained herein, DISTRICT and CONTRACTOR agree as follows:

1. **Term of Agreement.** This Agreement is effective as of the date first above written and shall continue for a term of one (1) year, with the option to extend for additional terms which shall not exceed three (3) consecutive years, as approved by the DISTRICT Board of Directors.

2. Services to be Performed. CONTRACTOR agrees to provide on-call maintenance, repair, and emergency services (“Services”) as requested by DISTRICT and contained within the Proposal. All Services shall be authorized through written task orders (“Task Orders”) issued by the DISTRICT. Each Task Order shall describe the scope of work, schedule, and compensation. CONTRACTOR shall not perform any Services without prior written authorization from DISTRICT. CONTRACTOR designates Jordan Willis as CONTRACTOR’S representative(s) responsible for overseeing the Services provided by CONTRACTOR. DISTRICT designates the District General Manager, or his or her designee, to act as the Project Manager (“Project Manager”) in connection with the delivery of Services under this Agreement. CONTRACTOR shall supply, at its sole expense, all equipment, tools, materials, and supplies necessary to perform Services.

2.01. Task Orders. DISTRICT shall issue Task Orders on an as-needed basis. For each Task Order, CONTRACTOR shall submit a written cost proposal, which shall include, at a minimum, labor, materials, subcontractors, and a proposed schedule for completion. No Task Order shall be binding, and CONTRACTOR shall not commence any work thereunder, unless and until the Task Order has been approved in writing by the DISTRICT. DISTRICT makes no representation or guarantee that CONTRACTOR will receive any minimum amount of work under this Agreement.

2.02. In addition to the requirements set forth in this Agreement, all Services performed pursuant to any Task Order shall be subject to, and CONTRACTOR shall comply with, the General Conditions, Special Conditions, and bond requirements applicable to the Work. The General Conditions and Special Conditions are attached hereto as Exhibit “C” and incorporated herein by this reference.

Each Task Order issued under this Agreement shall expressly incorporate the terms of this Agreement, and Exhibit “C” . Additionally, CONTRACTOR agrees that all work performed under any Task Order shall be governed by, and performed in accordance with, such provisions, whether or not expressly restated in the Task Order.

Without limiting the foregoing, CONTRACTOR shall comply with all requirements relating to performance bonds, payment bonds, maintenance bonds, and any other security required by the DISTRICT pursuant to Section 12 of this Agreement. . In the event of any conflict between the terms of a Task Order and the General Conditions, Special Conditions, or bond requirements, the more stringent provision, as determined by DISTRICT, shall control.

3. Associates and Subcontractors. CONTRACTOR may, at CONTRACTOR’S sole cost and expense, employ such competent and qualified independent associates, subcontractors and consultants as CONTRACTOR deems necessary to perform the Services; provided, however, that CONTRACTOR shall not subcontract any of the Services without the prior written consent of DISTRICT. CONTRACTOR shall require all subcontractors to comply with all applicable provisions of this Agreement, including prevailing wage, insurance, and indemnity obligations.

4. Compensation.

4.01 CONTRACTOR shall be paid at the rates set forth in the Proposal and shall

not increase any rate without the prior written consent of the DISTRICT. This Agreement is a time-and-materials, on-call contract. Notwithstanding anything in this Agreement to the contrary, total fees and charges paid by DISTRICT to CONTRACTOR under this Agreement shall not exceed the amount of **\$100,000.00**. Each Task Order issued pursuant to this Agreement may include its own not-to-exceed amount, which shall not be exceeded without prior written approval of the DISTRICT.

4.02 CONTRACTOR shall not be compensated for any Services rendered nor reimbursed for any expenses incurred in excess of those authorized unless approved in advance by the DISTRICT, in writing. CONTRACTOR shall not exceed any not-to-exceed amount established in an approved Task Order without the prior written approval of the DISTRICT.

4.03 CONTRACTOR shall submit to DISTRICT, on or before the fifteenth (15<sup>th</sup>) of each month, itemized invoices for the Services rendered in the previous month. Invoices shall reference the applicable Task Order. DISTRICT may withhold payment for: (i) defective work, (ii) non-compliance with prevailing wage laws, or (iii) incomplete or unauthorized work. The DISTRICT shall not be obligated to pay any invoice for services that are submitted more than sixty (60) days after the date such services were provided. DISTRICT shall have the right to review and audit all invoices prior to or after payment to CONTRACTOR. This review and audit may include, but not be limited to DISTRICT's:

- a. Determination that any hourly fee charged is consistent with this Agreement's approved hourly rate schedule;
- b. Determination that the multiplication of the hours billed times the approved rate schedule dollars is correct;
- c. Determination that each item charged is the usual, customary, and reasonable charge for the particular item. If DISTRICT determines an item charged is greater than usual, customary, or reasonable, or is duplicative, ambiguous, excessive, or inappropriate, DISTRICT shall either return the bill to CONTRACTOR with a request for explanation or adjust the payment accordingly and give notice to CONTRACTOR of the adjustment.

4.04 If the work is satisfactorily completed, DISTRICT shall pay such invoice within thirty (30) days of its receipt, or as reasonably soon after required certified payroll information is submitted to the DISTRICT, if applicable. Should DISTRICT dispute any portion of any invoice, DISTRICT shall pay the undisputed portion within the time stated above, and at the same time advise CONTRACTOR in writing of the disputed portion.

4.05 DISTRICT may withhold retention from progress payments on a Task Order basis where appropriate. Retention shall not exceed five percent (5%) of the amount payable under the applicable Task Order, unless a higher percentage is permitted by applicable law. Retention shall be released upon satisfactory completion and acceptance of the applicable Task Order, and if a Notice of Completion is recorded for such Task Order, in accordance with applicable law governing the release of retention. Retention, if any,

shall be administered separately for each Task Order.

4.06 Stop Notices. CONTRACTOR acknowledges that DISTRICT may withhold funds otherwise due or to become due to CONTRACTOR in response to any stop notice, bonded stop notice, or other lawful claim made in accordance with California Civil Code. DISTRICT shall be entitled to withhold such amounts as required by law or as reasonably necessary to satisfy such claim. CONTRACTOR shall be solely responsible for resolving any such claim, and DISTRICT shall have no obligation to make payment to CONTRACTOR for amounts subject to such withholding until the claim is released, discharged, or otherwise resolved to the satisfaction of DISTRICT in accordance with applicable law.

5. Obligations of CONTRACTOR.

5.01 CONTRACTOR agrees to perform all Services in accordance with the terms and conditions of this Agreement and the Proposal. All Services shall be performed in accordance with applicable industry standards and in a good and workmanlike manner. In the event that the terms of the Proposal shall conflict with the terms of this Agreement or contain additional terms that purport to bind the DISTRICT other than for the Services to be rendered and the hourly rate for the Services, the terms of this Agreement shall govern and said additional or conflicting terms shall be of no force or effect.

5.02 Except as otherwise agreed by the parties, CONTRACTOR will supply all personnel, materials and equipment required to perform the Services. CONTRACTOR shall provide its own offices, telephones, vehicles and computers. CONTRACTOR shall perform the Services subject to the direction, control, and approval of DISTRICT as set forth in this Agreement and applicable Task Orders.

5.03 CONTRACTOR shall keep DISTRICT informed as to the progress of the Services by means of regular and frequent consultations. Additionally, when requested by DISTRICT, CONTRACTOR shall prepare written status reports.

5.04 CONTRACTOR is responsible for paying, when due, all income and other taxes, fees and withholding, including withholding state and federal taxes, social security, unemployment and worker's compensation, incurred as a result of the compensation paid under this Agreement. CONTRACTOR agrees to indemnify, defend, and hold harmless DISTRICT for any claims, costs, losses, fees, penalties, interest, or damages suffered by DISTRICT resulting from CONTRACTOR's failure to comply with this provision.

5.05 CONTRACTOR represents that it possesses all required licenses necessary or applicable to the performance of Services under this Agreement and the Proposal and shall obtain and keep in full force and effect all permits and approvals required to perform the Services herein. In the event DISTRICT is required to obtain an approval or permit from another governmental entity, CONTRACTOR shall provide all necessary supporting documents to be filed with such entity.

5.06 CONTRACTOR shall be solely responsible for obtaining Employment Eligibility Verification information from CONTRACTOR's employees, in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a), and shall ensure that CONTRACTOR's employees are eligible to work in the United States.

5.07 In the event that CONTRACTOR employs, contracts with, or otherwise utilizes any CalPERS retirees in completing any of the Services performed hereunder, such instances shall be disclosed in advance to the DISTRICT and shall be subject to the DISTRICT's advance written approval.

5.08 Drug-free Workplace Certification. By signing this Agreement, the CONTRACTOR hereby certifies under penalty of perjury under the laws of the State of California that the CONTRACTOR will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code, Section 8350 et seq.) and will provide a drug-free workplace.

5.09 CONTRACTOR shall keep itself informed concerning and shall render all Services hereunder in accordance with all ordinances, resolutions, statutes, rule, and regulations of the DISTRICT and any federal, state or local governmental entity having jurisdiction in effect at the time service is rendered.

5.10 In the performance of this Agreement the CONTRACTOR shall comply with all applicable federal, state and local statutory and regulatory requirements including, but not limited to California Department of Industrial Relations (Cal/OSHA) regulations; and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act, related to their scope of work and operations. In case of conflict in regulations, the most stringent shall apply. DISTRICT shall have the right to suspend all or any portion of the Services upon written or verbal notice if DISTRICT reasonably determines that unsafe conditions or non-compliance with applicable laws or regulations exists. CONTRACTOR shall promptly correct any such conditions at its sole cost and expense. Any delay or cost resulting from such suspension attributable to CONTRACTOR'S failure to comply with this Section shall be borne solely by CONTRACTOR.

5.11 By executing this Agreement, CONTRACTOR warrants that CONTRACTOR (i) has thoroughly investigated and considered the scope of Services to be performed, (ii) has carefully considered how the Services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the Services under this Agreement. If the Services involve work upon any site, CONTRACTOR warrants that CONTRACTOR has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of Services hereunder. Should the CONTRACTOR discover any latent or unknown conditions, which will materially affect the performance of the Services hereunder, CONTRACTOR shall immediately inform the DISTRICT of such fact and shall not proceed except at CONTRACTOR's sole risk until written instructions are received from the Project Manager.

CONTRACTOR warrants all Services shall be performed in a good and workmanlike manner, in accordance with applicable industry standards, and shall be free from defective or faulty workmanship and materials. CONTRACTOR agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Services, whichever is later) after the date of final acceptance, CONTRACTOR shall within ten (10) days after being notified in writing by the DISTRICT of any defect in the Services or non-conformance of the Services to the Agreement, commence and prosecute with due diligence all Services necessary to fulfill the terms of the warranty at CONTRACTOR's sole cost and expense. CONTRACTOR shall act sooner as requested by the DISTRICT in response to an emergency. In addition, CONTRACTOR shall, at its sole cost and expense, repair and replace any portions of the Services (or work of other contractors) damaged by CONTRACTOR's defective Services or which becomes damaged in the course of repairing or replacing defective Services. For any Services so corrected, CONTRACTOR's obligation hereunder to correct defective Services shall be reinstated for an additional one-year period, commencing with the date of acceptance of such corrected Services. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of CONTRACTOR.

In the event that CONTRACTOR fails to fulfil its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the DISTRICT, the DISTRICT shall have the right to correct and replace any defective or non-conforming Services and any work damaged by such services or the replacement or correction thereof at CONTRACTOR's sole expense. CONTRACTOR shall be obligated to fully reimburse the DISTRICT for any expenses incurred hereunder upon demand. This provision may be waived if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

Payment to CONTRACTOR for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by CONTRACTOR.

5.12 Time is of the essence with respect to each Task Order issued under this Agreement.

5.13 CONTRACTOR shall be available on a 24-hour basis and shall respond to emergency service requests within two (2) hours unless otherwise approved by DISTRICT.

## 6. Insurance.

CONTRACTOR shall procure and maintain for the duration of this Agreement the following insurance coverage relating to the services provided under this Agreement by the CONTRACTOR.

a. Commercial General Liability (CGL) - Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 00 01) including products and completed operations, property damage, bodily injury, personal and advertising injury with limit of at least two million dollars (\$2,000,000) per occurrence or the full per occurrence limits of the policies available, whichever is greater. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (coverage as broad as the ISO CG 25 03, or ISO CG 25 04 endorsement provided to DISTRICT), or the general aggregate limit shall be twice the required occurrence limit.

b. Automobile Liability - Insurance Services Office (ISO) Business Auto Coverage (Form CA 00 01), covering Symbol 1 (any auto) or if CONTRACTOR has no owned autos, Symbol 8 (hired) and 9 (non-owned) with limit of one million dollars (\$1,000,000) for bodily injury and property damage each accident.

c. Workers' Compensation Insurance - as required by the State of California, with statutory limits, and Employer's Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.

d. Verification of Coverage – CONTRACTOR shall furnish the DISTRICT with certificates and amendatory endorsements, or copies of the applicable policy language effecting coverage required by this clause copies of which are attached hereto as **Exhibit "B"**. All certificates and endorsements are to be received and approved by the DISTRICT before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. The DISTRICT reserves the right to require complete, certified copies of all required insurance policies, including policy Declaration pages and Endorsement pages. CONTRACTOR shall provide new certificates of insurance prior to the expiration of any existing certificate of insurance.

e. If the CONTRACTOR maintains broader coverage and/or higher limits than the minimums shown above, the DISTRICT requires and shall be entitled to the broader coverage and/or higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to DISTRICT.

f. Required Provisions –

- Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the DISTRICT.

- CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all requirements stated herein and provide proof of such insurance to DISTRICT, if requested. CONTRACTOR shall ensure that DISTRICT its directors, officers, employees, contractors, subcontractors and authorized volunteers are an additional insured on Commercial General Liability Coverage (at least as broad as ISO Form CG 20 10 10 01). CONTRACTOR shall provide certificates of insurance to DISTRICT as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by DISTRICT's risk manager prior to

commencement of performance. Current certification of insurance shall be kept on file with DISTRICT at all times during the term of this contract. DISTRICT reserves the right to require complete, certified copies of all required insurance policies, at any time

- **Waiver of Subrogation:** The insurer(s) shall agree to waive all rights of subrogation against the DISTRICT, its elected or appointed officers, officials, agents, authorized volunteers, and employees for losses paid under the terms of the policy which arise from work performed by the named insured for the DISTRICT; but this provision applies regardless of whether or not the DISTRICT has received a waiver of subrogation from the insurer. Sole proprietors with no employees, LLCs, or partnerships who do not carry workers' compensation acknowledge that they are not subject to the Workers' Compensation Act of the State of California and agree to complete a signed workers compensation exemption form.

- The liability coverage shall give DISTRICT, its directors, officers, employees (collectively the DISTRICT), and authorized volunteers insured status (via ISO endorsement at least as broad as CG 20 10 10 01 or CG 20 10 07 04 specifically naming the DISTRICT, its directors, officers, employees, or authorized volunteers; or using the language that states "as required by written contract."

- **Primary Coverage:** For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary at least as broad as ISO CG 20 01 04 13 with respects to DISTRICT, its directors, officers, employees and authorized volunteers. Any insurance or self-insurance maintained by DISTRICT, DISTRICT's directors, officers, employees and authorized volunteers shall be excess of the CONTRATOR's insurance and shall not contribute with it.

- All coverage is to be placed with a carrier with an A.M. Best rating of no less than A: VII, or equivalent.

- The coverage shall contain no special limitations on the scope of protection afforded to DISTRICT, its directors, officers, employees, or authorized volunteers. If the CONTRACTOR maintains broader coverage and/or higher limits than the minimums shown above, the DISTRICT requires and shall be entitled to the broader coverage and/or higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the DISTRICT.

- If any of the required coverages expire or are cancelled during the term of this agreement, the CONTRACTOR shall deliver the renewal certificate(s) to DISTRICT at least ten (10) days prior to the expiration or cancellation date and shall obtain replacement insurance with the same coverage prior to such expiration.

- Self-Insurance is not acceptable or permitted for any insurance coverage required under this Agreement.

- **Self-Insured Retentions** - Self-insured retentions must be declared to and approved by the DISTRICT in writing. The DISTRICT may require the CONTRACTOR to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses

within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or DISTRICT.

7. Indemnification.

7.01 CONTRACTOR and DISTRICT agree that DISTRICT, its employees, agents and officials should, to the extent permitted by law, be fully protected from any loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, defense costs, court costs or any other costs arising out of or in any way related to the performance of this Agreement by CONTRACTOR or any subcontractor or agent of either as set forth herein. Accordingly, the provisions of this indemnity are intended by the parties to be interpreted and construed to provide the fullest protection possible under the law to DISTRICT. CONTRACTOR acknowledges that DISTRICT would not enter into this Agreement in the absence of the commitment of CONTRACTOR to indemnify and protect DISTRICT as set forth herein.

a. To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless DISTRICT, its employees, agents and officials, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, damages or costs of any kind, whether actual, alleged or threatened, actual attorneys' fees incurred by DISTRICT, court costs, interest, defense costs, including expert witness fees and any other costs or expenses of any kind whatsoever without restriction or limitation incurred in relation to, as a consequence of or arising out of, or in any way attributable actually, allegedly or impliedly, in whole or in part to the performance of this Agreement. CONTRACTOR's obligation to defend, indemnify and hold harmless shall include any and all claims, suits and proceedings in which CONTRACTOR (and/or CONTRACTOR's agents and/or employees) is alleged to be an employee of DISTRICT. All obligations under this provision are to be paid by CONTRACTOR as they are incurred by DISTRICT.

b. Without affecting the rights of DISTRICT under any provision of this Agreement or this Section, CONTRACTOR shall not be required to indemnify and hold harmless DISTRICT as set forth above for liability attributable solely to the fault of DISTRICT, provided such fault is determined by agreement between the parties or the findings of a court of competent jurisdiction.

8. Additional Services, Changes and Deletions.

8.01 In the event CONTRACTOR performs additional or different services than those described herein without the prior written approval of the Project Manager of the DISTRICT, CONTRACTOR shall not be compensated for such services. CONTRACTOR expressly waives any right to be compensated for services and materials not covered by the scope of this Agreement or authorized by the DISTRICT in writing.

8.02 CONTRACTOR shall promptly advise the Project Manager and as soon as

reasonably practicable upon gaining knowledge of a condition, event or accumulation of events which may affect the scope and/or cost of Services. All proposed changes, modifications, deletions and/or requests for additional services shall be reduced to writing for review and approval by the DISTRICT and/or Board of Directors.

9. Termination of Agreement.

9.01 Notwithstanding any other provision of this Agreement, DISTRICT, at its sole option, may terminate this Agreement with or without cause, or for no cause, at any time by giving thirty (30) days' written notice to CONTRACTOR.

9.02 In the event of termination, the payment of monies due CONTRACTOR for undisputed Services performed prior to the effective date of such termination shall be paid within thirty (30) business days after receipt of an invoice as provided in this Agreement. Immediately upon termination, CONTRACTOR agrees to promptly provide and deliver to DISTRICT all original documents, reports, studies, plans, specifications and the like which are in the possession or control of CONTRACTOR and pertain to DISTRICT.

10. Status of CONTRACTOR.

10.01 CONTRACTOR shall perform the Services as an independent contractor, subject to the direction and requirements of this Agreement and applicable Task Orders. CONTRACTOR shall regularly confer with DISTRICT's Project Manager as provided for in this Agreement.

10.02 CONTRACTOR agrees that it is not entitled to the rights and benefits afforded to DISTRICT's employees, including disability or unemployment insurance, workers' compensation, retirement, CalPERS, medical insurance, sick leave, or any other employment benefit. Furthermore, CONTRACTOR expressly waives any claim CONTRACTOR may have to any such rights. CONTRACTOR is responsible for providing, at its own expense, disability, unemployment, workers' compensation and other insurance, training, permits, and licenses for itself and its employees and subcontractors.

10.03 CONTRACTOR hereby specifically represents and warrants to DISTRICT that it possesses the qualifications, experience, personnel, and resources necessary to perform the Services under this Agreement in a competent and workmanlike manner, without the advice or direction of DISTRICT and that the Services to be rendered pursuant to this Agreement shall be performed faithfully, competently and to the best of CONTRACTOR'S ability, experience and talent. CONTRACTOR covenants that it shall follow the standards set forth in this Agreement, including Section 5.01, and that all materials and workmanship shall be of good quality and fit for their intended purpose. Further, CONTRACTOR represents and warrants that the individual signing this Agreement on behalf of CONTRACTOR has the full authority to bind CONTRACTOR to this Agreement.

10.04 Prevailing Wages.

A. To the extent applicable, each Task Order is subject to the State of California "Prevailing Wage Rates". Each applicable Task Order is subject to the requirements of California Labor Code Section 1720 et seq. requiring the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements. In accordance with provisions of Section 1773 of the Labor Code, the Director of the Department of Industrial Relations has ascertained the general prevailing rate of wages and employer payments for health and welfare, pension, vacation, and similar purposes applicable to the particular craft, classification, or type of workers employed on the work. The wage determinations shall be included in the Proposal. All pertinent wage determinations shall be posted on the jobsite. If federal funding is included in the project, the higher of the State and Federal wage rates shall be used.

B. Pursuant to Labor Code sections 1725.5 and 1771.1, no contractor or subcontractor may work on a public works project unless registered with the Department of Industrial Relations (DIR) as a Public Works Contractor for contracts awarded on/after April 1, 2015. General Contractors shall ensure all subcontractors executing work under the contract are properly registered with DIR and maintain active registration throughout the duration of the Project. All public works contractors and subcontractors to furnish Certified Payrolls and related records to the Agency's representative and shall also furnish electronic certified payroll records directly to the Labor Commissioner using the DLSE's online portal.

C. As a condition of payment, CONTRACTOR shall timely submit all required certified payroll records and related documentation. DISTRICT may withhold any portion of a payment, including the full amount, if CONTRACTOR fails to comply with prevailing wage or DIR requirements.

D. CONTRACTOR shall comply with all applicable apprenticeship requirements set forth in California Labor Code sections 1777.5 and 1777.6, including the employment of properly registered apprentices and payment of required apprenticeship contributions. CONTRACTOR shall ensure that all subcontractors also comply with such requirements. CONTRACTOR shall maintain and submit all required apprenticeship documentation upon request. DISTRICT may withhold payments or take other appropriate action for failure to comply with this Section.

10.05 CONTRACTOR shall comply with the provisions of the Labor Code of the State of California. CONTRACTOR shall defend, indemnify and hold the DISTRICT, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with applicable prevailing wage laws.

10.06 CONTRACTOR shall have no authority to bind DISTRICT in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against DISTRICT, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by DISTRICT. CONTRACTOR

shall not at any time or in any manner represent that CONTRACTOR or any of CONTRACTOR's officers, employees, or agents are in any manner officials, officers, employees or agents of DISTRICT.

11. Ownership of Documents; Audit.

11.01 All draft and final reports, plans, drawings, studies, maps, photographs, specifications, data, notes, manuals, warranties and all other documents of any kind or nature prepared, developed or obtained by CONTRACTOR in connection with the performance of Services performed for the DISTRICT shall become the sole property of DISTRICT, and CONTRACTOR shall promptly deliver all such materials to DISTRICT upon request. At DISTRICT's sole discretion, CONTRACTOR may be permitted to retain original documents, and furnish reproductions to DISTRICT upon request, at no cost to DISTRICT.

11.02 Subject to applicable federal and state laws, rules and regulations, DISTRICT shall hold all intellectual property rights to any materials developed pursuant to this Agreement. CONTRACTOR shall not use such data or documents for purposes other than the performance of this Agreement, nor shall CONTRACTOR release, reproduce, distribute, publish, adapt for future use or any other purposes, or otherwise use, any data or other materials first produced in the performance of this Agreement, nor authorize others to do so, without the prior written consent of DISTRICT.

11.03 CONTRACTOR shall retain and maintain, for a period not less than four years following termination of this Agreement, all-time records, accounting records and vouchers and all other records with respect to all matters concerning Services performed, compensation paid, and expenses reimbursed. At any time during normal business hours and as often as DISTRICT may deem necessary, CONTRACTOR shall make available to DISTRICT's agents for examination all of such records and shall permit DISTRICT's agents to audit, examine and reproduce such records.

12. Bond Requirements.

12.01 Purpose. This Section sets forth bonding and related security requirements applicable to the on-call potable water and sanitary sewer repair services to be performed by CONTRACTOR on an as-needed, time-and-materials basis under this Agreement. For purposes of this section, "Surety" means an admitted surety insurer authorized to transact surety business in the State of California. Each bond shall be issued by a Surety admitted in California and acceptable to DISTRICT and shall be on DISTRICT'S then-current bond forms and shall not be subject to any condition, limitation, or modification not expressly approved in writing by DISTRICT. CONTRACTOR shall pay all premiums and costs for required bonds. Bonds are in addition to, and not in limitation of, any other security, insurance, indemnity, or remedy available to DISTRICT under this Agreement or applicable law.

12.02 Condition Precedent to Work; Delivery of Bonds. As a condition precedent

to CONTRACTOR'S commencement of any Services, CONTRACTOR shall deliver to DISTRICT, in form and substance acceptable to DISTRICT, the bonds described in this Section, duly executed by CONTRACTOR as principal and by a Surety. DISTRICT may withhold issuance of any Task Order until all required bonds are received and approved. In the event of emergency Services requiring immediate response to protect public health, safety, or continuity of water operations, DISTRICT may authorize CONTRACTOR to proceed prior to delivery of bonds; provided, however, that CONTRACTOR shall deliver all required bonds within five (5) business days of such authorization, or as otherwise directed by DISTRICT. Failure to timely provide such bonds shall constitute a material breach.

12.03 Performance Bond. CONTRACTOR shall furnish a performance bond guaranteeing faithful performance of all obligations under this Agreement, including completion of all Services authorized by Task Orders issued during the term, in a penal sum equal to one hundred percent (100%) of the total not-to-exceed amount established under this Agreement (the "Performance Bond"). The Performance Bond shall also apply to and secure the performance of all authorized change orders, amendments, and modifications to any Task Order, including increases in scope, time, or compensation. In the event of emergency Services performed prior to issuance of a Task Order or formal amendment, the Performance Bond shall be deemed to apply to such Services once the associated Task Order or written authorization is issued, including any retroactive approvals. The Performance Bond shall remain in full force and effect through final completion and acceptance of all Services authorized under the applicable Task Order and satisfaction of all CONTRACTOR obligations that survive completion (including warranty and indemnity obligations to the extent applicable).

12.04 Payment Bond. CONTRACTOR shall furnish a payment bond guaranteeing payment in full for all labor, services, equipment, and materials furnished for the Services, in a penal sum equal to one hundred percent (100%) of the total not-to-exceed amount (the "Payment Bond"). The Payment Bond shall extend to all labor, materials, and services furnished pursuant to authorized change orders, amendments, and modifications to any Task Order. The Payment Bond shall further apply to emergency Services authorized by DISTRICT, including work performed prior to formal Task Order issuance, provided such work is subsequently documented and approved in writing. The Payment Bond shall be conditioned as required by applicable California law for public works and shall inure to the benefit of claimants as defined by law.

12.05 Maintenance Bond. CONTRACTOR shall furnish a maintenance bond guaranteeing the correction of defective work and warranty obligations arising under this Agreement in a penal sum equal to one hundred percent (100%) of the total not-to-exceed contract amount established under this Agreement (the "Maintenance Bond"). The Maintenance Bond shall remain in effect for the duration of the warranty period set forth in the Maintenance Bond, or such longer period as may be required by applicable law or manufacturer warranty requirements.

12.06 Maintenance of Bonds. CONTRACTOR shall maintain all required bonds

continuously in effect. If any bond is canceled, expires, is materially modified, or becomes insufficient due to an increase in the Task Order's not-to-exceed amount, CONTRACTOR shall immediately notify DISTRICT and, within five (5) business days (or sooner if required to avoid any lapse), deliver replacement or supplemental bonds meeting this Section. Failure to provide or maintain required bonds constitutes a material breach. In addition to any other remedies, DISTRICT may (a) suspend Services, (b) withhold payments otherwise due, and/or (c) terminate this Agreement for default, without waiving any rights against CONTRACTOR or the Surety.

12.07 Notice of Completion. If DISTRICT elects to record a Notice of Completion for any Task Order, final payment, including any retained funds applicable to such Task Order, shall be made in accordance with Section 4.05 of this Agreement, and if a Notice of Completion is recorded, not earlier than thirty-five (35) days after such recordation, as required by applicable law. DISTRICT shall have discretion to determine whether a Notice of Completion is appropriate for a given Task Order, consistent with applicable law and DISTRICT's administrative practices. CONTRACTOR shall cooperate with DISTRICT and promptly provide such information and documentation as may be reasonably required for the preparation and recordation of any Notice of Completion.

13. Miscellaneous Provisions.

13.01 This Agreement, which includes all attached exhibits, supersedes any and all previous agreements, either oral or written, between the parties hereto with respect to the rendering of Services by CONTRACTOR for DISTRICT and contains all of the covenants and agreements between the parties with respect to the rendering of such Services in any manner whatsoever. Any modification of this Agreement will be effective only if it is in writing signed by both parties.

13.02 CONTRACTOR shall not assign or otherwise transfer any rights or interest in this Agreement without the prior written consent of DISTRICT. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

13.03 CONTRACTOR shall timely file FPPC Form 700 Conflict of Interest Statements with DISTRICT if required by California law and/or the DISTRICT's conflict of interest policy.

13.04 If any legal action or proceeding, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs, in addition to any other relief to which that party may be entitled.

13.05 This Agreement is made, entered into and shall be performed in the County of Riverside in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California. The parties agree that the venue in any litigation between them shall be in Riverside County, California.

13.06 CONTRACTOR covenants that neither it nor any officer or principal of its firm has any interest, nor shall they acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of their Services hereunder. CONTRACTOR further covenants that in the performance of this Agreement, no person having such interest shall be employed by it as an officer, employee, agent, or subcontractor.

13.07 CONTRACTOR has read and is aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflicts of interest of public officers and employees. CONTRACTOR agrees that they are unaware of any financial or economic interest of any public officer or employee of the DISTRICT relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the DISTRICT may immediately terminate this Agreement by giving notice thereof. CONTRACTOR shall comply with the requirements of Government Code section 87100 et seq. and section 1090 in the performance of and during the term of this Agreement.

13.08 Improper Consideration. CONTRACTOR shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, services, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the DISTRICT in an attempt to secure favorable treatment regarding this Agreement or any contract awarded by DISTRICT. The DISTRICT, by notice, may immediately terminate this Agreement if it determines that any improper consideration as described in the preceding sentence was offered to any officer, employee or agent of the DISTRICT with respect to the proposal and award process of this Agreement or any DISTRICT contract. This prohibition shall apply to any amendment, extension or evaluation process once this Agreement or any DISTRICT contract has been awarded. CONTRACTOR shall immediately report any attempt by any DISTRICT officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from CONTRACTOR.

13.09 Severability. If any portion of this Agreement is declared invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the entire balance of this Agreement not so affected shall remain in full force and effect.

13.10 Covenant Against Discrimination. CONTRACTOR covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. CONTRACTOR shall take affirmative action to ensure that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin or ancestry.

13.11 Force Majeure. Neither party will be deemed in breach hereunder for any interruption or delay in the performance of its obligations hereunder if the interruption or

delay is due to unforeseen events which are beyond the reasonable control of such party, such as strikes, blockade, war, terrorism, riots, pandemics, or natural disasters, insofar as such an event prevents or delays the affected party from fulfilling its obligations and such party is not able to prevent or avoid it at a reasonable cost.

13.12 Confidentiality. All information gained or work product produced by CONTRACTOR in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to CONTRACTOR. CONTRACTOR shall not release or disclose any such information or work product to persons or entities other than DISTRICT without prior written authorization from the District General Manager.

CONTRACTOR, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Project Manager or unless requested by the DISTRICT's Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided CONTRACTOR gives DISTRICT notice of such court order or subpoena.

If CONTRACTOR, or any officer, employee, agent or subcontractor of CONTRACTOR, provides any information or work product in violation of this Agreement, then DISTRICT shall have the right to reimbursement and indemnity from CONTRACTOR for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of CONTRACTOR's conduct.

CONTRACTOR shall promptly notify DISTRICT should CONTRACTOR, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. DISTRICT retains the right, but has no obligation, to represent CONTRACTOR or be present at any deposition, hearing or similar proceeding. CONTRACTOR agrees to cooperate fully with DISTRICT and to provide DISTRICT with the opportunity to review any response to discovery requests provided by CONTRACTOR. However, this right to review any such response does not imply or mean the right by DISTRICT to control, direct, or rewrite said response.

13.13 Waiver. Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by DISTRICT of any work or Services by CONTRACTOR shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default

concerning the same or any other provision of this Agreement.

13.14 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

13.15 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purpose of this Agreement.

13.16 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

13.17 Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified neither party shall be responsible for the service of the other.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereby have made and executed this Agreement to be effective as of the day and year first above written.

**DISTRICT:**

MISSION SPRINGS WATER DISTRICT

By: \_\_\_\_\_

Print  
Name \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CONTRACTOR:**

TRI-STAR CONTRACTING II, INC.

By: \_\_\_\_\_

Print  
Name \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT “A”**

**SCOPE OF WORK, PROPOSAL, AND FEE SCHEDULE**

**(insert behind this page)**

# *Tri-Star Contracting II, Inc.*

**15501 Little Morongo Rd., Desert Hot Springs,**

**Phone (760) 251-5454    Fax (760) 251-5458**

**License # 909195 A    FED# 20-816-8300**

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Friday, May 29, 2026

## On-Call Potable Water and Sanitary Sewer Repair Services

### a. Cover Letter:

Tri-Star Contracting II, Inc. is a local Desert Hot Springs class A contracting company.

Tri-Star has an extensive history of civil work in the area and an understanding of MSWD's requirements for both construction of new improvements and repair of existing improvements. We have the crews and equipment to assist MSWD in your needs for repair services and has had many instances over the years of performing these services in the past. We have reviewed the specifications, contract, and bid documents associated with this project and are ready to perform the work needed by the district.

If you have any questions, please contact Jordan Willis at 760-251-5454 or via email [JWillis@tri-star.info](mailto:JWillis@tri-star.info)

### b. Understanding of the Project:

We have reviewed the project documents, and are confident that we will be able to perform the services requested by the district. We have the crews and equipment available for expedited response. Tri-Star has held this, and similar, contracts in the past for on-call repair services and we are familiar with the district's requirements, and expectations.

### c. Company Information:

Tri-Star Contracting II, Inc. performs grading, excavation, water/sewer main, storm drain, concrete & paving.

Tri-Star Contracting II, Inc.  
15501 Little Morongo Road  
Desert Hot Springs , CA 92240  
760-251-5454  
760-251-5458 Fax  
[jwillis@tri-star.info](mailto:jwillis@tri-star.info)

#### d. Skills & Licenses

Daniel Willis (Superintendent) 16 years of experience in the construction industry with a vast knowledge of all aspects of grading, excavation, sewer and water main repair and installation. Mr. Willis is confined space and trench safety and AQMD certified.

Victor Contreras (Foreman) 30+ years' experience as a heavy equipment operator and has been a lead foreman for Tri-Star Contracting II, Inc. since 2007. Mr. Contreras is 30hr OSHA certified along with confined space and trench safety and AQMD certified and oversees a crew of 4-7 operator/laborers.

Michael Carr (Foreman) 45+ years' experience as a heavy equipment operator and a lead grading foreman for Tri-Star Contracting II, Inc. since 2007 while overseeing a crew of 4-7 operators/laborers.

#### e. Experience and References

##### 1. City of Desert Hot Springs - Indian Ave Road Repairs – 2023/2024

Design and reconstruct Indian Ave after Tropical Storm Hilary, including locating and re-installation of watermain, fire hydrants. Build concrete storm channel under roadway, import fill and rebuild two lane road. Concrete and pave roadway, stripping and install cable railing.

Danny Porras - Assistant City Manager/City Engineer  
dporras@cityofdhs.org (760) 329-6411 ext 109

##### 2. Mission Springs Water District – 22/23, 23/24, 24/25, 25/26 On Call Potable Water and Sanitary Sewer Repair Services

- Emergency Sewer Repairs 1st St. 4th St. 6th St 7th St Between Palm Dr & Cactus Dr - 2022-2023

Remove and replace 342' 8" Sewer Main

- Well #22 Repair – 2024

Construct 12" pipe connection to include: Cut and remove existing steel pipe, remove existing thrust block, Weld on adapter, Provide and install 15' of 12" DIP, Provide and install (1) 12" 45 bend, connect 12" 45 to existing flange, Pour new thrust block.

Eric Weck - Engineering Manager  
eweck@mswd.org (760) 329-6448

##### 3. City of Palm Desert - 2025-2026 On-Call Maint. & Repairs

- Fred Waring Storm Drain Repair 2025

Remove and replace Pipe Full Street Crossing, remove existing pipe & replace (2) 75' runs of 19' x 30"

Elliptical Class III 1350-D Rubber Gasket RCP, Sawcut & Remove asphalt full depth 4" AC over 6" Base: 8' x 80', Grind for cap and pave 2" thick: 12' x 80', Includes R&R of cobble median

- One Quail Place – Partial Pond Demo - 2025

Demo & remove ponds on site

- Mid Valley Channel Clean-up 2025

Clear all brush and debris from 5 retention basins on the North side of Gerald Ford.

Randy Chavez - Director of Public Works  
rchavez@palmdesert.gov (760) 776-6462

## SCHEDULE OF VALUES

*Contractor must submit the following information below as part of their proposals.*

| EQUIPMENT DESCRIPTION                 | Make           | Model            | HOURLY RATE | OVERTIME RATE |
|---------------------------------------|----------------|------------------|-------------|---------------|
| Large Excavator                       | Hitachi        | 470              | \$287.50    |               |
| Small Excavator                       | John Deere     | 85G              | \$128.00    |               |
| Backhoe                               | John Deere     | 710G             | \$115.00    |               |
| Service Truck                         | Ford           | F550             | \$50.00     |               |
| Dump Truck                            | Volvo          | VLN300           | \$65.00     |               |
| Air Compressor                        | Atlascopo      |                  | \$35.00     |               |
| Dewatering Equipment                  |                |                  |             |               |
| By-pass Pump and Hoses                |                |                  |             |               |
|                                       |                |                  |             |               |
| <b>List all other equipment below</b> |                |                  |             |               |
| Excavator                             | John Deere     | 245G             | \$205.00    |               |
| Blade                                 | John Deere     | 722G             | \$185.00    |               |
| Backhoe                               | Caterpillar    | 430F             | \$105.00    |               |
| Skiploader                            | John Deere     | 210              | \$105.00    |               |
| Kubota                                | Kubota         | BX23700          | \$89.50     |               |
| Loader                                | John Deere     | 544L             | \$120.00    |               |
| Loader                                | Caterpillar    | 966K             | \$175.00    |               |
| Skid Steer                            | Caterpillar    | 289D             | \$110.00    |               |
| Asphalt Roller                        | Caterpillar    | CB214D           | \$95.00     |               |
| Asphalt Zipper                        | Asphalt Zipper | AZ400            | \$30.00     |               |
| Vacuum Trailer                        | Vermeer        |                  | \$139.50    |               |
| 4000 Gallon Water Truck               | Kenworth       | T800             | \$65.00     |               |
| Lowbed/Transport                      | Kenworth       | T800             | \$150.00    |               |
| Crew Trucks w/ Tools                  | Ford           | F550/350/250/150 | \$30.00     |               |
| Arc Welding Machine                   |                |                  | \$25.00     |               |
| Arrowboard                            |                |                  | \$25.00     |               |
| Whacker                               | Multiquip      | MTX70HD          | \$75.00     |               |
| Sweeper/Broom                         | Broce Broom    | BB250B           | 125.00      |               |

| Classifications               | Prevailing Wage (PW) Hourly Rate | PW - Overtime Rate (OT) | PW Double Time (DT) Rate | Contractor's Mark-Up in Percentage | Fully Burdened Rate | Fully Burdened OT Rate | Fully Burdened DT Rate |
|-------------------------------|----------------------------------|-------------------------|--------------------------|------------------------------------|---------------------|------------------------|------------------------|
|                               |                                  |                         |                          |                                    |                     |                        |                        |
| <b>Journey person</b>         |                                  |                         |                          |                                    |                     |                        |                        |
| Group 1                       | \$ N/A                           | \$ N/A                  | \$ N/A                   | \$ N/A                             | \$ N/A              | \$ N/A                 | \$ N/A                 |
| Group 2                       | N/A                              | N/A                     | N/A                      | N/A                                | N/A                 | N/A                    | N/A                    |
| Group 3                       | N/A                              | N/A                     | N/A                      | N/A                                | N/A                 | N/A                    | N/A                    |
| Group 4                       | N/A                              | N/A                     | N/A                      | N/A                                | N/A                 | N/A                    | N/A                    |
| Group 5                       | N/A                              | N/A                     | N/A                      | N/A                                | N/A                 | N/A                    | N/A                    |
| <b>Laborers</b>               |                                  |                         |                          |                                    |                     |                        |                        |
| General Foreman               | N/A                              | N/A                     | N/A                      | N/A                                | N/A                 | N/A                    | N/A                    |
| Foreman                       | N/A                              | N/A                     | N/A                      | N/A                                | N/A                 | N/A                    | N/A                    |
| Group 1 – General             | \$75.09                          | \$98.33                 | \$121.57                 | 60%                                | \$120.14            | \$157.33               | \$194.51               |
| Group 2 – Chute Man           | \$75.64                          | \$99.16                 | \$122.67                 | 60%                                | \$121.02            | \$158.66               | \$196.27               |
| Group 3 – Pipeline            | \$76.19                          | \$99.98                 | \$123.77                 | 60%                                | \$121.90            | \$159.97               | \$198.03               |
| Group 4 – Pipe Layer          | \$77.74                          | \$102.31                | \$126.87                 | 60%                                | \$124.38            | \$163.70               | \$202.99               |
| Group 5 – Blaster             | \$78.09                          | \$102.83                | \$127.57                 | 60%                                | \$124.94            | \$164.53               | \$204.12               |
| Apprentice (85%)              | \$59.04                          | \$80.07                 | \$101.10                 | 60%                                | \$94.46             | \$128.11               | \$161.76               |
| Operating Engineers           | See Attached                     | See Attached            | See Attached             | See Attached                       | See Attached        | See Attached           | See Attached           |
| General Foreman               | N/A                              | N/A                     | N/A                      | N/A                                | N/A                 | N/A                    | N/A                    |
| Foreman                       | N/A                              | N/A                     | N/A                      | N/A                                | N/A                 | N/A                    | N/A                    |
| Group 1 – Oiler               | N/A                              | N/A                     | N/A                      | N/A                                | N/A                 | N/A                    | N/A                    |
| Group 8 – Universal           | N/A                              | N/A                     | N/A                      | N/A                                | N/A                 | N/A                    | N/A                    |
| Group 10 – Mechanic/Certified | N/A                              | N/A                     | N/A                      | N/A                                | N/A                 | N/A                    | N/A                    |
| Carpenter                     | N/A                              | N/A                     | N/A                      | N/A                                | N/A                 | N/A                    | N/A                    |
| General Foreman               | N/A                              | N/A                     | N/A                      | N/A                                | N/A                 | N/A                    | N/A                    |
| Journeyman                    | N/A                              | N/A                     | N/A                      | N/A                                | N/A                 | N/A                    | N/A                    |
| Project Manager               | N/A                              | N/A                     | N/A                      | N/A                                | N/A                 | N/A                    | N/A                    |
| Pipe Layer                    | N/A                              | N/A                     | N/A                      | N/A                                | N/A                 | N/A                    | N/A                    |
| Equipment Operator            | N/A                              | N/A                     | N/A                      | N/A                                | N/A                 | N/A                    | N/A                    |

### On-Call Potable Water and Sanitary Sewer Repair Services

| Classifications                             | Prevailing Wage<br>(PW)<br>Hourly Rate | PW-Overtime<br>Rate (OT) | PW Double Time<br>(DT)<br>Rate | Contractor's<br>Mark-Up in<br>Percentage | Fully Burdened<br>Rate | Fully Burdened<br>OT Rate | Fully Burdened<br>DT Rate |
|---------------------------------------------|----------------------------------------|--------------------------|--------------------------------|------------------------------------------|------------------------|---------------------------|---------------------------|
| <b>Laborers</b>                             |                                        |                          |                                |                                          |                        |                           |                           |
| Group 1                                     | 75.09                                  | 98.33                    | 121.57                         | 60%                                      | 120.144                | 157.328                   | 194.512                   |
| Group 2                                     | 75.64                                  | 99.155                   | 122.67                         | 60%                                      | 121.024                | 158.648                   | 196.272                   |
| Group 3                                     | 76.19                                  | 99.98                    | 123.77                         | 60%                                      | 121.904                | 159.968                   | 198.032                   |
| Group 4                                     | 77.74                                  | 102.305                  | 126.87                         | 60%                                      | 124.384                | 163.688                   | 202.992                   |
| Group 5                                     | 78.09                                  | 102.83                   | 127.57                         | 60%                                      | 124.944                | 164.528                   | 204.112                   |
| <b>Operator Engineers</b>                   |                                        |                          |                                |                                          |                        |                           |                           |
| Group 3 - Bobcat/Skidsteer                  | 104.82                                 | 137.055                  | 169.29                         | 60%                                      | 167.712                | 219.288                   | 270.864                   |
| Group 4 - Mini Ex/ Roller                   | 106.31                                 | 139.29                   | 172.27                         | 60%                                      | 170.096                | 222.864                   | 275.632                   |
| Group 6 - Skiploader/Welding/Haul Truck     | 106.53                                 | 139.62                   | 172.71                         | 60%                                      | 170.448                | 223.392                   | 276.336                   |
| Group 8 - Backhoe/Grade Checker/Loader      | 106.64                                 | 139.785                  | 172.93                         | 60%                                      | 170.624                | 223.656                   | 276.688                   |
| Group 10 - Mechanic/Certified Welder        | 106.76                                 | 139.965                  | 173.17                         | 60%                                      | 170.816                | 223.944                   | 277.072                   |
| Group 12 - Excavator/Blade                  | 106.93                                 | 140.22                   | 173.51                         | 60%                                      | 171.088                | 224.352                   | 277.616                   |
| Non Production Foeman (non Prevailing Wage) | 84                                     | 126                      | 168                            | 60%                                      | 134.4                  | 201.6                     | 268.8                     |
| <b>Cement Mason</b>                         | 80.69                                  | 104.54                   | 128.39                         | 60%                                      | 129.104                | 167.264                   | 205.424                   |
| <b>Teamster</b>                             |                                        |                          |                                |                                          |                        |                           |                           |
| Group 3 - 2 Axel Water Truck/Dump Truck     | 82.03                                  | 102.965                  | 123.90                         | 60%                                      | 131.248                | 164.744                   | 198.24                    |
| Group 5 - 4 Axel Water Truck                | 82.25                                  | 103.295                  | 124.34                         | 60%                                      | 131.60                 | 165.272                   | 198.944                   |
| Group 6 - 4 or more axles                   | 82.28                                  | 103.34                   | 124.40                         | 60%                                      | 131.648                | 165.344                   | 199.04                    |
| <b>Apprentice (85%)</b>                     | 59.04                                  | 80.07                    | 101.10                         | 60%                                      | 94.46                  | 128.11                    | 161.76                    |
|                                             |                                        |                          |                                |                                          |                        |                           |                           |
|                                             |                                        |                          |                                |                                          |                        |                           |                           |
|                                             |                                        |                          |                                |                                          |                        |                           |                           |
|                                             |                                        |                          |                                |                                          |                        |                           |                           |

## **Scope of Work**

The Contractor shall provide all labor, equipment, materials, and supervision to perform maintenance and repair services associated with MSWD's on-call potable water and sanitary sewer repair services.

Although MSWD is attempting to identify the limits and services required, this should not unnecessarily limit the Contractor in the development of a scope it believes is necessary to meet MSWD's goals and objectives.

MSWD's water system consists of approximately 330-miles of water mains of various materials, age, and condition. Typical pipe materials include Asbestos Cement Pipe (ACP), Steel, Ductile Iron Pipe (DIP), and Polyvinyl chloride (PVC). Water mains range from 2-inch in size up to 24-inches. MSWD's main water system is broken down to eight primary elevations with 15 pressure zones within those elevations. MSWD also operates two smaller water systems within the Whitewater/North Palm Springs area. There are approximately 14,000 service connections within three water systems and are comprised of mainly copper service material with a small percentage of plastic service materials.

MSWD's wastewater collections system flows predominately by gravity to the Horton Wastewater Treatment Plant and consists of approximately 120-miles of Vitrified Clay Pipe (VCP) ranging in sizes from 8-inches to 36-inches. There are approximately 2,200 sewer manholes and 9,600 4 and 6-inch sewer connections in the wastewater system. MSWD also owns and operates two sewer lift stations.

MSWD desires to have contractors available on an on-call/emergency basis that can respond within a designated period to deal with water and sewer emergencies and any overflow repair work

The Contractor shall provide all labor, materials, equipment, and supervision to perform services which may include but not be limited to the excavation, procurement of materials, installation, backfill and paving and all other work necessary to complete the following types of work:

- The repair and construction of water steel pipe, DIP, ACP PVC, and other pipe materials ranging in size from 2-inch to 24-inch in diameter
- The repair and construction of water services, fire hydrant assemblies, and other appurtenant structures
- Dewatering of excavations
- The repair and construction of VCP material sewer mains and laterals ranging from 4-inch to 36-inch in diameter
- The repair and construction of sewer manhole and cleanouts
- The repair and construction of sewer laterals
- Bypass pumping
- Site remediation and cleaning
- Traffic Control

MSWD and Contractor agree that no specific quantity of work is guaranteed to be provided to the Contractor under the terms and conditions of this contract. MSWD does not guarantee that the Contractor will be assigned any specific project during the term of the contract. Services are to include provision of all labor, equipment, tools, supervision, and materials necessary to complete

the work. If necessary, MSWD may supply repair materials at its discretion. Unless indicated otherwise, all services provided shall be in accordance with the latest edition of the Greenbook: Standard Specifications for Public Works Construction. All work and general conditions shall be performed in accordance with the current Cal-OSHA requirements, , the State Water Resources Control Board Health Guidelines, and the American Water Works Association (AWWA) Standards. All costs for traffic control (including traffic control plan), street restoration (per applicable land use agency) and encroachment permits are the responsibility of the contractor.

### **Level of Maintenance**

All work shall be performed in a manner commensurate with community professional standards and with an ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances. Standards and frequencies may be modified as deemed necessary by MSWD for the proper maintenance and repair of the water and sewer infrastructure.

If, in the judgment of MSWD, the level of maintenance is less than that specified herein, MSWD shall, at its option, in addition to or in lieu of other remedies provided herein, withhold appropriate payment from the Contractor until services are rendered in accordance with specifications set forth within this document and providing no other arrangements have been made between the Contractor and MSWD. Failure to notify of a change and/or failure to perform an item or work on a scheduled day may, at MSWD's sole discretion, result in deduction of payment for that day, week, or month. Payment will be retained for work not performed until such time as the work is performed to MSWD standard.

The Contractor is required to correct deficiencies within the time specified by MSWD. If noted deficient work has not been completed, payment for subject deficiency shall be withheld and shall continue to be withheld until deficiency is corrected, without right to retroactive payments.

### **Workmanship and Supervision**

Unless otherwise stated, Contractor shall be responsible to provide all labor and materials to allow for successful Project completion.

MSWD may choose to reimburse the Contractor for materials that need to be procured. These instances shall be analyzed on a case -by -case basis and reimbursement for materials will need to be agreed upon in the Contractor's letter proposal prior to the commencement of work.

Receipts shall be required for reimbursements for materials purchased for projects. MSWD reserves the right to specify what type of material and/or equipment will be purchased per project. All equipment and material purchases shall be preapproved by MSWD. The Contractor shall charge the actual cost of materials to MSWD plus a maximum of 15% for overhead costs associated with procurement of materials.

MSWD reserves the right to purchase materials directly and make them available to the Contractor. In the event MSWD exercises the option to purchase the materials, the following conditions will apply:

- Contractor shall conform to all MSWD practices and procedures.
- All MSWD purchases will be for the sole expressed use of and for MSWD.
- The Contractor shall secure, store, inventory, distribute and control all materials entrusted to the Contractor's representatives.

- All materials and inventories shall be made available to MSWD upon request. The Contractor will reduce the unit cost for each maintenance task by MSWD's actual cost for the materials provided and used.

The Contractor represents and warrants that, at all times during the contract term, Contractor shall obtain, maintain, and keep in full force and effect all licenses, permits, certifications, professional qualifications, and approval required by applicable law to perform the services under said contract.

The Contractor shall maintain all work sites free of hazards to persons and/or property resulting from the Contractor's activities. Any hazardous condition noted by the Contractor, which is not a result of the Contractor's activities, shall be immediately reported to MSWD.

The Contractor shall, at its sole responsibility, remove and properly dispose of all debris arising from or related to the performance of the services described in this Scope of Work.

All work performed under this contract shall be performed in such a manner as to provide maximum safety for the public and, where applicable, comply with all safety standards required by CAL-OSHA. MSWD reserves the right to issue restraint or cease and desist orders to the Contractor when unsafe or harmful acts are observed or reported relative to the performance of the work under this contract.

The supervisor or person in charge and on site of any MSWD project shall have a smart phone capable of email.

The Contractor shall ensure that, at all times during work on any MSWD assigned project, an on-site supervisor who is fluent in English is present.

### **Working Hours**

Normal working hours shall be between the hours of 7:00 AM and 3:30 PM, Monday through Friday, unless otherwise stated by MSWD for emergency or standby services. The Contractor is subject to being contacted 24 hours a day, 7 days a week, 365 days a year to perform emergency repairs. These representatives for the Contractor shall respond to said emergency within two (2) hours from receiving notification. The Contractor shall notify MSWD immediately of any changes to the Contractor's representation.

### **Contractor's Office**

The Contractor shall designate a project supervisor or person in charge at all times and provide MSWD with written notice of such designation. The designated individual shall be available throughout the duration of the work.

The Contractor shall also provide the names and telephone numbers of at least two (2) qualified personnel available during emergency conditions and capable of mobilizing to the job site within two (2) hours of notification.

Unless otherwise stated by MSWD, there will be no on-site storage of equipment or materials on MSWD property or at District sites. Contractors will have full responsibility for maintaining an office and a storage facility. All vehicles and equipment used in conjunction with the work shall be

maintained in a neat, clean, orderly manner and shall be in good working order. MSWD may reject any vehicle or piece of equipment and order it removed if deemed unsafe.

### **Equipment**

All vehicles and equipment used in conjunction with the work shall be maintained in a neat, clean, and orderly manner and shall be in good working order. MSWD may reject vehicles or equipment and order it removed at their discretion.

### **Street Closures, Detours, Barricades**

Contractor shall be responsible for all traffic control and barricades necessary to perform the scope of work. Warning signs, lights, and devices shall be installed and displayed in compliance with the current edition of the "California Manual on Uniform Traffic Control Devices" (CA MUTCD) and "Work Area Traffic Control Handbook" (WATCHBOOK) for use in performance of work upon highways issued by the State of California, Department of Transportation.

### **Permits**

The Contractor shall be responsible for obtaining permits where required by federal, state, or local agencies as it pertains to the work being conducted.

### **Underground Excavations**

The Contractor shall be responsible for locating all underground utility lines to ensure the safety of his/her work crew and to protect, in place, existing utility equipment before commencing any excavation. Contractor should contact MSWD and Underground Service Alert ([www.digalert.org](http://www.digalert.org)) or call (811) at least forty-eight (48) hours before commencing any excavation, to locate underground service lines.

**EXHIBIT “B”**

**CERTIFICATES OF INSURANCE AND ENDORSEMENTS**

**(insert behind this page)**

**EXHIBIT “C”**

**GENERAL CONDITIONS**

**(insert behind this page)**

SECTION 2.1  
of  
GENERAL CONDITIONS

DEFINITIONS, TERMS, ABBREVIATIONS

2.1.01 Definitions - Wherever used in the Contract Documents, the following shall have the meanings indicated which shall be applicable to both the singular and plural thereof.

Acceptance, Final Acceptance - The formal action by the Owner accepting the Work as being complete.

Accepted Bid - The bid (proposal) accepted by the Owner.

Addenda - Written or graphic instruments issued prior to the opening of sealed bids, which modify or interpret the Contract Documents and Drawings by additions, deletions, clarifications or corrections.

Agreement - The written agreement (contract) executed between the Owner and the Contractor covering the performance of the Work.

Bid - The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

Bidder - Any person, firm or corporation submitting a Bid for the Work.

Bonds - Bid, Performance, and Payment Bonds and other instruments of security, furnished by the Contractor and his surety in accordance with the Contract Documents.

Change Order - A written order to the Contractor authorizing an addition, deletion or revision in the Work within the general scope of the Contract Documents or authorizing an adjustment in the Contract Price or Contract Time.

Contract Documents - The Contract Documents, including Advertisement for Bids, Information for Bidders, Bid, Bid Bond, Agreement, Payment Bond, Performance Bond, Insurance Certificates, Notice of Award, Notice to Proceed, Change Order, General Conditions, Supplemental General Conditions, Special Conditions, Detailed Technical Provisions, Drawings, and Addenda.

Contract Price - The total monies payable to the Contractor under the terms and conditions of the Contract Documents.

Contract Time - The number of calendar days stated in the Contract Documents for the completion of the Work.

Contractor - The person, firm or corporation with whom the Owner has executed the Agreement.

Detailed Technical Provisions - A part of the Contract Documents consisting of written descriptions of the technical nature of materials, equipment, construction system, standards and workmanship.

Drawings - The part of the Contract Documents, which show the characteristics, and scope of the Work to be performed and which have been prepared or approved by the Engineer.

Engineer - The person, firm or corporation named as such in the Contract Documents.

Field Order - A written order affecting a change in the Work not involving an adjustment in the Contract Price or an extension of the Contract Time, issued by the Engineer to the Contractor during construction.

Laboratory - The laboratory authorized by the Owner or the Owner's representative to test materials and work involved in the Project.

Manufacturer - A person, firm or corporation that fabricates, processes, or creates from raw materials or component parts, materials or equipment to be incorporated into the Project.

Notice of Award - The written notice of the acceptance of the Bid from the Owner to the successful Bidder.

Notice to Proceed - Written communication issued by the Owner to the Contractor authorizing him to proceed with the Work and establishing the date of commencement of the Work.

Owner - A public or quasi-public body or authority, corporation, association, partnership, or individual for whom the Work is to be performed.

Owner's Representative - The person, consultant, or engineering firm authorized by the Owner to represent him during the performance of the Work by the Contractor and until final acceptance. The Owner's Representative is referred to throughout the Contract Documents as if singular in number and masculine in gender. The Owner's Representative means the Owner's representative or his assistants.

Project - The undertaking to be performed as provided in the Contract Documents.

Resident Project Representative - The authorized representative of the Owner who is assigned to the Project site or any part thereof.

Shop Drawings - All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a Subcontractor, manufacturer, Supplier or distributor, which illustrate how specific portions of the Work shall be fabricated or installed.

Special Conditions - Modifications to Detailed Technical Provisions.

Specifications - The General Conditions, Supplemental General Conditions, Special Conditions, and Detailed Technical Provisions of these Contract Documents.

Subcontractor - An individual, firm or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the site.

Substantial Completion - That date as certified by the Engineer when the construction of the Project or a specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Project or specified part can be utilized for the purposes for which it is intended.

Supplemental General Conditions - Modifications to General Conditions that are specifically applicable to this Project.

Supplier - Any person or organization who supplies materials or equipment for the Work, including that fabricated to a special design, but who does not perform labor at the site.

Utility - Public or private fixed works for the transportation of fluids, gases, power, signals or communications.

Work - All labor necessary to produce the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in the Project.

Written Notice - Any notice to any party of the Agreement relative to any part of this Agreement in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at his last given address or delivered in person to said party or his authorized representative on the Work.

2.1.02 Terms - Wherever used in the Contract Documents, the terms "directed", "required", "permitted", "ordered", "designated", "prescribed", or terms of like import are used, it shall be understood that the direction, requirements, permission, order, designation, or prescription of the Owner's Representative is intended. Similarly, the terms "approved", "acceptable", "satisfactory", "or equal", or terms of like import shall mean approved by or acceptable to or satisfactory to the Owner's Representative, unless otherwise expressly stated.

The word "provide" shall be understood to mean furnish and install.

2.1.03 Abbreviations - Whenever used in the Contract Documents, the following abbreviations shall have the meanings indicated:

|        |                                                                    |
|--------|--------------------------------------------------------------------|
| AASHTO | American Association of State Highway and Transportation Officials |
| ACI    | American Concrete Institute                                        |
| AGA    | American Gas Association                                           |
| AGMA   | American Gear Manufacturer's Association                           |
| AI     | The Asphalt Institute                                              |

|                  |                                                                                                                                |
|------------------|--------------------------------------------------------------------------------------------------------------------------------|
| AIA              | American Institute of Architects                                                                                               |
| AIEE             | American Institute of Electrical Engineers                                                                                     |
| AISC             | American Institute of Steel Construction                                                                                       |
| AISI             | American Iron & Steel Institute                                                                                                |
| ANSI             | American National Standards Institute<br>(formerly USASI, USAU, ASA)                                                           |
| API              | American Petroleum Institute                                                                                                   |
| APWA             | American Public Works Association                                                                                              |
| AREA             | American Railway Engineering Association                                                                                       |
| ASA              | American Standards Association (now ANSI)                                                                                      |
| ASCE             | American Society of Civil Engineers                                                                                            |
| ASHRAE           | American Society of Heating, Refrigerating,<br>and Air Conditioning Engineers                                                  |
| ASME             | American Society of Mechanical Engineers                                                                                       |
| ASTM             | American Society for Testing and Materials                                                                                     |
| AWS              | American Welding Society                                                                                                       |
| AWWA             | American Water Works Association                                                                                               |
| CRSI             | Concrete Reinforcing Steel Institute                                                                                           |
| CPR              | Certified Payroll Records                                                                                                      |
| DIR              | California Department of Industrial Relations                                                                                  |
| IEEE             | Institute of Electrical and Electronics<br>Engineers                                                                           |
| LCP              | Labor Compliance Program                                                                                                       |
| NBFU             | National Board of Fire Underwriters                                                                                            |
| NEMA             | National Electrical Manufacturers Association                                                                                  |
| PCA              | Portland Cement Association                                                                                                    |
| SSPC             | Steel Structures Painting Council                                                                                              |
| UBC              | Uniform Building Code, Pacific Coast Building<br>Officials Conference of the International<br>Conference of Building Officials |
| U/L or UL        | Underwriters' Laboratories, Inc.                                                                                               |
| USASI or<br>USAS | United States of America Standards Institute<br>(now ANSI)                                                                     |

SECTION 2.2  
of  
GENERAL CONDITIONS

ADDITIONAL INSTRUCTIONS AND  
DETAIL DRAWINGS

2.2.01 SECTION NOT USED.

2.2.02 SECTION NOT USED.

SECTION 2.3  
of  
GENERAL CONDITIONS

SCHEDULES, REPORTS AND RECORDS

2.3.01 A preconstruction conference will be held prior to commencement of the Work. Attendees shall be the Contractor, his Subcontractors, if applicable, the Owner, the Engineer, representatives of Federal, State or local regulatory or enforcement agencies, and any other parties deemed appropriate by the Owner.

2.3.02 The Contractor shall submit to the Owner such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable as are required by the Contract Documents for the Work to be performed.

2.3.03 Prior to the start of construction, the Contractor shall submit a construction progress schedule to the Engineer for approval. Said schedule shall include, but is not limited to, the following information: Contractor's name, address and telephone number; project/contract number; date prepared; Engineer's name; Owner's name; date of Notice to Proceed; contract completion date; and, list of all important activities, including construction and material delivery, with starting and ending dates for each activity.

The schedule shall be prepared so that the Contractor can update it when significant changes in an activity time and/or completion time occur, as the Engineer may direct. After the Engineer approves the schedule, one (1) electronic copy shall be furnished to the Engineer for distribution. All costs for schedule preparation and printing are included in the Contractor's Bid.

The Engineer reserves the right to alter said schedule to prevent excessive public nuisance or to exclude areas where rights-of-way acquisition might still be in progress or provide timely facilities for testing and connection to other installations dependent upon this project.

2.3.04 Prior to starting construction, the Contractor shall submit to the Engineer for his approval a detailed breakdown of his cost estimate into the various elements of materials and construction operations. When approved, this breakdown will serve as a basis for the Engineer to determine partial payments.

2.3.05 Prior to the start of construction, the Contractor shall submit the dates at which special drawings will be required and the respective dates when applicable for submission of shop drawings, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.

SECTION 2.4  
of  
GENERAL CONDITIONS

DRAWINGS AND SPECIFICATIONS

2.4.01 SECTION NOT USED.

2.4.02 SECTION NOT USED.

2.4.03 SECTION NOT USED.

2.4.04 SECTION NOT USED.

SECTION 2.5  
of  
GENERAL CONDITIONS

SHOP DRAWINGS/MATERIAL SUBMITTALS

2.5.01 SECTION NOT USED.

2.5.02 SECTION NOT USED.

2.5.03 SECTION NOT USED.

2.5.04 SECTION NOT USED.

SECTION 2.6  
of  
GENERAL CONDITIONS

MATERIALS, SERVICES AND FACILITIES

2.6.01 It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the Work within the specified time.

2.6.02 Materials and equipment shall be so stored as to ensure the preservation of their quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work shall be located so as to facilitate prompt inspection. The Contractor shall be entirely responsible for damage or loss to material and equipment until the Work has been completed by the Contractor and accepted by the Owner.

2.6.03 Manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

2.6.04 Materials, supplies and equipment shall be in accordance with samples submitted by the Contractor and approved by the Engineer.

2.6.05 Materials, supplies or equipment to be incorporated into the Work shall not be purchased by the Contractor or the Subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

2.6.06 Whenever under this Agreement it is provided that the Contractor shall furnish materials or manufactured articles, or shall do work for which no detailed specifications are set forth, the materials or manufactured articles shall be of the best grade in quality and workmanship obtainable in the market from firms of established good reputation, or, if not ordinarily carried in stock, shall conform to the usual standards for first class materials or articles of the kind required, with due consideration of the use to which they are to be put. In general, the Work performed shall be in full conformity and harmony with the intent to secure the best standard of construction and equipment of the Work as a whole or in part.

2.6.07 All equipment, materials, and supplies to be incorporated in the Work shall be new, unless otherwise specified.

SECTION 2.7

of  
GENERAL CONDITIONS

INSPECTION AND TESTING

2.7.01 All materials and equipment used in the construction of the Project shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the Contract Documents.

2.7.02 The Owner shall provide all inspection and testing services not required by the Contract Documents. Performance of these tests and all costs will be borne by the Owner; except, the cost of any test which shows unsatisfactory results shall be borne by the Contractor.

2.7.03 The Contractor shall provide at his expense the testing and inspection services required by the Contract Documents.

2.7.04 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested, or approved by someone other than the Contractor, the Contractor will give the Engineer timely notice of readiness. The Contractor will furnish the Engineer the required certificates of inspection, testing or approval. The Contractor shall pay for all inspection fees imposed by public agencies other than the Owner.

2.7.05 Inspections, tests, or approvals by the Engineer or others shall not relieve the Contractor from his obligations to perform the Work in accordance with the requirements of the Contract Documents.

2.7.06 The Engineer and his representatives will at all times have access to the Work. In addition, authorized representatives and agents of any participating Federal or State agency shall be permitted to inspect all work, materials, and other relevant data and records. The Contractor will provide proper facilities for such access and observation of the Work and also for any inspection or testing thereof.

2.7.07 If any Work is covered contrary to the written instructions of the Engineer or work done for which the Contractor has not requested and received inspection, it must, if requested by the Engineer, be uncovered for his observation and replaced at the Contractor's expense.

2.7.08 If the Engineer considers it necessary or advisable that covered Work be inspected or tested by others, the Contractor, at the Engineer's request, will uncover, expose or otherwise make available for observation, inspection or testing as the Engineer may require that portion of the Work in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such Work is defective, the Contractor will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such Work is not found to be defective, the Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure,

observation, inspection, testing and reconstruction and an appropriate Change Order shall be issued.

2.7.09 Upon request of the Engineer, the Contractor shall furnish certification of compliance that fabricated or manufactured products conform to the standards of the industry as specified in these Contract Documents and that said fabricated or manufactured products were fabricated or manufactured under the quality control standards of the stated specifications of these Contract Documents.

SECTION 2.8  
of  
GENERAL CONDITIONS

SUBSTITUTIONS

2.8.01 Whenever a material, article or piece of equipment is identified in the Contract Documents by reference to brand name or catalog number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The Contractor may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the Contract Documents by reference to brand name or catalog number, and if, in the opinion of the Engineer, such material, article, or piece of equipment is of equal substance and function to that specified, the Engineer may approve its substitution and use by the Contractor. The Contractor warrants that if substitutes are approved, no major changes in the function or general design of the Project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract Price or Contract Time.

2.8.02 The Contractor's use of approved substitutions or equals shall not relieve the Contractor from compliance with the Contract Documents. The Contractor shall bear all extra expense resulting from providing or using approved substitutions or equals where they affect the adjoining or related work, including the expense of required engineering, redesigning, drafting and permits, where necessary, whether the Owner's approval is given before or after receipt of Bids.

The Contractor shall bear the cost of all engineering work associated with the review of submittals for substitutions and equals. The Contractor shall approve the engineering costs prior to the performance of the engineering work using the form entitled "Authorization of Engineering Costs for the Evaluation of Substitutions and Equals" found in the General Conditions of the Specifications. The Engineer will not perform the submittal review until authorization is given. If the Contractor does not provide this authorization, the submittal will be rejected.

Engineering costs associated with redesign of adjoining or related work due to Substitutions or Equals shall be approved in writing by the Contractor prior to the performance of the work. The Contractor shall approve the cost of the engineering work using the form entitled, "Authorization of Engineering Costs for Redesign due to Substitutions and Equals" found in the General Conditions of the Specifications. The Engineer will not perform the redesign until the authorization is given. If the Contractor does not provide this authorization, the submittal, which created the need for redesign, shall be rejected.

SECTION 2.9  
of  
GENERAL CONDITIONS

INTELLECTUAL PROPERTY, PATENTS, ROYALTIES AND INDEMNIFICATION

2.9.01 The Contractor shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and save the Owner harmless from loss on account thereof, including attorney's fees, except that the Owner shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified. However, if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Engineer.

2.9.02 Contractor shall be responsible at all times for compliance with applicable patents, copyrights, trademarks, and/or other intellectual property rights held by others encompassing, in whole or in part, any invention, design, process, product, device, material, article or arrangement used, directly or indirectly, in the performance of the Work or incorporated into the Work.

Contractor shall pay, and include in the Contract Sum, all royalties and license fees and assume all costs incident to the use in the performance of the Work or the incorporation into the Work of any invention, design, process, product, device, material, article or arrangement which is the subject of a patent right, copyright, trademark, and/or other intellectual property right held by others.

To the fullest extent permitted by law, Contractor shall save, defend, hold harmless, and fully indemnify the District and all its officers and employees connected with the Project, other parties designated in Article "Insurance for Others" of Section 00 73 16, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all damages, claims for damage, costs, or expenses in law or equity, including attorney's fees and costs, that may at any time arise or be set up for any infringement or unauthorized use of any patent rights, copyrights, trademarks or other intellectual property claims by any person in consequence of the use by the District, or any of its officers, agents, members, employee authorized representatives, or any other person deemed necessary by any of them acting within the scope of the duties entrusted to them, of articles to be supplied under the Contract and of which Contractor is not the patentee or assignee or does not have the lawful right to sell the same.

This indemnity provision is in addition to all other defense, hold harmless and indemnity clauses in the Contract Documents and shall survive Final Completion and termination of the Contract. If the District is enjoined from the operation or use of the Work, or any part thereof, as a result of any suits or claims for infringement or unauthorized use of a patent right, copyright, trademark, and/or other intellectual property right, Contractor shall, at its sole expense and at no cost to the District, take reasonable steps to procure the right to operate or use the Work. If Contractor cannot procure such right within a reasonable time, Contractor shall promptly, at Contractor's sole expense and at no cost to the District, (1) modify the Work, consistent with applicable requirements of the Contract Documents, so as to avoid infringement of any such intellectual

property right, or (2) replace said Work with work that meets applicable requirements of the Contract Documents and that does not infringe or violate any such intellectual property right.

SECTION 2.10  
of  
GENERAL CONDITIONS

SURVEYS, PERMITS, REGULATIONS

2.10.01 SECTION NOT USED.

2.10.02 SECTION NOT USED.

2.10.03 SECTION NOT USED.

SECTION 2.11  
of  
GENERAL CONDITIONS

PROTECTION OF WORK, PROPERTY  
AND PERSONS

2.11.01 The Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. He will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the Work and other persons who may be affected thereby, all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

2.11.02 The Contractor will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction, including the applicable provisions of the California Occupational Safety and Health Act of 1973, Part 1, Division 5, of the Labor Code §6300 et. seq. and the Construction Safety Orders of the Division of Industrial Safety. He will erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection. He will notify owners of adjacent utilities when prosecution of the Work may affect them.

2.11.03 The Contractor will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable, except damage or loss attributable to the fault of the Contract Documents or to the acts or omissions of the Owner or the Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor.

2.11.04 In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the Engineer or Owner, shall act to prevent threatened damage, injury or loss. He will give the Engineer prompt Written Notice of any significant changes in the Work or deviations from the Contract Documents caused thereby, and a Change Order shall thereupon be issued covering the changes and deviations involved.

2.11.05 Until the formal acceptance by the Owner of the performance of the Contractor hereunder, either by furnishing equipment and/or materials or by performance of Work, the Contractor shall have the charge and care thereof and shall bear the risk of injury or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the nonexecution of the Work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of that which he is to provide or complete hereunder occasioned by any of the above causes before completion and acceptance and shall bear the expense thereof. In case

of suspension of Work from any cause whatsoever, the Contractor shall be responsible for all equipment and/or materials then upon Owner property and shall properly store them, if necessary, and shall erect temporary structures where necessary in so doing. Nothing in these Contract Documents shall be considered as vesting in the Contractor any right of property in materials used after they have been attached or affixed to the Work or the soil upon Owner's real property, but all such materials shall, upon being so attached or affixed, become the property of the Owner.

2.11.06 Prior to the beginning of any work, the Contractor shall obtain, at its sole expense, all permits required by the California Division of Occupational Safety and Health (Cal/OSHA) for permit-required activities associated with the Project and shall provide copies of such permits to the Owner upon request.

2.11.07 In accordance with Government Code Section 4216 and following, Contractor shall notify Underground Service Alert at least two days prior to excavation with a description of the area to be excavated to determine if any participant has a subsurface installation in the area.

2.11.08 The Contractor shall not commence any excavation over five (5) feet in depth until he has submitted to the Owner a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during any such excavation and such plan has been accepted by the Owner or by a registered civil or structural engineer, employed by the Owner, to whom authority to accept has been delegated. If such plan varies from the shoring system standards promulgated by the Department of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed and paid by the Contractor. Nothing in this section shall be deemed to allow the use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders. Nothing contained in this article shall be construed as relieving the Contractor of full responsibility for providing shoring, bracing, sloping, or other provisions, which are adequate for worker protection.

2.11.09 A working platform for any scaffolding swung or suspended from an overhead support more than ten (10) feet above the ground, floor or area in which an employee on the scaffolding might fall, shall have a safety rail of wood or other equally rigid material of adequate strength; such rail shall be in compliance with the applicable orders of the Division of Industrial Safety.

The suspended scaffolding shall be fastened so as to prevent the same from swaying from the building, or structure, or other object being worked on from such scaffolding. All parts of such scaffolding shall be of sufficient strength to support, bear, withstand with safety, any weight of persons, tools, appliances or materials which might reasonably be placed on it or which are to be supported by it.

In addition to the duties imposed by any law regulating or relating to scaffolding, the Contractor who uses scaffolding in connection with the construction, alteration, repairing, painting, cleaning, or doing of any work upon any building or structure shall furnish safety lines to tie all hooks and hangers back on the roof of such building or structure and provide safety lines hanging from the roof, securely tied thereto, for all swinging scaffolds which rely upon stirrups of the single point of suspension type to support the working platform. One such line shall be provided for each workman with a minimum of one line between each pair of hangers or falls.

Platforms or floors of scaffolding shall be not less than fourteen (14) inches in width and shall be free from knots or fractures impairing their strength.

The use of lean-to scaffolds, sometimes known as jack scaffolds, as support for scaffolds is prohibited.

2.11.10 In addition to any requirements imposed by law, the Contractor shall shore up, brace, underpin, and protect, as may be necessary, all foundations and other parts of all existing structures adjacent to and adjoining the site of the work which are in any way affected by the excavations or other operations connected with the performance of the Work. Whenever notice is required to be given by the Owner or the Contractor to any adjacent or adjoining landowner or other party before commencement of any work, such notice shall be given by the Contractor.

2.11.11 The Contractor shall not load nor permit any part of any structure to be loaded with any weights that will endanger the structure, nor shall subject any part of the Work to stresses or pressures that will endanger it.

2.11.12 The Contractor will be required to certify that he has an Injury, Illness Prevention Plan for his company as required by Labor Code Section 6401.7.

The names and telephone numbers of at least two medical doctors practicing in the vicinity and the telephone number of the local ambulance service shall be prominently displayed adjacent to telephones and carried by the supervisor of the work being performed.

The Contractor shall provide assurance to the District that all equipment has proper permits issued by the South Coast Air Quality Management District, or the local air quality district.

In addition, the Contractor shall be required to post notices required by Proposition 65 for any hazardous chemicals listed by the State Health Department, which are brought onto the property as part of the construction program.

2.11.13 Any public works contract of a local public entity, which involves digging trenches or other excavations that extend deeper than four feet below the surface, shall contain a clause, which provides the following:

- a. That the contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:
  - (1) Material the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, and that is required to be removed to Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
  - (2) Subsurface or latent physical conditions at the site differing from those indicated.

- (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.
- b. That the public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the contract.
  - c. That, in the event that a dispute arises between the public entity and the contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the work, the contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The contractor shall retain any and all rights provided either by contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.
  - d. Differing Conditions shall not include:
    - 1. All that is indicated in or reasonably interpreted from the Contract Documents or Reference Documents;
    - 2. All that could be seen on Site;
    - 3. Conditions that are materially similar or characteristically the same as those indicated or described in the Contract Documents or Reference Documents.
    - 4. Conditions where the location of a building component is in the proximity where indicated in or reasonably interpreted from the Contract Documents or Reference Documents.
  - e. Contractor shall be responsible for the safety and protection of the affected area of the Work for the duration of the District's investigation of potential Differing Conditions.
  - f. Failure by Contractor to comply with the requirements of this Paragraph concerning the timing and content of any notice of unforeseen or differing site conditions or of any request for adjustment of the Contract Sum and/or Contract Time based on alleged unforeseen or differing site conditions shall be deemed a waiver of any Contract Claim or subsequent proceedings (e.g., Government Code Claims and litigation) by Contractor for adjustments to the Contract Sum or Contract Time arising from or relating to such conditions.

SECTION 2.12  
of  
GENERAL CONDITIONS

SUPERVISION BY CONTRACTOR

2.12.01 The Contractor shall supervise and direct the Work. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor shall employ and maintain on the Work a qualified supervisor or superintendent who shall have been designated in writing by the Contractor as the Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the Contractor and all communications given to the supervisor shall be as binding as if given to the Contractor. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the Work.

2.12.02 The Contractor shall employ only such foremen, mechanics and laborers as are competent and skilled in their respective lines of work, and whenever the Engineer shall notify the Contractor that any man on the Work is, in his opinion, incompetent, unfaithful, intemperate, or disorderly or refuses to carry out the provisions of this Contract, or uses threatening or abusive language to any person on the Work representing the Owner, or is otherwise unsatisfactory, such man shall be discharged immediately from the Work and shall not be re-employed upon it except with the consent of the Engineer. Such discharge shall not be the basis of any claim for damages against the Owner or his agents.

2.12.03 In the event that the Contractor proposes to substitute a key team member during the performance of the Contract, Contractor shall submit to the District Representative, at least seven days prior to engaging the person, an Experience Statement form for the District's review and acceptance. Any proposed substitution is subject to the approval of the District Representative based upon qualifying experience on similar projects as set forth in the bid documents for the project. Failure to obtain the District's acceptance shall not constitute a cause for delay. In addition, the District may issue an order to stop the work under these General Conditions until such time as the Contractor engages persons possessing skills and qualifications acceptable to the District.

2.12.04. Whenever the Work of a Subcontractor is dependent upon the work of other Subcontractors or Contractors, then Contractor shall require the Subcontractor to:

1. coordinate its Work with the dependent work;
2. provide necessary dependent data, connections, miscellaneous items, and other transitional requirements;
3. supply and install items to be built into dependent work of others;
4. make provisions for dependent work of others;
5. examine dependent drawings and specifications and submittals;
6. examine previously placed dependent work;
7. check and verify dependent dimensions of previously placed work;
8. notify Contractor of previously placed dependent work or dependent dimensions which are unsatisfactory or will prevent a satisfactory installation of its Work; and

9. not proceed with its Work until the unsatisfactory dependent conditions have been corrected.

2.12.05. Contractor shall immediately comply with and prosecute orders and instructions including, but not limited to, Change Orders, RFI replies and Clarifications given by the District in accordance with the terms of the Contract, but nothing herein contained shall be taken to relieve Contractor of any of its obligations or liabilities under the Contract, or of performing its required detailed direction and supervision.

2.12.06. Contractor shall at all times permit the District, its agents and authorized representatives to: (i) visit and inspect the Work, the materials and the manufacture and preparation of such materials; (ii) subject them to inspection at all such places; and (iii) reject the Work if it does not conform to the requirements of the Contract Documents. This obligation of Contractor shall include maintaining proper facilities and safe access for such inspection. Where the Contract requires Work to be tested or inspected, it shall not be covered up before inspection and approval by the District.

2.12.07. Whenever Contractor desires to perform Work outside regular working hours, Contractor shall give notice to the District of such desire and request and obtain the District's written permission at least 3 working days in advance, or such other period as may be specified, except in the event of an emergency prior to performing such Work so that the District may make the necessary arrangement for testing and inspection.

2.12.08. If Contractor receives a written notice from the District that a Clarification is forthcoming from the District, all Work performed before the receipt of the Clarification shall be coordinated with the District to minimize the effect of the Clarification on Work in progress. All affected Work performed after receipt of the District's written notice but before receipt of the Clarification and not so coordinated shall be at Contractor's risk.

2.12.09. During all disputes or disagreements with the District, Contractor shall carry on the Work and adhere to the progress schedule required to be submitted under the requirements of the Contract Documents. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the District and Contractor may otherwise agree in writing.

SECTION 2.13  
of  
GENERAL CONDITIONS

CHANGES IN THE WORK

2.13.01 This Agreement may not be altered in whole or in part except by modification in writing and properly executed by all parties hereto or by a change order.

2.13.02 The Owner may at any time, as the need arises, order changes within the scope of the Work without invalidating the Agreement. If such changes increase or decrease the amount due under the Contract Documents, or in the time required for performance of the Work, an equitable adjustment shall be authorized by Change Order.

2.13.03 The Engineer, also, may at any time, by issuing a Field Order, make changes in the details of the Work. The Contractor shall proceed with the performance of any changes in the Work ordered by the Engineer unless the Contractor believes that such Field Order entitles him to a change in Contract Price or Time, or both, in which event he shall give the Engineer Written Notice thereof within seven (7) days after the receipt of the ordered change. Thereafter the Contractor shall document the basis for the change in Contract Price or Time within thirty (30) days. The Contractor shall not execute such changes pending the receipt of an executed Change Order or further instruction from the Owner.

SECTION 2.14  
of  
GENERAL CONDITIONS

CHANGES IN CONTRACT PRICE

2.14.01 The Contract Price may be changed only by a Change Order. The value of any Work covered by a Change Order or of any claim for increase or decrease in the Contract Price shall be determined by one or more of the following methods in the order of precedence listed below:

- a. Unit prices. Original bid items. Unit prices previously approved are acceptable for pricing changes of original bid items. However, when changes in quantities exceed fifteen (15) percent of the original bid quantity and the total dollar change of that bid item is significant, the Owner shall review the unit price to determine if a new unit price should be negotiated.
- b. An agreed lump sum.
- c. The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work. In addition, there shall be added an amount to be agreed upon but not to exceed fifteen (15) percent of the actual cost of the Work to cover the cost of general overhead and profit.

When all or any part of the work covered by Change Order is performed by any of the Contractor's Subcontractors, the markups established in this section shall be applied to the Subcontractor's actual cost of such work, to which a markup of five (5) percent on the subcontracted portion of the work may be added by the prime Contractor.

SECTION 2.15  
of  
GENERAL CONDITIONS

TIME FOR COMPLETION AND  
LIQUIDATED DAMAGES

2.15.01 The date of beginning and the time for completion of the Work are essential conditions of the Contract Documents and the Work embraced shall be commenced on or before a date specified in the Notice to Proceed. The Contractor should be aware that time is of the essence for this project.

2.15.02 The Contractor will proceed with the Work at such rate of progress to ensure full completion within the Contract Time. It is expressly understood and agreed, by and between the Contractor and the Owner, that the Contract Time for the completion of the Work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the Work.

2.15.03 If the Contractor shall fail to complete the Work within the Contract Time, or requests for extension of time approved by the Owner, then the Contractor will pay to the Owner the amount for liquidated damages as specified in the Agreement for each calendar day that the Contractor shall be in default after the time stipulated in the Contract Documents.

2.15.04 The Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the Work is due to the following, and the Contractor has promptly given Written Notice of such delay to the Owner or Engineer.

- a. To any preference, priority or allocation order duly issued by the Owner.
- b. If delays are caused by unforeseen events beyond the control of both the Contractor and the Owner, such delays will entitle the Contractor to an extension of time as provided herein, but the Contractor shall not be entitled to damages or additional payment due to such delays. War, government regulations, labor disputes, strikes, fires, floods, adverse weather necessitating cessation of work, other similar action of the elements, inability to obtain materials, equipment, labor, required "extra work," or other specific reasons as may be further described in the specifications may constitute such a delay.

No extension of time will be granted for a delay caused by the inability to obtain materials unless the Contractor furnishes to the Engineer documentary proof of the inability to obtain such materials in a timely manner in accordance with the sequence of the Contractor's operations and the approved construction schedule.

- c. To any delays of Subcontractors occasioned by any of the causes specified in paragraphs 2.15.04a and 2.15.04b of this article.

- d. If delays beyond the Contractor's control are caused by reasons other than those mentioned above, but substantially equal in gravity to those enumerated, and an extension of time is deemed by the Engineer to be in the best interests of the Owner, an extension of time may be granted, but the Contractor shall not be entitled to damages or additional payment due to such delays.

If delays beyond the Contractor's control are caused solely by action or inaction by the Owner, such delays will entitle the Contractor to an extension of time.

- e. Extensions of time, when granted, will be based upon the effect of delays on the project as a whole and will not be granted for noncontrolling delays to minor included portions of work unless it can be shown that such delays did, in fact, delay the progress of the project as a whole.
- f. If the Contractor desires payment for a delay or an extension of time, he shall, within thirty (30) days after the beginning of the delay, file with the Owner a written request and report as to the cause and extent of the delay. The request for payment or extension must be made at least fifteen (15) days before the specified completion date. Failure by the Contractor to file these items within the times specified will be considered grounds for refusal by the Owner to consider such request.

2.15.05 In case the Work called for under this Contract is not completed within the time limit stipulated herein, the Owner shall have the right, in lieu of assessing liquidated damages, to extend the time of completion thereof. If the time limit be so extended, the Owner shall have the right to charge to the Contractor and to deduct from the final payment for the Work, the actual cost to the Owner of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the Contract and which accrue during the period of such extension, except that the cost of final surveys and preparation of final estimate and the cost accruing by reason of unavoidable delays shall not be included in such charges.

SECTION 2.16  
of  
GENERAL CONDITIONS

CORRECTION OF WORK

2.16.01 The Contractor shall promptly remove from the premises all Work rejected by the Engineer for failure to comply with the Contract Documents, whether incorporated in the construction or not, and the Contractor shall promptly replace and re-execute the Work in accordance with the Contract Documents and without expense to the Owner and shall bear the expense of making good all Work of other Contractors destroyed or damaged by such removal or replacement.

2.16.02 All removal and replacement Work shall be done at the Contractor's expense. If the Contractor does not take action to remove such rejected Work within ten (10) days after receipt of Written Notice, the Owner may remove such Work and store the materials at the expense of the Contractor.

SECTION 2.17  
of  
GENERAL CONDITIONS

SUBSURFACE CONDITIONS AND  
EXAMINATION OF CONTRACT DOCUMENTS

2.17.01 The Contractor represents that he has carefully examined the Contract Documents and the site where the Work is to be performed and that he has familiarized himself with all local conditions and Federal, State and local laws, ordinances, rules and regulations that may affect performance of the Work in any manner. The Contractor further represents that he has studied all surveys and investigation reports governing subsurface and latent physical conditions pertaining to the job site; that he has performed such additional surveys and investigations as he deems necessary to complete the Work at the Contract Price; and, that he has correlated the results of all such data with the requirements of the Contract Documents. The submittal of a Bid shall be conclusive evidence that the Contractor has investigated and is satisfied as to the conditions to be encountered and as to the character, quality and scope of the Work.

2.17.02 The Drawings for the Work show conditions as they are supposed or believed by the Engineer to exist; but it is not intended or to be inferred that the conditions as shown thereon constitute a representation that such conditions actually exist. The Owner and the Engineer shall not be liable for any loss sustained by the Contractor as a result of any variance of the conditions as shown in the Drawings and the actual conditions revealed during the progress of the Work or otherwise.

Where the Owner or the Engineer or their consultants have made investigations of subsurface conditions in areas where the Work is to be performed, such investigations were made only for the purpose of study and design. The conditions indicated by such investigations apply only at the specific location of each boring or excavation at the time the borings or excavations were made. Where such investigations have been made, the Contractor may inspect the records as to such investigations subject to and upon the conditions hereinafter set forth. The inspection of the records shall be made at the office of the Engineer.

The records of such investigations are not a part of the Agreement and are shown solely for the convenience of the Contractor. It is expressly understood and agreed that the Owner, the Engineer and their consultants assume no responsibility whatsoever in respect to the sufficiency or accuracy of the investigations; the records thereof; or of the interpretations set forth therein or made by the Owner's consultants, the Engineer or his consultants in the use thereof by the Engineer, and there is no warranty or guarantee, either express or implied, that the conditions indicated by such investigations or records thereof are representative of those existing throughout such areas, or any part thereof, or that unlooked for developments may not occur, or that materials other than, or in proportions different from, those indicated may not be encountered.

When a log of test borings showing a record of the data obtained by the investigation of subsurface conditions by the Owner, the Engineer or their consultants is included with the Drawings, it is expressly understood and agreed that said log of test borings does not constitute a part of the

Agreement, represents only the opinion of the Owner or the Engineer or their consultants as to the character of the materials encountered by them in the test borings, is included in the Drawings only for the convenience of the Contractor, and its use is subject to all of the conditions and limitations set forth in this article.

2.17.03 The availability or use of information described in this article is not to be construed in any way as a waiver of the provisions of Section 2.17.01 and the Contractor is cautioned to make such independent investigations and examinations as he deems necessary to satisfy himself as to conditions to be encountered in the performance of the Work.

2.17.04 No information derived from such inspection of records of investigations or compilation thereof made by the Owner, Engineer, or their consultants will in any way relieve the Contractor from any risk or from properly fulfilling the terms of the Agreement.

SECTION 2.18  
of  
GENERAL CONDITIONS

SUSPENSION OF WORK,  
TERMINATION AND DELAY

2.18.01 The Owner may suspend the Work or any portion thereof for a period of not more than ninety (90) days or such further time as agreed upon by the Contractor, by Written Notice to the Contractor and the Engineer which notice shall fix the date on which Work shall be resumed. The Contractor will resume that Work on the date so fixed. The Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension.

2.18.02 If the Contractor is adjudged a bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the Contractor or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to Subcontractors or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the Work or if he disregards the authority of the Engineer, or if he otherwise violates any provision of the Contract Documents, then the Owner may, without prejudice to any other right or remedy and after giving the Contractor and his surety a minimum of ten (10) days from delivery of a Written Notice, terminate the services of the Contractor and take possession of the Project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and finish the Work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Project, including compensation for additional professional services, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor will pay the difference to the Owner. Such costs incurred by the Owner will be determined by the Engineer and incorporated in a Change Order.

2.18.03 Where the Contractor's services have been terminated by the Owner, said termination shall not affect any right of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the Owner due to the Contractor will not release the Contractor from compliance with the Contract Documents.

2.18.04 After ten (10) days from delivery of a Written Notice to the Contractor and the Engineer, the Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate the Agreement. In such case, the Contractor shall be paid for all Work executed and any expense sustained plus reasonable profit. The Owner's authority and responsibility with respect to termination for convenience of owner or upon breach of contract are set forth in more detail in Section 2.35 of these General Conditions.

2.18.05 If, through no act or fault of the Contractor, the entire Work is suspended for a period of more than ninety (90) days by the Owner or under an order of court or other public authority, or by request of litigation relating to the Project, or the Engineer fails to act on any request for payment within thirty (30) days after it is submitted, or the Owner fails to pay the Contractor substantially the sum approved by the Engineer or awarded by arbitrators within thirty (30) days of its approval and presentation, then the Contractor may, after ten (10) days from delivery of a Written Notice to the Owner and the Engineer, terminate the Agreement and recover from the Owner payment for all Work executed and all expenses sustained. In addition and in lieu of terminating the Agreement, if the Engineer has failed to act on a request for payment or if the Owner has failed to make any payment as aforesaid, the Contractor may upon ten (10) days Written Notice to the Owner and the Engineer stop the Work until he has been paid all amounts then due, in which event and upon resumption of the Work, Change Orders shall be issued for adjusting the Contract Price or extending the Contract Time or both to compensate for the costs and delays attributable to the stoppage of the Work.

2.18.06 If the performance of all or any portion of the Work is suspended, delayed, or interrupted as a result of a failure of the Owner or Engineer to act within the time specified in the Contract Documents, or if no time is specified, within a reasonable time, an adjustment in the Contract Price or an extension of the Contract Time, or both, shall be made by Change Order to compensate the Contractor for the costs and delays necessarily caused by the failure of the Owner or Engineer.

SECTION 2.19  
of  
GENERAL CONDITIONS

PAYMENTS TO CONTRACTOR

2.19.01 SECTION NOT USED

2.19.02 SECTION NOT USED

2.19.03 SECTION NOT USED

2.19.04 SECTION NOT USED

2.19.05 SECTION NOT USED

2.19.06 SECTION NOT USED

2.19.07 SECTION NOT USED

2.19.08 SECTION NOT USED

SECTION 2.20  
of  
GENERAL CONDITIONS

ACCEPTANCE OF FINAL  
PAYMENT AS RELEASE

2.20.01 The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor other than claims in stated amounts as may be specifically excepted by the Contractor for all things done or furnished in connection with this Work and for every act and neglect of the Owner and others relating to or arising out of this Work. Any payment, however, final or otherwise, shall not release the Contractor or his sureties from any obligations under the Contract Documents or the Performance Bond and Payment Bond.

SECTION 2.21  
of  
GENERAL CONDITIONS

INSURANCE

2.21.01 The Contractor shall not commence any work under the Contract Documents until he obtains at his own expense all required insurance. Such insurance must have the approval of the Owner as to Company, limits, form and amount. The Contractor shall not permit any Subcontractor to commence work on the Project until the Subcontractor has also complied with these insurance requirements. The types of insurance, which the Contractor shall secure and maintain for the full Contract time, are Workers' Compensation Insurance, Employer's Liability Insurance, Commercial General Liability Insurance, Automobile Liability Insurance, Builder's Risk "All Risk" Insurance, and Contractor's Pollution Liability Insurance as hereinafter specified. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from his operations under the Contract Documents.

All policies required by this Section shall be primary insurance as to the Owner so that coverage held by the Owner will not contribute to any loss under the Contractor's insurance using the ISO endorsement CG 20 01 04 13 or coverage at least as broad.

Premiums for said insurance shall be paid for by the Contractor.

2.21.02 Before commencing any work, the Contractor shall submit written evidence that he and all Subcontractors have obtained for the Contract time full Worker's Compensation Insurance coverage, as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. **Waiver of Subrogation** (also known as Transfer of Rights of Recovery Against Others to Us): The Contractor hereby agrees to waive rights of subrogation to obtain endorsement necessary to affect this waiver of subrogation in favor of the Owner, its directors, officers, employees, and authorized volunteers, for losses paid under the terms of this coverage which arise from work performed by the named insured for the Owner; this provision applies regardless of whether or not the Owner has received a waiver of subrogation from the insurer.

2.21.03 Before commencing any work, the Contractor shall procure for the entire Contract time full Commercial General Liability Insurance, Automobile Liability Insurance coverage, and Contractor's Pollution Liability as hereinafter specified. Such insurance shall insure the Contractor and all Subcontractors for all claims for personal injury, including sickness and death, and all claims for destruction of or damage to property, including loss of use, arising out of or in connection with any operations under the Contract Documents, whether such operations be by the Contractor or by any Subcontractor under the Contractor, or by anyone directly or indirectly employed by the Contractor or by any Subcontractor.

Such Commercial General Liability Insurance shall be written with a limit of liability of not less than five million dollars (\$5,000,000) per occurrence or the full per occurrence limits of the

policies available, whichever is greater for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit or products-completed operations aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (coverage as broad as the ISO CG 25 03, or ISO CG 25 04 endorsement, or insurer's equivalent endorsement provided to the District) or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit. Should the Contractor maintain insurance coverage exceeding the specified amount, any such additional coverage shall still benefit the Owner.

Such Commercial General Liability Insurance shall also be written for all damages arising out of injury to or destruction of property of others, arising directly or indirectly out of or in connection with the performance of the Work under the Contract Documents and in any one occurrence, including explosion, collapse and underground exposure.

Contractor's Pollution Liability – (optional: if project involves environmental hazards) with limits no less than \$5,000,000 per occurrence or claim, and \$10,000,000 policy aggregate.

Such Automobile Liability Insurance shall be written with a limit of liability of not less than one million dollars (\$1,000,000) for all damages arising out of bodily injury, including sickness and death, at any time resulting therefrom, sustained by any one person in any one occurrence, and a limit of liability of not less than two million dollars (\$2,000,000) aggregate for any such damages sustained by two or more persons in any one occurrence. Such automobile liability insurance shall be written with a limit of liability of not less than one million dollars (\$1,000,000) for all damages arising out of injury to or destruction of property of others, arising directly or indirectly out of or in connection with the performance of the Work under the Contract Documents and in any one occurrence, including explosion, collapse and underground exposure.

If the Contractor maintains broader coverage and or/higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum of insurance and coverage shall be available to the District.

Coverage for Commercial General Liability Insurance, Contractor's Pollution Liability Insurance and Automobile Liability Insurance shall be at least as broad as the following:

- a. Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 00 01).
- b. Insurance Services Office (Form CA 00 01), covering Symbol 1 (any auto) with a limit of one million dollars (\$1,000,000) for bodily injury and property damage each accident.
- c. Excess Liability Insurance (if necessary) - The limits of insurance required in this agreement may be satisfied by a combination of primary, umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of

the District (if agreed to in a written contract or agreement) before the District's own primary or self-insurance shall be called upon to protect it as a named insured.

Any deductible or self-insured retention must be declared to and approved by the District. At the option of the District, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its directors, officers, employees, agents and volunteers; or the contractor shall procure a bond guaranteeing payment of losses and related investigations, administration and defense expenses.

The Commercial General Liability Insurance policy and Contractor's Pollution (if necessary) are to contain, or be endorsed to contain, the following provisions:

The policy for such insurance shall include contractual coverage sufficiently broad to cover the Contractor's indemnification agreement contained in Section 2.24 excepting 2.24.04 of these General Conditions. The District, its directors, officers, employees, and authorized volunteers are to be given insured status at least as broad as ISO endorsement CG 20 10 11 85; or both CG 20 10 10 01 and CG 20 37 10 01 (or the CG 20 10 07 04 and CG 20 37 07 04 (or earlier edition date) specifically naming all of the District parties required in this agreement, or using language that states "as required by contract"). All Subcontractors hired by Contractor must also have the same forms or coverage at least as broad; as respects (via CG 20 38 04 13): liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; and automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the District, its directors, officers, employees, or authorized volunteers.

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. The Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in the favor of the District for all work performed by the Contractor, its employees, agents and subcontractors. this provision applies regardless of whether or not the District has received a waiver of subrogation from the insurer.

2.21.04 Until the completion and final acceptance by the Owner of all the work under and implied by this agreement, the work shall be under the Contractor's responsible care and charge. The Contractor shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by causes of any nature whatsoever.

If applicable, the Contractor shall provide and maintain **Builder's Risk** (course of construction) or an installation floater (for materials and equipment) covering all risks of direct physical loss, damage or destruction to the work in the amount specified in the General Conditions, to insure against such losses until final acceptance of the work by Owner. Such insurance shall insure at least against the perils of fire and extended coverage, theft, vandalism and malicious mischief, and collapse. The policy shall be endorsed with Owner, its directors, officers, employees, and authorized volunteers named as loss payee, as their interest may appear. The making of progress payments to the Contractor shall not be construed as creating an insurable interest by or for Owner

or be construed as relieving the Contractor or his/her subcontractors of responsibility for loss from any direct physical loss, damage or destruction occurring prior to final acceptance of the work by Owner. The policy must specify that coverage is to include all materials and equipment to be incorporated in the Project while at the construction site and while in transit.

Such policy shall be endorsed with the District, the Owner, the Owner's Representative, the Engineer and their consultants and each of their directors, officers, employees, and authorized volunteers named as loss payee, as their interest may appear. The making of progress payments to the Contractor shall not be construed as creating an insurable interest by or for the District or be construed as relieving the Contractor or his/her subcontractors of responsibility for loss from any direct physical loss, damage or destruction occurring prior to final acceptance of the work by the District. A maximum deductible amount of five thousand dollars (\$5,000.00) on all perils will be allowed. Also, the insurer shall waive all rights of subrogation.

If the Owner determines not to require the Contractor to procure such insurance, the Contract price shall be reduced by the amounts set forth in the bid items for the premium for such insurance.

If the Owner determines to require the Contractor to procure such insurance, such insurance shall be endorsed with the District, the Owner, the Owner's Representative, the Engineer and their consultants and each of their directors, officers, employees, and authorized volunteers named as loss payee, as their interest may appear. The policy or policies for such insurance may provide for a deductible amount not to exceed five (5) percent of the Contract price. As provided in Section 7104 of the Public Contracts Code, the Contractor is responsible for the cost of repairing or restoring work up to five (5) percent of the contract amount.

2.21.05 Contractor shall furnish the Owner with copies of certificates and amendatory endorsements affecting coverage required by this contract. All certificates and endorsements are to be received and approved by the Owner before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Owner reserves the right to require complete, certified copies of all required insurance policies, including policy declaration pages and endorsement pages, required by these specifications, at any time. Failure to continually satisfy the insurance requirements is a material breach of contract.

**Acceptability of Insurers** - Any insurance carrier providing insurance coverage required by the Contract Documents shall be authorized to do business in the State of California unless waived, in writing, by the District's Contracts Analyst. Carrier(s) shall have an A.M. Best rating of no less than an A: VII or better.

**Evidences of Insurance** - Prior to execution of the agreement, the Contractor shall file with District a certificate of insurance (Acord Form 25 or equivalent) signed by the insurer's representative evidencing the coverage required by this agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative and evidence of waiver of rights of subrogation against the District. Such evidence shall also include (1) attached additional insured endorsements with primary & non-contributory wording, (2) Workers' Compensation waiver of subrogation, and (3) a copy of the Commercial General Liability declarations or

endorsement page listing all policy endorsements, and confirmation that coverage includes or has been modified to include required provisions. The District reserves the right to obtain complete, certified copies of all required insurance policies at any time and the Contractor shall provide the same within five (5) days of such request. Failure to continually satisfy the insurance requirements is a material breach of contract.

**Continuation of Coverage** - The Contractor shall, upon demand of the District deliver evidence of coverage showing continuation of coverage for at least ten (10) years after completion of the project. The Contractor further waives all rights of subrogation under this agreement. When any of the required coverages expires during the term of this agreement, the Contractor shall deliver the renewal certificate(s) including the general liability additional insured endorsement and evidence of waiver of rights of subrogation against District (if builder's risk insurance is applicable) to District at least ten (10) days prior to the expiration date.

The Contractor shall, upon demand of District, deliver to District copies such policy or policies of insurance and the receipts for payment of premiums thereon.

The District reserves the right to modify these insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other circumstances.

SECTION 2.22  
of  
GENERAL CONDITIONS

CONTRACT SECURITY

2.22.01 The Contractor shall within thirty (30) days after the receipt of the Notice of Award furnish the Owner with a Performance Bond in penal sum equal to the amount of the Contract Price and a Payment Bond in penal sum equal to one-hundred (100) percent of the amount of the Contract Price, requiring the performance by the Contractor of all undertakings, covenants, terms, conditions and agreements of the Contract Documents, and upon the payment by the Contractor to all subcontractors, persons supplying labor and materials in the prosecution of the Work provided by the Contract Documents.

2.22.02 Bonds shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the state in which the Work is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570 and by California law. The expense of these Bonds shall be borne by the Contractor. Bonds to be placed with insurers with a current A.M. Best's rating of no less than A: VII or better.

2.22.03 If at any time a surety on any such Bond is declared a bankrupt or loses its right to do business in the state in which the Work is to be performed or is removed from the list of Surety Companies accepted on Federal Bonds, Contractor shall within ten (10) days after notice from the Owner to do so, substitute an acceptable Bond (or Bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums on such Bond shall be paid by the Contractor. No further payments shall be deemed due nor shall they be made until the new surety or sureties shall have furnished an acceptable Bond to the Owner.

2.22.04 The Performance Bond and the Payment Bond must remain in effect throughout the period for performance of the Work and through the time of final payment by the Owner, and the Performance Bond must remain in effect for a period of one (1) year from the date of approval of the work by the Board of Directors of Owner, which is the period of the Contractor's warranty, or as modified under the Supplemental General Conditions. If a change order results in an increased contract amount, an updated bond must be submitted to reflect the revised total contract value.

SECTION 2.23  
of  
GENERAL CONDITIONS

ASSIGNMENTS AND BANKRUPTCY

2.23.01 The Contractor shall not sell, transfer, assign or otherwise dispose of the Agreement or any portion thereof, or of his right, title or interest therein, or his obligations thereunder, without written consent of the Owner.

2.23.02 In the event of bankruptcy of the Contractor, whether voluntary or involuntary, this Agreement is automatically terminated, and the Contractor is entitled to no further payments over and above the reasonable value of the actual work completed at that time.

SECTION 2.24  
of  
GENERAL CONDITIONS

INDEMNIFICATION

2.24.01 The Contractor and any Subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable during the term of this agreement and associated with the work performed thereunder, will indemnify, defend and hold harmless the Owner and any of their directors, independent contractors, agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the Work, provided that any such claims, damage, loss or expense is attributable to personal injury, bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom; and is caused in whole or in part by any act or omission of the Contractor, any Subcontractor, any supplier, anyone directly or indirectly employed by any of them or anyone for whose acts or omissions any of them may be liable, but not including the sole or active negligence or willful misconduct of the Owner.

Each of the indemnified parties named in this Section shall be entitled to designate the attorney of their choice and indemnitor agrees to keep Owner's attorney advised as to the status of all claims, damages, losses, expenses and litigation which may arise hereunder.

2.24.02 In any and all claims against the Owner or any of their directors, independent contractors, agents or employees, by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefits acts.

2.24.03 The obligation of the Contractor under this paragraph shall not extend to the liability of the Engineer, his agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications.

2.24.04 The Contractor shall indemnify, defend and save the Owner, the Owner's Representative, the Engineer, their consultants, and each of their directors, independent contractors, officers, employees and agents harmless from all costs, losses, expenses, damages, attorneys' fees, and other costs, including all costs of defense, which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the Work and all of Contractor's obligations under the Agreement, including but not limited to, Contractor's failure to complete any portion of the Work by the time specified in the Contract Documents. Such costs, expenses, and damages shall include all costs incurred by the Owner, the Owner's Representative, the Engineer, and their consultants to defend against any claims, stop notices, or lawsuits based thereon in which any of them is made a party.

Each of the indemnified parties named in this section shall be entitled to designate the attorney of their choice and the indemnitor agrees to pay the fee of each such attorney so designated.



SECTION 2.25  
of  
GENERAL CONDITIONS

SEPARATE CONTRACTS

2.25.01 The Owner reserves the right to let other contracts in connection with this Project. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their Work and shall properly connect and coordinate his Work with theirs. If the proper execution or results of any part of the Contractor's Work depends upon the Work of any other Contractor, the Contractor shall inspect and promptly report to the Engineer any defects in such Work that render it unsuitable for such proper execution and results.

2.25.02 The Owner may perform additional Work related to the Project by himself, or he may let other Contracts containing provisions similar to these. The Contractor will afford the other Contractors who are parties to such Contracts (or the Owner, if he is performing the additional Work himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of Work and shall properly connect and coordinate his Work with theirs.

2.25.03 If the performance of additional Work by other Contractors or the Owner is not noted in the Contract Documents prior to the execution of the Contract, Written Notice thereof shall be given to the Contractor prior to starting any such additional Work. If the Contractor believes that the performance of such additional Work by the Owner or others involves him in additional expense or entitles him to an extension of the Contract Time, he may make a claim therefor as provided in Sections 2.14, 2.15, and 2.18.

SECTION 2.26  
of  
GENERAL CONDITIONS

SUBCONTRACTING

2.26.01 SECTION NOT USED.

2.26.02 SECTION NOT USED.

2.26.03 SECTION NOT USED.

2.26.04 SECTION NOT USED.

2.26.05 SECTION NOT USED.

2.26.06 SECTION NOT USED.

SECTION 2.27  
of  
GENERAL CONDITIONS

ENGINEER'S AUTHORITY

2.27.01 The Engineer shall act as the Owner's representative during the construction period. He shall decide questions which may arise as to quality and acceptability of materials furnished and Work performed. He shall interpret the intent of the Contract Documents in a fair and unbiased manner. The Engineer will make visits to the site and determine if the Work is proceeding in accordance with the Contract Documents.

2.27.02 The Contractor will be held strictly to the intent of the Contract Documents in regard to the quality of materials, workmanship and execution of the Work. Inspections may be at the factory or fabrication plant of the source of material supply.

2.27.03 The Engineer will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.

2.27.04 The Engineer shall promptly make decisions relating to interpretation of the Contract Documents.

2.27.05 Any plan or method of Work suggested by the Engineer but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Engineer and the Owner shall assume no responsibility therefor.

2.27.06 Engineer's authority and responsibility with respect to Resident Project Representation are as set forth in Section 2.33 of these General Conditions.

SECTION 2.28  
of  
GENERAL CONDITIONS

LAND AND RIGHTS-OF-WAY

2.28.01 Prior to issuance of Notice to Proceed, the Owner shall obtain land and all work shall be performed within existing public rights-of-way for carrying out the Work to be performed pursuant to the Contract Documents. Right-of-way limits are shown on the Drawings.

2.28.02 The Contractor shall provide at his own expense and without liability to the Owner any additional land and access thereto that the Contractor may desire for temporary construction facilities, or for storage of materials.

2.28.03 Contractor shall confine his equipment, the storage of materials and equipment and the operations of his workmen to areas permitted by law, ordinances, permits, or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with materials or equipment.

2.28.04. Notwithstanding the designation of Contract limits or the indication of temporary fences or barricades, the provisions of the Contract Documents governing certain portions or phases of the Work may require that certain operations be carried out beyond such designated limits. In all cases, the Work shall be constructed solely within the boundaries described in the Contract Documents. Contractor shall coordinate with the District to obtain in advance of said operations all necessary permits, rights-of-way, or easements, and shall give proper notice thereof to owners of affected properties in accordance with section 832 of the California Civil Code. Contractor shall obtain all such permits, rights-of-way and easements at no cost to the District.

2.28.05. Pumping, draining and control of surface and ground water and excavating or other earthwork shall be carried out so as to avoid endangering the Work or adjacent facility or property, or interrupting, restricting or otherwise infringing or interfering with the use thereof. Contractor shall conform to the Code and applicable laws and regulations and shall obtain all permits necessary to perform grading or excavation or dispose of surface or ground water or excavated materials at the Site.

2.28.06. Contractor shall not load nor permit any part of any structure to be loaded in a manner that will endanger the structure, nor shall Contractor subject part of the Work or adjacent property to stresses or pressures that will endanger it.

2.28.07. Contractor shall assume full responsibility and shall promptly settle all claims for damage to areas within the Contract limits, or to adjoining areas or the owners or occupants thereof, resulting from the performance of the Work.

SECTION 2.29  
of  
GENERAL CONDITIONS

GUARANTEE

2.29.01 The Contractor shall guarantee that all materials and equipment furnished will be new unless otherwise specified.

2.29.02 The Contractor shall guarantee all materials and equipment furnished and Work performed for a period of one (1) year from the date of acceptance by the Board of Directors of Owner. The Contractor warrants and guarantees for a period of one (1) year from the date of acceptance by the Board of Directors of Owner that the completed work is free from all defects due to faulty materials or workmanship and the Contractor shall promptly make such corrections as may be necessary by reasons of such defects including the repairs of any damage to other parts of the work resulting from such defects. The Owner will give notice of observed defects with reasonable promptness. In the event that the Contractor should fail to make such repairs, adjustments, or other Work that may be made necessary by such defects, the Owner may do so and charge the Contractor the cost thereby incurred. The Performance Bond shall remain in full force and effect throughout the guarantee period.

SECTION 2.31  
of  
GENERAL CONDITIONS

TAXES

2.31.01 The Contractor shall be responsible for paying all taxes applicable during the performance of the Work or portions thereof, whether or not said taxes were in effect on or increased after the date of Bid opening including, but not limited to, all sales, consumer, use and other similar taxes assessed by Federal, State or local authorities where the Work is performed.

2.31.02 The terms of these Contract Documents may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to these Contract Documents, the private party may be subjected to the payment of personal property taxes levied on such interest.

SECTION 2.32  
of  
GENERAL CONDITIONS

CONFLICT

2.32.01 SECTION NOT USED.

2.32.02 SECTION NOT USED.

SECTION 2.33  
of  
GENERAL CONDITIONS

RESIDENT PROJECT REPRESENTATIVE

2.33.01 The Engineer will furnish a Resident Project Representative and Assistants to assist the Engineer in carrying out his responsibilities at the Project sites. The duties, responsibilities, and limitations of authority of any such Resident Project Representative and Assistants are herein set forth.

2.33.02 The Resident Project Representative is the Engineer's agent and will act as directed by and under the supervision of the Engineer. He will confer with the Engineer regarding his actions. His dealings in matters pertaining to the on-site Work shall, in general, be only with the Engineer and the Contractor. His dealings with Subcontractors shall only be through or with the full knowledge of the Contractor or his superintendent. He will generally communicate with the Owner only through or as directed by the Engineer.

2.33.03 The duties and responsibilities of the Resident Project Representative will be as follows:

- a. Schedules - Review the progress schedule, schedule of Shop Drawing submissions, and schedule of values prepared by the Contractor and consult with the Engineer concerning their acceptability.
- b. Conferences - Attend preconstruction conferences. Arrange a schedule of progress meetings and other job conferences as required in consultation with the Engineer and notify those expected to attend in advance. Attend meetings and maintain and circulate copies of minutes thereof.
- c. Liaison -
  - (1) Serve as the Engineer's liaison with the Contractor, working principally through the Contractor's superintendent and assist him in understanding the intent of the Contract Documents. Assist the Engineer in serving as Owner's liaison with the Contractor when Contractor's operations affect Owner's on-site operations.
  - (2) As requested by the Engineer, assist in obtaining from the Owner additional details or information, when required at the job site for proper execution of the Work.
  - (3) Alert the Contractor directly and through his superintendent, to the hazards involved in accepting or acting upon instructions from the Owner or others, except instructions transmitted through the Engineer or himself.

- d. SECTION NOT USED
- e. SECTION NOT USED
- f. Interpretation of Contract Documents - Transmit to the Contractor the Engineer's clarifications and interpretations of the Contract Documents.
- g. Modifications - Consider and evaluate the Contractor's suggestions for modifications in Drawings or Specifications and report them with recommendations to the Engineer.
- h. Records -
  - (1) Maintain at the job site orderly files for correspondence, reports of job conferences, shop drawings and samples submissions, reproductions of original Contract Documents including all addenda, change orders, field orders, additional Drawings issued subsequent to the execution of the Agreement, the Engineer's clarifications and interpretations of the Contract Documents, progress reports, and other Project-related documents.
  - (2) Keep a diary or logbook, recording hours on the job site, weather conditions, data related to questions of extras or deductions, list of visiting officials, daily activities, decisions, observations in general and specific observations in more detail as in the case of observing test procedures. Send copies to the Engineer.
  - (3) Record names, addresses and telephone numbers of all the Contractors, Subcontractors, and major Suppliers of equipment and materials.
- i. Reports -
  - (1) Furnish Engineer periodic reports as required of progress of the Work and the Contractor's compliance with the approved progress schedule and schedule of Shop Drawing submissions.
  - (2) Consult with the Engineer in advance of scheduled major tests, inspections or start of important phases of the Work.
- j. Payment Requisitions - Review applications for payment with the Contractor for compliance with the established procedure for their submission and forward them with recommendations to the Engineer, noting particularly their relation to the schedule of values, Work completed and materials and equipment delivered at the site.
- k. Guarantees, Certificates, Maintenance and Operation Manuals - During the course of the Work, verify that guarantees, certificates, maintenance and operation manuals and other data required to be assembled and furnished by the Contractor are applicable to the items actually installed; and deliver this material to the Engineer for his review and forwarding to the Owner prior to final acceptance of the Project.

1. Completion -

- (1) Before the Engineer issues a Certificate of Substantial Completion, submit to the Contractor a list of observed items requiring correction.
- (2) Conduct final inspection in the company of the Engineer, Owner and Contractor and prepare a final list of items to be corrected.
- (3) Verify that all items on the final list have been corrected and make recommendations to the Engineer concerning acceptance.

2.33.04 Except upon written instructions of the Engineer, the Resident Project Representative shall not:

- a. Authorize any deviation from the Contract Documents or approve any substitute materials or equipment.
- b. Undertake any of the responsibilities of the Contractor, Subcontractors, or Contractor's superintendent.
- c. Expedite Work for the Contractor.
- d. Advise on or issue directions relative to any aspect of the means, methods, techniques, sequences or procedures of construction unless such is specifically called for in the Contract Documents.
- e. Advise on or issue directions as to safety precautions and programs in connection with the Work.
- f. Authorize the Owner to occupy the Project in whole or in part.
- g. Participate in specialized field or laboratory tests.

SECTION 2.34  
of  
GENERAL CONDITIONS

LEGAL RELATIONS AND RESPONSIBILITY

2.34.01 The Contractor shall keep himself fully informed of all existing and future State and Federal laws and all county and city ordinances and regulations which in any manner affect the conduct of the Work, and all of such orders and decrees of bodies or tribunals having any jurisdiction or authority over same. If any discrepancy or inconsistency is discovered in the Contract Documents or Agreement for the Work in relation to any such law, ordinance, regulation, order or decree, he shall forthwith report the same to the Engineer in writing. He shall at all times observe and comply with and shall cause all his agents and employees to observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees, and shall protect, defend and indemnify the Owner, the Engineer, and all of its and their officers and agents against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by himself or his employees.

If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations and without giving notice to the Owner, the Contractor shall bear all costs arising therefrom.

The Contractor's attention is directed to Division 2, Part 7, Chapter 1 of the Labor Code of California and especially to Article 2 (Wages); and Article 3 (Working Hours).

- a. Wages to be paid for a day's work to all classes of laborers, workers, or mechanics on the work contemplated by the contract, shall be not less than the prevailing rate for a day's work in the same trade or occupation on the locality within the State where the work hereby contemplated is to be performed as determined by the State of California Director of Industrial Relations pursuant to his authority under Labor Code section 1720 et. seq. Each laborer, worker, or mechanic employed by a Contractor or by any Subcontractor shall receive the wages herein provided for. The Contractor shall pay up to two hundred (\$200.00) per day penalty for each worker paid less than the prevailing rate of per diem wages. The difference between the prevailing rate of per diem wages and the wage paid to each worker shall be paid by the Contractor to the worker. NOTE: an error on the part of the awarding body does not relieve the Contractor from responsibility for payment of the prevailing wage of per diem wages and penalties pursuant to Labor Code section 1720 – 1781 and 1813 – 1815.
- b. In accordance with Sections 1773.1 and 1773.8 of the Labor Code the Contractor shall pay travel and subsistence payments to each workman needed to execute the Work as such travel and subsistence payments are defined in the applicable collective bargaining assurances filed with the Department of Industrial Relations.
- c. Pursuant to Labor Code Section 1810 et. seq., it is stipulated hereby that eight (8) hours labor constitutes a legal day's work hereunder.

- d. Pursuant to Labor Code Section 1813, it is stipulated hereby that the Contractor shall, as a penalty to the Owner, forfeit up to twenty-five (25) Dollars for each workman employed in the execution of this Contract by the Contractor or by any Subcontractor hereunder for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, unless such worker receives compensation for all hours worked in excess of 8 hours per day at not less than 1.5 times the base rate of pay (or 2 times base rate on Sunday/Holidays), in violation of the provisions of Article 3 (commencing with Section 1810), Chapter 1, Part 7, Division 2, of the Labor Code.
- e. The Contractor is responsible for compliance with Labor Code Section 1777.5 and the California Code of Regulations 230 – 230.2 for all apprenticeable occupations, whether employed by the Contractor or by the Subcontractors. Included in these requirements is the Contractor's requirement to provide notification to the appropriate apprenticeship committees, pay training fund contributions, utilize apprentices in a minimum ratio of not less than once apprentice for each five journeyman hours (unless an exception is granted in accordance with Labor Code 1777.5) and/or request for the dispatch of apprentices.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

Willful violations of Section 1777.5 will result in a forfeiture of \$100.00 for each calendar day of noncompliance which shall be withheld from progress payments by Owner upon notice from the Department of Industrial Relations. (Labor Code 1777.7).

- f. Attention is directed to the provisions of Labor Code 1725.5 requiring all contractors and subcontractors who bid or work on a public works project to be registered with the Department of Industrial Relations (DIR) via its online portal: <https://efiling.dir.ca.gov/PWCR/ActionServlet?action=displayPWCRRegistrationForm>

2.34.02 In the event of any legal or equitable proceeding to enforce the terms or conditions of this Agreement, the parties agree that venue shall be in the judicial district in which the office of the Owner is located.

2.34.03 If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

All clauses contained in the Contract Documents shall be interpreted in a manner, which renders them valid under applicable provisions of State, and Federal law where a consistent interpretation is possible.

2.34.04 In the event any arbitration proceeding, administrative proceeding or litigation in law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions or performance of this Agreement, the prevailing party shall be entitled to the award of a reasonable attorney's fee and the costs of the proceeding, which shall be determined by the Court or the presiding officer at the proceeding, authorized to make a determination of the issues at the hearing level, or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled.

If any party to this Agreement becomes a party to any litigation, administrative proceeding or arbitration concerning the enforcement or interpretation of the provisions of this Agreement or the performance of this Agreement by reason of any act or omission of another party or authorized representatives of another party to this Agreement and not by any act or omission of the party that becomes a party to that proceeding or any act or omission of its authorized representatives, the party that causes another party to become involved in the proceeding shall be liable to that party for reasonable attorney fees and costs of the proceeding incurred by that party in the proceeding. The award of reasonable attorney fees and costs shall be determined as provided above.

In the event opposing parties have each prevailed on one or more causes of action actually contested or admitted by pleadings or prehearing documents on file, the presiding officer may offset such fees and costs between prevailing parties after considering the necessity of the proceeding and the importance of the issue or issues upon which a party has prevailed.

2.34.05 It shall be the responsibility of the contractor to maintain an accurate payroll record showing the name, address, Social Security Number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each employee in accordance with Labor Code 1776, and to insure that each subcontractor on the project also complies with all provisions of Labor Code 1776 and this contract provision.

All payroll records shall be certified as accurate by the applicable contractor or subcontractor or its agent having authority over such matters.

The Contractor shall submit to the Agency's designated Labor Compliance Officer a copy of Certified Payroll Records as enumerated by Labor Code 1776 for the Contractor's, as well as Subcontractor's, employees working on the project work. The Agency shall make no payment to the Contractor until the certified records are received by the Agency's designated Labor Compliance Administrator/Department/Division. Each contractor performing work under contract shall keep an accurate payroll record, showing the name, address, social security number, work week, and the actual per diem wages to each journeyman, apprentice, worker, or other employee employed by him in connection with the public work. Such records shall be certified and available for inspection at all reasonable hours at the principal place of the Contractor as required by Labor Code section 1776. Contractor and Subcontractor shall keep accurate project records such as Daily Logs and Reports and may be asked to provide copies of such records per the State of California Public Records Act, Government Code section 6250 – 6276.48. Pursuant to SB854, all public works contractors and subcontractors shall also furnish electronic certified payroll records directly to the Labor Commissioner. For all projects awarded on or after April 1, 2015, the contractors and

subcontractors must furnish electronic certified payroll records to the Labor Commissioner using the online portal: <http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>

Records made available to the general public in accordance with the prior paragraph shall be marked or obliterated in such a manner that the name and address of the contractor and/or subcontractor and the name, address and telephone number of all employees do not appear on the modified records.

Contractor shall file a certified copy of any requested payroll records with the entity that requested such records within ten (10) days of the date a written request for payroll records has been received.

Failure of contractor to comply with any provision of this Section or Labor Code 1776 within ten (10) days of the date a written request for compliance is received shall result in a forfeiture of up to one hundred dollars (\$100.00) per calendar day or portion thereof, for each worker, until strict compliance is obtained. Upon notification by the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the Department of Industrial Relations, the Owner shall withhold penalties under this Section or Labor Code 1776 from the contractor's progress payments then due.

2.34.06 By entering into this contract or any subcontract pursuant to this contract, the Contractor and each Subcontractor who performs work or supplies goods, services or materials hereby offers and agrees to assign to the Owner all rights, title, and interest in and to all causes of action it may have under Federal or State Anti-Trust Law, including, but not limited to, any Anti-Trust action any of them may have under Section 4 of the Clayton Act (15 U.S.C. Sec 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from the purchases of goods, services or materials pursuant to this contract or any related subcontract. This assignment is made and becomes effective at the time the awarding body tenders final payment to the Contractor shall insure that a comparable provision is included in all subcontracts at all tier levels which are executed pursuant to this prime contract. Contractor shall have the rights set forth in Section 4553 and 4554 of the Public Contract Code.

SECTION 2.35  
of  
GENERAL CONDITIONS

REMOVAL, RELOCATION OR PROTECTION  
OF EXISTING UTILITIES

2.35.01 SECTION NOT USED

2.35.02 SECTION NOT USED

2.35.03 SECTION NOT USED

2.35.04 SECTION NOT USED

2.35.05 SECTION NOT USED

SECTION 2.36  
of  
GENERAL CONDITIONS

ANTI-TRUST CLAIMS

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

SECTION 2.37  
of  
GENERAL CONDITIONS

TERMINATION FOR CONVENIENCE  
OF OWNER OR UPON BREACH OF CONTRACT

2.37.01 The performance of work under this contract may be terminated by Owner in accordance with this clause in whole or from time to time in part whenever Owner or Owner's Representative determines that such termination is in the best interest of Owner. Any such termination shall be affected by delivery to Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, the date upon which the termination becomes effective, and the reason for the termination.

2.37.02 After receipt of a Notice of Termination, except as otherwise directed by Owner or Owner's Representative, Contractor shall:

- a. Stop work under the contract on the date and to the extent specified in the Notice of Termination,
- b. Place no further orders or subcontract for materials, services, or facilities, except as may be necessary for the completion of such portion of work under the contract as is not terminated,
- c. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination,
- d. Assign to Owner in the manner, at the times, and to the extent directed by Owner or Owner's Representative all of the right, title, and interest of Contractor under the orders and subcontracts terminated, in which case Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts,
- e. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts to the extent Owner may require,
- f. Transfer title and deliver to Owner, in the manner, at the times, and to the extent, if any, directed by Owner (1) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of work terminated by the Notice of Termination and (2) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to Owner,
- g. Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by Owner or Owner's Representative any property of the types referred to in f. above, provided Contractor (1) shall not be required to extend credit to any purchasers, and (2) may acquire any such property under the conditions prescribed by and at the prices approved by Owner or Owner's Representative. The proceeds of any such

transfer or disposition shall be applied in reduction of any payments to be made by Owner to Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as Owner or Owner's Representative may direct,

- h. Complete performance of such part of the work as shall not have been terminated by the Notice of Termination to the satisfaction of Owner,
- i. Take such action as Owner or Owner's Representative may direct for the protection and preservation of the property related to this contract which is in the possession of Contractor and which the Owner has or may acquire an interest.

After receipt of a Notice of Termination, Contractor shall submit to Owner his termination claim, in the form and with certification prescribed by Owner or Owner's Representative. This claim shall be submitted promptly but in no event later than three (3) months from the effective date of termination, unless one or more extensions in writing are granted by the Owner or Owner's Representative upon Contractor's written request within such three (3) month period or any authorized extension of the three (3) month period. Owner may deny or grant the request for an extension of time as Owner may determine in its sole discretion. Owner's decision to grant or deny the extension shall be final and binding on all parties to this contract. Upon failure of Contractor to submit his termination claim within the time allowed, Owner or Owner's Representative may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of termination and shall thereupon pay to Contractor the amount so determined.

2.37.03 Contractor and Owner may agree upon the whole or any part of the amount paid to Contractor by reason of the total or partial termination of work pursuant to this clause provided an agreement, in writing, has been reached within three months following the date the termination notice has become effective.

In the event Contractor and Owner are unable to agree on the termination price, Owner shall pay to Contractor the amount determined by Owner or Owner's Representative, in its sole discretion, to be fair and equitable under the circumstances excluding amounts Owner and Contractor have agreed to in accordance with the terms of this section.

In no event shall Contractor be entitled to receive any amount upon termination of this contract which exceeds the total contract price reduced by the amount of payments otherwise made and further reduced by the contract price of work not terminated, by the fair value, as determined by Owner or Owner's Representative, in its sole discretion, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to Owner, by all unliquidated advances or other payments on account made to Contractor applicable to the terminated portion of the contract, by any claim which Owner may have against Contractor in connection with this contract, by the agreed price for, or the proceeds of sale of any materials, supplies, or other things acquired by Contractor or sold, pursuant to the provisions of this clause and not otherwise recovered or credited to Owner, and by estimated or actual costs to correct Contractor's work which Owner or Owner's Representative, in its sole discretion, determines to be defective. The decision of Owner or Owner's

Representative to determine the proper termination amounts shall be final and binding on all parties to this contract.

2.37.04 Unless otherwise provided for in this contract, Contractor shall, from the effective date of termination until the expiration of three years after final settlement under this Contract, preserve and make available to Owner at all reasonable times at the office of Contractor, and without charge of any kind to Owner, all Contractor's books, records, documents, and other evidence bearing on the costs and expenses of Contractor under this contract. For this purpose, Contractor specifically consents to allow Owner to receive such copies of Contractor's tax returns as Owner may deem necessary to verify Contractor's costs.

2.37.05 In the event Owner terminates the contract in whole or in part due to the failure of Contractor, its agents, servants, employees or subcontractors to perform any work in the time or manner designated in the contract documents, Owner shall immediately serve written notice of the Termination upon the surety and the Contractor, and the surety shall have the right to take over and perform the contract; provided, however, that if the surety within ten (10) days after the serving upon it of a notice of termination does not give the Owner written notice of his intention to take over and perform the contract or does not commence performance thereof within thirty (30) days from the date of serving said notice, the Owner may take over the work and prosecute the same to completion by contract or by any other method he may deem advisable for the account and at the expense of the Contractor, and his surety shall be liable to the Owner for any excess costs or other damages occasioned the Owner thereby, and in such event the Owner may, without liability for so doing, take possession of and utilize in completing the work such materials, appliances, plants, and other property belonging to the Contractor that may be on the site of the work and be necessary therefor. For any portion of such work that the Owner elects to complete by furnishing his own employees, materials, tools and equipment, the Owner shall be compensated for such in accordance with the schedule of compensation for force account work in the article on payment for changes in the work.

2.37.06 In the event Owner terminates the contract as a result of a breach of any contract terms by Contractor, its agents, servants, employees or subcontractors, if the unpaid balance of the contract price exceeds the direct and indirect costs of completing the work, including, but not limited to, all costs to Owner arising from professional services and attorneys' fees and all costs generated to insure or bond the work of substituted contractors or subcontractors utilized to complete the work, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor shall pay the difference to the Owner promptly upon demand; on failure of Contractor to pay, the Surety shall pay on demand by Owner. Excessive costs not paid by Contractor or its Surety within thirty (30) days following the mailing of a demand for such costs by Owner shall earn interest at the rate of fifteen percent (15%) per annum or the maximum rate authorized by California law, whichever is lower.

SECTION 2.38  
of  
GENERAL CONDITIONS

SUPPLEMENTAL GENERAL CONDITIONS

2.38.01 Responsibility of Job Site Conditions

Contractor agrees that he shall assume sole and complete responsibility for job site conditions during the course of construction of this project, including safety of all persons and property. This requirement shall apply continuously and not be limited to normal working hours. The Contractor shall defend, indemnify and hold the Owner and the Engineer harmless from any and all liability, real or alleged, in connection with the performance of work on this project, excepting for liability arising from the sole negligence of the Owner or the Engineer.

2.38.02 Mediation and Arbitration of Claims

Pursuant to Public Contract Code Section 20104(c), the current provisions of Article 1.5 of Chapter 1 of Part 3 of the Public Contract Code (commencing with Section 20103.5) dealing with the mediation and arbitration of public works claims are incorporated herein and a copy of these provisions are attached to these General Conditions.

SECTION 2.39  
of  
GENERAL CONDITIONS

PUBLIC CONTRACT CODE SECTIONS  
20103.5 – 20207.7

The following Public Contract Code Sections are included for information.

20103.5. In all contracts subject to this part where federal funds are involved, no bid submitted shall be invalidated by the failure of the bidder to be licensed in accordance with the laws of this state. However, at the time the contract is awarded, the contractor shall be properly licensed in accordance with the laws of this state. The first payment for work or material under any contract shall not be made unless and until the Registrar of Contractors verifies to the agency that the records of the Contractors' State License Board indicate that the contractor was properly licensed at the time the contract was 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. The agency shall include a statement to that effect in the standard form of pre-qualification questionnaire and financial statement. Failure of the bidder to obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the contract and shall result in the forfeiture of the security of the bidder.

20104. (a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b) (1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by or on behalf of the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount of payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

20104.2. For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within forty-five (45) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within fifteen (15) days after receipt of the further documentation or within a period of time no greater than taken by the claimant in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within fifteen (15) days of receipt of the local agency's response or within fifteen (15) days of the local agency's failure to respond within the time prescribed respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the local agency shall, within thirty (30) days, schedule a meet-and-confer conference for the purpose of resolving the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision

(a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

20104.4. The following procedures are established for all civil actions filed to resolve claims subject to this article.

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

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

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

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

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

20104.6. (a) No local agency shall fail to pay money as to any portion of a claim, which is undisputed except as, otherwise provided in the contract.

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

As stated in subdivision (c) of Section 20104, any contract entered into on or after January 1, 1991, which is subject to this article shall incorporate this article. To that end, these contracts shall be subject to this article even if this article is repealed pursuant to subdivision (a).

20207.7. Unless the amount involved in the purchase at any one time of any articles for which no contract has been entered into exceeds ten thousand dollars (\$10,000), the board may purchase the articles without the necessity of advertising or lettering contracts. Where the cost of any articles for which no contract has been entered into exceeds ten thousand dollars (\$10,000), the board shall advertise for sealed bids for furnishing the district the articles. In the matter of advertising, opening and accepting bids, and the letting of contracts, the board shall proceed in all respects in the manner and form provided in the case of contracts for annual supplies.