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# STANDARD PROVISIONS

# STANDARD PROVISIONS

## SECTION 1. DEFINITIONS

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Whenever in these Specifications and other Contract documents the following abbreviations and terms or pronouns in place of them are used, the intent and meaning shall be interpreted as follows:

### ABBREVIATIONS

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AISI	American Iron and Steel Institute
AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction
ANSI	American National Standards Institute
API	American Petroleum Institute
AREA	American Railway Engineering Association
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigerating and Air Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society of Testing and Materials
AWG	American Wire Gage
AWPA	American Wood-Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
BAAQMD	Bay Area Air Quality Management District
CAEPA	California Environmental Protection Agency
CCR	California Code of Regulations
CFR	Code of Federal Regulations
CIH	Certified Industrial Hygienist
CWA	Federal Clean Water Act
DHS	California Department of Health Services
HSC	California Health and Safety Code
IEEE	Institute of Electrical and Electronics Engineers
MSDS	Material Safety Data Sheet
NEC	National Electric Code
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Association
NPDES	National Pollution Discharge Elimination System
RWQCB	California Regional Water Quality Control Board
SAE	Society of Automotive Engineers
SWRCB	California State Water Resources Control Board
UBC	Uniform Building Code
UL	Underwriters Laboratories
USEPA	United States Environmental Protection Agency
WCLB	West Coast Lumber Inspection Bureau
WWPA	Western Wood Products Association

**Acceptance:** The formal written acceptance by the District of a contract which has been completed in all respects in accordance with the Drawings and Specifications and any modifications thereof previously approved.

**Addendum:** A change in the Specifications or Drawings issued prior to the opening of Proposals.

**Approved, Directed, Ordered, or Required:** Whenever these words or their derivatives are used, it is the intent, unless otherwise clearly stated, that approval or direction by the Engineer is indicated.

**Article:** A numbered portion of a title section of the Specifications.

**Bid:** See Proposal, Article 3.03

**Bidder:** Any individual, firm, partnership, corporation, or combination thereof, submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.

**Board, Board of Directors:** The Board of Directors of the District.

**Certified Hazardous Materials Testing Laboratory:** A laboratory certified by the California Department of Health Services to perform specific chemical and physical analysis for hazardous materials.

**Certified Industrial Hygienist:** A professional who is certified by the American Board of Industrial Hygienists as trained to evaluate safety and health hazards and determine safety measures necessary for personnel working under hazardous conditions.

**Claim:** 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 Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the Contractor is not otherwise entitled to, or (C) an amount of payment which is disputed by the District.

**Code:** The terms Government Code, Labor Code, etc. refer to codes of the State of California.

**Construction Equipment:** Equipment used for the performance of work but not incorporated into the project.

**Contract:** The written agreement between Contractor and District including the Notice to Bidders, Proposals, Drawings, Specifications, Contract Bonds, Contract change orders, and Addenda.

**Contract Prices:** The prices for the work set forth in a contract.

**Contractor:** The entity or person entering a contract with the District.

**Controlling Item of Work:** Any feature or combination of features of the work considered at the time by the Engineer, which if delayed, will delay the time of completion of a contract.

**Days:** Calendar days, unless otherwise designated.

**Designated Engineer:** A Deputy Operating Officer of the District as identified in Article 13.01 of the Special Provisions.

**District:** The Santa Clara Valley Water District.

**Drawings:** The official drawings, working drawings, detail drawings, and supplemental drawings, or reproductions thereof, which show the location, character, dimensions, and details of the work to be done, and which are to be considered as part of a contract.

**Engineer:** The Designated Engineer, acting either directly, or through a properly designated representative, assumes all duties and responsibilities, and has all rights and authority, in accordance with the Contract Documents.

**Equipment:** Equipment incorporated or to be incorporated into the project.

**Fixed Costs:** Any necessary labor, material, and equipment costs directly expended on the item or items under consideration which remain constant regardless of the quantity of work done.

**Hazardous Material:** (A) Any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to any federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability (including, but not limited to response, removal, and remediation costs) or standards of conduct or performance concerning any hazardous, toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or as otherwise dangerous waste, substance or material; (B) any substance, product, waste, or other material of any nature whatsoever whose presence in and of itself may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of a state or federal court; (C) any substance without limitation, which contains petroleum or crude oil, including but not limited to, petroleum and petroleum products.

**Hazardous Waste:** Any substance or material, as defined in the California Hazardous Waste Control Act, Health and Safety Code Section 25, or the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

**Liquidated Damages:** The amount stated in the Specifications, as provided in Government Code Section 53069.85, to be paid to the District or to be deducted from any payments due or to become due the Contractor for each day's delay in completing the whole or any specified portion of the work beyond the time allowed in the Specifications.

**Materials:** Materials incorporated or to be incorporated into the project.

**Milestone:** A specified portion of the work identified in the Contract as a Milestone.

**Milestone Completion:** The date determined by the District when the Milestone is complete. Milestone Completion does not constitute Acceptance but does establish the completion date of the Milestone for the purpose of assessment of Liquidated Damages, if any, associated with the Milestone.

**Personnel Protection:** Equipment and procedures which minimize human exposure to regulated materials, hazardous materials, hazardous wastes, or unsafe situations.

**Plans, Construction Plans:** The Drawings.

**Project:** The erection, construction, alteration, repair, or improvement to be accomplished under the Contract.

**Project Completion:** Project Completion is the stage at which the whole Work is complete per the Contract documents, and the Engineer has performed the final inspection and issued a Project Completion letter.

**Reasonable Accuracy:** Within the tolerances as shown on the Drawings or indicated in the Specifications.

**Regulated Material:** Any substance or combination of substances for which federal, state, or local regulations require special management, storage, disposal, or handling practices. This shall include, but not be limited to, materials defined as: Hazardous Materials and Waste; Designated Wastes (CCR, Title 23, Section 23-2522); and Special Waste (CCR, Title 22, Section 22-66195).

**Remediation:** Restoration of the contaminated soil, groundwater, or other materials to its pre-contaminated level or to a level acceptable to the District and local, state, and federal agencies.

**Responsible Bidder:** A bidder meeting the criteria set forth in District's Resolution No. 88-11.

**Subcontractor:** An entity or person contracting with the Contractor or another subcontractor to perform any portion of work.

**Specifications:** The directions, provisions, and requirements contained in the Standard Provisions, Special Provisions, and Technical Provisions.

**Ton:** 2,000 pounds avoirdupois.

**Work:** That which is constructed or done pursuant to the requirements of the Contract to accomplish the Project including, but not limited to, providing labor, materials, equipment, and information documentation.

## **SECTION 2. INTERPRETATION OF CONTRACT**

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### **2.01. Precedence of Contract**

- A. In resolving conflicting requirements between the Contract Documents order of precedence shall be as follows:
  - 1. Change orders
  - 2. Agreement
  - 3. Addenda
  - 4. Special Provisions
  - 5. Technical Provisions
  - 6. Drawings
  - 7. Standard Provisions
  - 8. State Specifications
  
- B. With reference to the Drawings:
  - 1. Figures govern over scaled dimensions
  - 2. Detail drawings govern over general drawings

### **2.02. Clarification of Contract**

- A. All corrections of readily apparent errors or omissions in the Contract may be made by the Engineer when such corrections are necessary for the proper fulfillment of their intention as construed by the Engineer. The misplacement, addition, or omission of any word, letter, figure, or punctuation mark which has no substantive legal effect will in no way change the due spirit, intent, or meaning of these Specifications.
  
- B. Any part of the work not shown on the Drawings or described in these Specifications but which is reasonably or ordinarily implied by either, shall be furnished and installed by the Contractor as if fully described in these Specifications and shown upon the Drawings.
  
- C. Should it appear that the work to be done or any of the matters relative thereto is not sufficiently detailed or explained in the Specifications or on the Drawings, or if the Contractor discovers during the course of the work any discrepancies between the Contract Drawings and conditions in the field, or any errors or omissions in the Contract or in the layout given by stakes, points, or instructions, the bidder or Contractor shall apply in writing to the Engineer for such further explanations as may be necessary and shall conform to them as part of the Contract. In the event of any doubt or questions arising respecting the true

meaning of the Contract, reference shall be made in writing to the Engineer, whose decision thereon shall be final. Any work done after such discovery until authorized by the Engineer, will be done at the Contractor's risk.

**2.03. State Specifications and Plans**

- A. Unless otherwise stated, State Specifications and Plans referred to in these Specifications shall be the latest edition of the State of California Department of Transportation Standard Specifications and Standard Plans. When specifically stated to follow the State Specifications and Plans for an item, the work set forth in these Contract documents shall be accomplished in accordance with the appropriate provisions and details of the State Standard Specifications and Standard Plans. Said Specifications and Plans are herein referred to as the State Specifications and Plans and are by reference made a part of these Specifications the same as though set out in full, as to the provisions requiring compliance. In the event of conflict between the State Standard Specifications or the State Standard Plans and the Standard, Special, or Technical Provisions of these Specifications or the Drawings, these Specifications and Drawings shall apply.

## **SECTION 3. PROPOSAL REQUIREMENTS AND CONDITIONS**

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### **3.01. Approximate Estimate**

- A. The quantities given in the Notice to Bidders, Proposal, and Contract forms are approximate only, being given as a basis for the comparison of Proposals, and the District does not, expressly or by implication, agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the work, or to omit portions of the work, as may be deemed necessary or advisable by the Engineer.

### **3.02. Examination of Drawings, Specifications, and Site of Work**

- A. The bidder shall examine carefully the site of the work contemplated and the Proposal, Drawings, Specifications, and Contract forms therefor. The submission of a Proposal will be conclusive evidence that the bidder has investigated and is fully aware of the conditions and difficulties to be encountered, of the character, quality, and quantities of work to be performed and materials to be furnished, and of the requirements of the Proposal, Drawings, Specifications, and other Contract documents.
- B. Where investigation of subsurface conditions has been made by the District in respect to foundation, characterization of soils, groundwater, or other design, bidders may inspect the records of the District as to such investigation, including examination of samples and drill cores, if any. When logs of test boring showing a record of the data obtained by the District's investigation of subsurface conditions are made available, said logs represent only the opinion of the District as to the character of material encountered by it in its test borings and are made available only for the convenience of bidders.
- C. Note that the District investigation of subsurface conditions is made for the purpose of design. The District assumes no responsibility whatever in respect to the sufficiency of test borings, or accuracy of the log of test borings, or other preliminary investigations, or of the interpretation thereof. There is no guarantee expressed or implied that the conditions indicated are representative of those existing throughout the work, or any part of it, or that unforeseen developments may not occur.
- D. Making such information available to bidders is not to be construed in any way as a waiver of the provisions of Article 3.02, and bidders must satisfy themselves through their own investigations, analysis, and interpretations as to conditions to be encountered.
- E. No information derived from such inspection of records or preliminary investigations made by the District, or from the Engineer, or from assistants, or from the maps, Specifications, profiles, or Drawings will in any way relieve the Contractor from any risk or from properly fulfilling all the terms of the Contract. Records of such preliminary investigations as may have been made by the District may be inspected at the office of the District, 5750 Almaden Expressway,

San Jose, California 95118, or at such other locations as may be stated in the Notice to Bidders.

**3.03. Proposal Form**

- A. The Proposal Form, when filled out by the Bidder and executed, shall be submitted as the Bidder's Proposal. All Proposals shall show the prices proposed in figures in the spaces provided, and shall be signed by the Bidder. The Bidder shall fill out all blanks in the Proposal Form as therein required.
- B. Payment for the various items listed in the Proposal Form shall constitute full compensation for furnishing all plant, labor, equipment, appliances, and materials, and performing all operations required to complete all work in conformity with the Drawings and Specifications. All costs for work not specifically mentioned in the Proposal Form shall be included in the Contract prices for the items listed.
- C. In the case of unit basis items, the amount set forth under the "Total" column shall be the extension of the item unit price bid on the basis of the estimated quantity for the item.
- D. In case of discrepancy between the item unit price and the total price set forth for the item, the item unit price shall prevail; provided, however, that if the amount set forth as an item unit price is ambiguous, unintelligible, or uncertain for any cause, or is omitted, or in the case of unit basis items, is the same amount as the entry in the "Total" column, then the amount set forth in the "Total" column for the item shall prevail in accordance with the following:
  - 1. As to lump sum items, the amount set forth in the "Total" column shall be the item price.
  - 2. As to unit basis items, the amount set forth in the "Total" column shall be divided by the estimated quantity for the item and the price thus obtained shall be the item unit price.

**3.04. Queries on Bidding**

- A. Questions regarding the Specifications or Drawings or any other portion of the Contract, or any addendum thereto shall be directed to the Designated Engineer of the Santa Clara Valley Water District, 5750 Almaden Expressway, San Jose, California 95118, in writing. No interpretation of the meaning of the Specifications, Drawings, or other prebid documents will be made to any bidder orally. Any written queries received later than 10 days before the bid due date may not be answered.

**3.05. Rejection of Proposals**

- A. Proposals may be rejected if they show any alterations of form, additions not called for, conditional bids, incomplete bids, erasures, or irregularities of any

kind. Proposals in which the prices, in the opinion of the District, are unbalanced, may be rejected.

- B. When proposals are signed by an agent, other than the officer or officers of a corporation authorized to sign contracts on its behalf, or a member of a partnership, a written authorization or Power of Attorney should be on file with the District prior to opening proposals or submitted with the Proposal; otherwise, the Proposal may be rejected as irregular and unauthorized.

**3.06. Proposal Guarantee**

- A. All proposals shall be presented under sealed cover and accompanied by one of the following forms of bidder's security; cash, a cashier's check, certified check, or a bidder's bond executed by an admitted surety, made payable to the District. The security shall be in an amount equal to at least 10 percent of the total Contract price in the Proposal. A proposal will not be considered unless one such form of bidder's security is enclosed with it.
- B. A bidder's bond will not be accepted unless it substantially conforms to the bond form included with the Proposal form and is properly filled out and executed. If desired, the bond form included therein, properly filled out as directed, may be executed and used as the bidder's bond. Blanks conforming to this form may be obtained from the District.

**3.07. Withdrawal of Proposals**

- A. Any proposal may be withdrawn at any time prior to the time fixed in the Notice to Bidders for the opening of proposals only by written request for the withdrawal of the Proposal filed with the Clerk of the Board of Directors. The request shall be executed by the bidder or duly authorized representative. The withdrawal of a proposal does not prejudice the right of the bidder to file a new proposal.

**3.08. Joint Proposals**

- A. If two or more bidders desire to bid jointly on a project, they shall file an affidavit of joint venture with the District in the form approved by the District, and such affidavit of joint venture will be valid only for the specified project for which it is filed. If such affidavit of joint venture is not filed as aforesaid and approved by the District prior to the time for opening proposals on the specific project for which it is submitted, a joint proposal submitted by the same bidders may be disregarded.

**3.09. Disqualification of Bidders**

- A. Submittal of more than one proposal form from an individual, firm, partnership, corporation, or a combination thereof under the same or different names, will not be considered. If there is reason for believing that collusion exists among the bidders, none of the participants in such collusion will be considered for award of this Contract.

**3.10. Addendum**

- A. Addenda may be issued prior to opening of proposals and shall be deemed a part of the original Specifications and Drawings. All such additions or changes shall be considered by the bidder in preparation of the Proposal. Addendum notification(s) will be sent to each planholder at the e-mail address provided by the Contractor for the planholders' list and addenda will be posted on the District's website at [www.valleywater.org/Programs/Construction.aspx](http://www.valleywater.org/Programs/Construction.aspx).

**3.11. Guaranty**

- A. The Contractor may be required to furnish a written guaranty covering certain items of material and equipment for varying periods of time from the date of acceptance of the Contract. The material and equipment to be guaranteed, the form of guaranty, and the time limit of the guaranty will be specified in the Special Provisions. Said guaranty shall be signed and delivered to the Engineer before final payment will be made. Upon completion of the Contract, the amounts of the Contract bonds required in Article 4.03 may be reduced to conform to the total amount of the Contract bid prices for the items to be guaranteed and this amount shall continue in full force and effect for the duration of the guaranty period.
- B. Guarantee periods shall commence on the date equipment or material is placed into service at the direction of the District. In the event such items are not placed into service prior to partial or final acceptance of the project, the guarantee period will commence on the date of such acceptance.

**3.12. Bid Protest**

- A. Any Bid protest relating to the form or content of the Bid documents must be submitted in writing to the Designated Engineer identified in Article 13.01 of the Special Provisions. The protest must be received before 5 p.m. three (3) business days in advance of the Bid opening. Any Bidder who fails to submit a protest before the Bid opening deadline will be deemed to have waived any protest to the form or content of the Bid documents.
- B. Any Bid protest unrelated to Article 3.12.A. must be submitted in writing to the Designated Engineer. The protest must be received before 5 p.m. on the third business day following Bid opening.
- C. The protest document must contain a complete statement of the basis for the protest. The protest must refer to the specific portion(s) of the Bid documents that form the basis for the protest. The protest must include the name, address, and telephone number of the person representing the protesting party.
- D. The Designated Engineer's final decision on a protest will be issued in writing no later than ten (10) calendar days following receipt of the protest.

## **SECTION 4. AWARD OF CONTRACT**

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### **4.01. Award of Contract**

- A. The District reserves the right to reject or waive irregularities, in any and all proposals, or in the bidding procedures.
- B. The Contract, if awarded, will be to a responsible bidder, submitting the lowest responsive bid. The award, if made, will be within 45 days after the opening of the proposals. If the lowest responsible bidder refuses or fails to execute the Contract, the award may be made to the second lowest responsible bidder. The award, if made, will be within 75 days after the opening of the proposals. If the second lowest responsible bidder refuses or fails to execute the Contract, the Contract may be awarded to the third lowest responsible bidder. The award, if made, will be made within 105 days after the opening of the proposals. The periods of time specified above within which the award of Contract may be made shall be subject to extension for such further period as may be agreed upon in writing between the District and the bidder concerned.

### **4.02. Return of Bidder Security**

- A. No later than 60 days after the award of the Contract to the responsible bidder submitting the lowest responsive bid, the security of the unsuccessful bidder(s) will be returned, except for bidder's bonds and any guarantees which have been forfeited.

### **4.03. Contract Bonds**

- A. The Contractor shall furnish in the forms attached hereto, a performance bond and a payment bond executed by both the Contractor and the sureties, each equal to 100 percent of the contract sum.
- B. Should any surety or sureties be deemed unsatisfactory at any time by the District, notice will be given the Contractor to that effect, who shall forthwith substitute a new surety or sureties satisfactory to the District. No further payment shall be deemed due or will be made under this Contract until the new sureties shall qualify and be accepted by the District.

### **4.04. Execution of Contract**

- A. The Contract Agreement must be signed by the responsible bidder submitting the lowest responsive bid and returned, together with the Contract bonds and insurance documents, within ten (10) days, of District's Notice of Contract Award letter, not including Sundays and legal holidays.
- B. Formation of a Contract between the parties requires accomplishment of the following: (1) execution of the Agreement by Contractor; (2) submission by Contractor, and acceptance by District of the required Contract Bonds, and insurance coverages and documents; and (3) execution of the Agreement by

District. No Contract is formed until these three elements have been accomplished to the satisfaction of the District.

**4.05. Failure to Execute Contract**

- A. Failure to execute the Agreement after Contract award and to file acceptable bonds and insurance documents as provided herein, within ten (10) days, not including Sundays and legal holidays, shall be just cause for the District's annulment of the award and forfeiture of the bidder's security.

## **SECTION 5. SCOPE OF WORK**

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### **5.01. Work to be Done**

- A. The work to be done consists of furnishing all labor, methods or processes, implements, tools, machinery, construction equipment, materials of any kind, and installed manufactured equipment, except as otherwise specified herein, to be furnished by the District or from sources provided by the District, which are required to construct in a good and worker-like manner all the work herein specified.

### **5.02. Final Cleanup**

- A. Before final inspection the Contractor shall clean the premises, and unless otherwise specified, remove all rubbish, excess materials, falsework, temporary structures, and equipment. All parts of the work shall be left in a neat and presentable condition to the satisfaction of the Engineer.

### **5.03. Change in Work**

- A. The District may, at any time or from time to time, order additions, deletions, or revisions in the work; these will be authorized by a written order issued by the Engineer and/or by a change order. Upon receipt of any such document, the Contractor shall promptly proceed with the work involved which will be performed under the applicable conditions of the Contract.
- B. Changes in the Contract price shall be determined in accordance with Article 5.04. Changes in the Contract time shall be determined in accordance with Article 5.05.
- C. If the District and the Contractor are unable to agree as to the extent, if any, of an increase or decrease in the Contract price or an extension or shortening of the Contract time that would be required as a result of a written order, a claim may be made therefor as provided in Articles 5.08 or 5.09.
- D. The Contractor shall not be entitled to an increase in the Contract price nor an extension of the Contract time with respect to any work performed that is not required by the Contract, except in the case of an emergency, and except in the case of uncovering work as provided in Article 9.07.
- E. The District and the Contractor shall execute appropriate change orders covering:
  - 1. changes in the work which are ordered by the District pursuant to paragraph A above;
  - 2. changes in the Contract price and/or Contract time which are agreed to by the parties; or
  - 3. any other changes agreed to by the parties.

5.03.01. Allowable Quantity Variations

- A. **General:** Increases or decreases in the quantity of a Contract item of work will be determined by comparing the actual pay quantity of an item of work with the approximate quantity in the listing of the bid items contained in the Proposal.
  - 1. If the actual pay quantity of an item of work varies from the approximate quantity by 25 percent or less, payment will be made for the actual quantity of work performed at the Contract unit price listed in the Proposal.
  - 2. If the actual pay quantity of an item of work varies from the approximate quantity by more than 25 percent, in the absence of an executed Contract Change Order specifying the compensation to be paid, the compensation payable to the Contractor will be determined in accordance with Article 5.03.01.A.1, or Article 5.03.01.A.2.
    - a. **Increases of More Than 25 Percent:** If the actual pay quantity of an item of work exceeds the approximate quantity by more than 25 percent, the amount of work in excess of 125 percent of the approximate quantity will be paid for by adjusting the Contract unit price. Such adjustment of the Contract unit price will be the positive or negative difference between the Contract unit price and the actual unit cost of the total pay quantity of the item. At the sole option of the Engineer, the actual unit cost of the work involved in such excess will be determined in accordance with Article 5.04.01.C.2 (by mutual acceptance of a lump sum amount) or Article 5.04.01.C.3 (cost of work, based on time and materials).
      - (1) If the cost of an item of work includes fixed costs, the fixed costs will be deemed to have been recovered by the Contractor by the payments made for 125 percent of the approximate quantity at the Contract unit price for the item and in computing the actual unit cost, the fixed costs will be excluded.
      - (2) When the compensation payable for the quantity of work performed in excess of 125 percent of the approximate quantity is less than \$5,000 at the Contract unit price, no adjustment in the Contract unit price will be made unless requested in writing by the Contractor within 14 days from the date the Contractor became aware, or should have reasonably become aware, of the increase in quantity.
    - b. **Decreases of More Than 25 Percent:** If the actual pay quantity of an item of work is less than 75 percent of the approximate quantity, an adjustment in compensation will not be made unless the Contractor makes a request in writing within 14 days from the date the Contractor became aware, or should have reasonably

become aware, of the decrease in quantity. If the Contractor makes a request, the actual pay quantity of said item of work performed will be paid for by adjusting the Contract unit price. Such adjustment of the Contract unit price will be the positive or negative difference between the Contract unit price and the actual unit cost of the total pay quantity of the item, including fixed costs. At the sole option of the Engineer, payment for the actual quantity of work will be made in accordance with Article 5.04.01.C.2 (by mutual acceptance of a lump sum amount) or Article 5.04.01.C.3 (cost of work based on time and materials).

- (1) Payment for the actual pay quantity of such item of work will in no case exceed the payment which would have been made for the performance of 75 percent of the approximate quantity of such item at the Contract unit price.

**B. Eliminated Items:** If any Contract item of the work is eliminated in its entirety, payment will be made to the Contractor for the actual cost incurred in connection with the eliminated Contract item if incurred prior to the date of notification in writing by the Engineer of such elimination.

- 1. If acceptable material is ordered by the Contractor for an eliminated Contract item prior to the date of notification of such elimination by the Engineer, and if orders for such material cannot be canceled, payment for such material will be made at the actual cost to the Contractor. In such case, the material shall become the property of the District. If the materials can be returned to the vendor and if the Engineer so directs, the material shall be returned and the Contractor will be paid for the actual cost for returning the material.
- 2. The actual costs to be paid by the District to the Contractor in accordance with this Article will be computed in accordance with Article 5.04.02.

**C. Supplemental Contract Items:** Items noted as “Supplemental” in the Proposal may be deleted entirely or in part at the sole discretion of the District. The provisions of Articles 5.03.01.A.1., 5.03.01.A.2, and 5.03.01.B shall not apply to “Supplemental Contract Items.”

**5.04. Change in Contract Price**

**5.04.01. General**

**A.** The Contract price constitutes the total compensation payable to the Contractor for performing the work. All duties, responsibilities, and obligations assigned to or undertaken by the Contractor to perform the work shall be at the Contractor’s expense without change in the Contract price.

- B. The Contract price may only be changed by a change order. Any request for an increase in the Contract price shall be based on written notice delivered by the Contractor to the Engineer promptly, but in no event later than 10 days after the date of the occurrence of the event giving rise to the request and stating the general nature of the request. Notice of the amount of the request with supporting data shall be delivered within 45 days after the date of the occurrence, unless the Engineer allows an additional period of time to ascertain more accurate data in support of the request, and shall be accompanied by the Contractor's written statement that the amount requested covers all amounts (direct, indirect, and consequential) to which the Contractor is entitled as a result of the occurrence of the event. No request for an adjustment in the Contract price will be valid if not submitted in accordance with this Article.
  
- C. The value of any work covered by a change order or of any request for an increase or decrease in the Contract price shall be determined in one of the following ways:
  - 1. Where the work involved is covered by unit prices contained in the Contract documents, by application of unit prices to the quantities of the items involved; or
  - 2. By mutual acceptance of a lump sum, which may include an allowance for overhead and profit not necessarily in accordance with Article 5.04.04; or
  - 3. On the basis of the cost of work (determined as provided in Articles 5.04.02. and 5.04.03.) plus a Contractor's fee for overhead and profit (determined as provided in Article 5.04.04.)

**5.04.02. Cost of Work (Based on Time and Materials)**

- A. **General:** The term "cost of work" means the sum of all costs necessarily incurred and paid by the Contractor for labor, materials, and equipment in the proper performance of work. Except as otherwise may be agreed to in writing by the District, such costs shall be in amounts no higher than those prevailing in the locality of the project.
  
- B. **Labor:** The cost of labor used in performing work by the Contractor, a subcontractor, or other forces, will be the sum of the following:
  - 1. The actual wages paid plus any employer payments to or on behalf of workers for fringe benefits, including health and welfare, pension, vacation, and similar purposes. The cost of labor may include the wages paid to foremen when it is determined by the Engineer that the services of foremen do not constitute a part of the overhead allowance.
  - 2. There will be added to the actual wages as defined above, a percentage set forth in the latest "Labor Surcharge and Equipment Rental Rates" in use by the California State Department of Transportation which is in effect on the date upon which the work is accomplished. This percentage shall

constitute full compensation for all payments imposed by State and Federal laws including, but not limited to, workers' compensation insurance and Social Security payments.

3. The amount paid for subsistence and travel required by collective bargaining agreements.
4. For equipment operators, payment for the actual cost of labor and subsistence or travel allowance will be made at the rates paid by the Contractor to other workers operating similar equipment already on the work, or in the absence of such labor, established by collective bargaining agreements for the type of workers and location of the extra work, whether or not the operator is actually covered by such an agreement. A labor surcharge will be added to the cost of labor described herein in accordance with the provisions of subsection 2 of Article 5.04.02.B herein, which surcharge shall constitute full compensation for payments imposed by State and Federal laws, and all other payments made to on behalf of workers other than actual wages.

C. **Materials:** The cost of materials used in performing work will be the cost to the purchaser, whether Contractor or subcontractor, from the supplier thereof, except as the following are applicable:

1. Trade discounts available to the purchaser shall be credited to the District notwithstanding the fact that such discounts may not have been taken by the Contractor.
2. For materials secured by other than a direct purchase and direct billing to the purchaser, the cost shall be deemed to be the price paid to the actual supplier as determined by the Engineer. Markup, except for actual costs incurred in the handling of such materials, will not be allowed.
3. Payment for materials from sources owned wholly or in part by the purchaser shall not exceed the price paid by the purchaser for similar materials from said sources on extra work items or the current wholesale price for such materials delivered to the work site, whichever price is lower.
4. If, in the opinion of the Engineer, the cost of material is excessive, or the Contractor does not furnish satisfactory evidence of the cost of such material, then the cost shall be deemed to be the lowest current wholesale price for the quantity concerned delivered to the work site, less trade discount. The District reserves the right to furnish materials for the extra work and no claim shall be made by the Contractor for costs and profit on such materials.

D. **Equipment:** The Contractor will be paid for the use of equipment at the rental rate listed for such equipment specified in the current edition of the Department of Transportation publication entitled, "Labor Surcharge and Equipment Rental

Rates," which is in effect on the date upon which the work is accomplished. Such rental rates will be used to compute payments for equipment whether the equipment is under the Contractor's control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment shall be the rate resulting in the least total cost to the District for the total period of use. If it is deemed necessary by the Contractor to use equipment not listed in the foregoing publication, an equitable rental rate for the equipment will be established by the Engineer. The Contractor may furnish cost data which might assist the Engineer in the establishment of the rental rate.

1. The rental rates paid, as above provided, shall include the cost of fuel, oil, lubrication supplies, small tools, necessary attachments, repairs and maintenance of all kinds, depreciation, storage, insurance, and all incidentals. Operators of equipment will be separately paid for as provided in subsection 4 of Article 5.04.02.B.
2. All equipment shall be in good working condition and suitable for the purpose for which the equipment is to be used.
3. Before construction equipment is used on the extra work, the Contractor shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the Engineer, in duplicate, a description of the equipment and its identifying number.
4. Unless otherwise specified, manufacturer's ratings and manufacturer-approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.
5. Individual pieces of equipment or tools having a replacement value of \$500 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefor.

E. **Owner-Operated Equipment:** When owner-operated equipment is used to perform work and is to be paid for as extra work, the Contractor will be paid for the equipment and operator as follows:

1. Payment for the equipment will be made in accordance with the provisions in Article 5.04.02.D. "Equipment."
2. Payment for the cost of labor and subsistence or travel allowance will be made at the rates paid by the Contractor to other workers operating similar equipment already on the project, or, in the absence of such other workers, at the rates for such labor established by collective bargaining agreement for type of worker and location of the work, whether or not the owner-operator is actually covered by such an agreement. A labor surcharge will be added to the cost of labor described herein, in

accordance with the provisions in subsection 2 of Article 5.04.02(B), "Labor."

3. To the direct cost of equipment rental and labor, computed as provided herein, will be added the markup for equipment rental and labor as provided in Article 5.04.04, "Contractor's Fee."

F. **Equipment Time:** The rental time to be paid for equipment on the work shall be the time the equipment is in productive operation on the work being performed and shall include the time required to move the equipment to the new location and return it to the original location or to another location requiring no more time than that required to return it to its original location; except, that moving time will not be paid if the equipment is used on other than the extra work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power. No payment will be made for loading and transporting costs when the equipment is used at the site of the extra work on other than the extra work. The following shall be used in computing the rental time of equipment on the work:

1. When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be considered to be ½-hour of operation, and any part of an hour in excess of 30 minutes will be considered 1-hour of operation.
2. When daily rates are listed, operation for any part of a day less than 4 hours shall be considered to be ½-day of operation.
3. Rental time will not be allowed while equipment is inoperative due to breakdowns or Contractor caused delays.

G. **Cost of Work Documentation:** The Contractor shall furnish the Engineer Daily Extra Work Reports on a daily basis covering the direct costs of labor and materials and charges for equipment whether furnished by the Contractor, subcontractor, or other forces. The District will provide the Extra Daily Work Report forms to the Contractor. The Contractor or an authorized agent shall sign each Daily Extra Work Report. The Daily Extra Work Report shall provide names and classifications of workers and hours worked; size, type, and identification number of equipment; and the hours operated. Copies of certified payrolls and statement of fringe benefit shall substantiate labor charges. Valid copies of vendor's invoices shall substantiate material charges.

1. The Engineer will make any necessary adjustments. When these reports are agreed upon and signed by both parties, they shall become the basis of payment for the work performed, but shall not preclude subsequent adjustment based on a later audit.
2. The Contractor shall inform the Engineer when extra work will begin so that the District inspector can concur with the Daily Extra Work Reports. Failure to conform to these requirements may impact the Contractor's ability to receive proper compensation.

**5.04.03. Special Services**

- A. Special services are defined as that work characterized by extraordinary complexity, sophistication, or innovations, or a combination of the foregoing attributes which are unique to the construction industry. The following may be considered by the Engineer in making estimates for payment for special services:
  - 1. When the Engineer and the Contractor, by agreement, determine that a special service is required which cannot be performed by the forces of the Contractor or those of any of its subcontractors, the special service may be performed by an entity especially skilled in the work to be performed. After validation of invoices and determination of market values by the Engineer, invoices for special services based upon the current fair market value thereof may be accepted without complete itemization of labor, material, and equipment rental costs.
  - 2. When the Contractor is required to perform work necessitating special fabrication or machining process in a fabrication or a machine shop facility away from the jobsite, the charges for that portion of the work performed at the offsite facility may, by agreement, be accepted as a special service and accordingly, the invoices for the work may be accepted without detailed itemization.
  - 3. All invoices for special services will be adjusted by deducting all trade discounts offered or available, whether the discounts were taken or not. In lieu of the allowances for overhead and profit on labor, materials, and equipment specified in Article 5.04.04. herein, a single allowance of ten (10) percent will be added to invoices for special services.

**5.04.04. Contractor’s Fee**

- A. Work ordered on the basis of time and materials will be paid for at the actual and necessary cost as determined by the Engineer, plus allowances for overhead and profit which allowances shall constitute the “Contractor’s Fee,” except as provided in subparagraph B of this Article. For extra work involving a combination of increases and decreases in the work, the actual necessary cost will be the arithmetic sum of the additive and deductive costs. The allowance for overhead and profit shall include compensation for superintendence, bond and insurance premiums, taxes, all field and home office expenses, and all other items of expense or cost not included in the cost of labor, materials, or equipment provided for under Articles 5.04.02.B, C, D, and E, herein. The allowance for overhead and profit will be made in accordance with the following schedule:

<b>Actual Necessary Cost</b>	<b>Overhead and Profit Allowance</b>
Labor .....	33 percent
Materials .....	15 percent
Equipment.....	15 percent

- B. Labor, materials, and equipment may be furnished by the Contractor or by the subcontractor on behalf of the Contractor. When all or any part of the extra work is performed by a subcontractor, the allowance specified in subparagraph A of Article 5.04.04 shall only be applied to the labor, materials, and equipment costs of the subcontractors to which the Contractor may add 5 percent of the subcontractor's total cost for the extra work. Regardless of the number of hierarchical tiers of subcontractors, the 5 percent increase above the subcontractor's total cost, which includes the allowances for overhead and profit specified herein, may be applied one time only for each separate work transaction.

**5.04.05. Compensation for Time Extensions**

- A. Adjustments in compensation for time extension will be allowed only for causes in Article 5.05.01.B.1 through Article 5.05.01.B.4 computed in accordance with Article 5.04 and the following. No adjustments in compensation will be allowed when District-caused delays to a controlling item of work and Contractor-caused delays to a controlling item of work occur concurrently or for causes in Article 5.05.01.B.5 through Article 5.05.01.B.6.
- B. Compensation for idle time of equipment will be determined in accordance with the provisions in Article 5.04.02.E and Section 8-1.09 of the State Specifications.

**5.05. Change of Contract Time****5.05.01. General**

- A. The Contract time may only be changed by a change order. Any request for an extension of the Contract time shall be based on written notice delivered by the Contractor to the Engineer promptly, but in no event later than 10 days after the date of the occurrence of the event giving rise to the request and stating the general nature of the request. Notice of the extent of the request with supporting data shall be delivered within 45 days after the date of such occurrence, unless the Engineer allows an additional period of time to ascertain more accurate data in support of the request, and shall be accompanied by the Contractor's written statement that the adjustment requested is the entire adjustment to which the Contractor has reason to believe it is entitled as a result of the occurrence of said event. No request for an adjustment in the Contract time will be valid if not submitted in accordance with the requirements of this Article.
  - 1. The Contract time will only be extended when a delay occurs which impacts a controlling item of work as shown on the work schedules required in the Special Provisions. Time extensions will be allowed only if the cause is beyond the control and without the fault or negligence of the Contractor. Time extensions will also be allowed when District-caused delays to a controlling item of work and Contractor-caused delays to a controlling item of work occur concurrently. The Contractor will be notified if the Engineer determines that a time extension is not justified.

- B. The Contract time will be extended in an amount equal to time lost due to delays beyond the control of the Contractor if a request is made therefor as provided in this Article. An extension of Contract time will only be granted for days on which the Contractor is prevented from proceeding with at least 75 percent of the normal labor and equipment force actually engaged on the said work, by said occurrences or conditions resulting immediately therefrom which impact a controlling item of work as determined by the Engineer. Such delays shall include:
1. Changes.
  2. Failure of the District to furnish access, right of way, completed facilities of related projects, Drawings, materials, equipment, or services for which the District is responsible.
  3. Survey error by the District.
  4. Suspension of work pursuant to Articles 7.05(A) and 7.05(C).
  5. Occurrences of a severe and unusual nature including, but not restricted to, acts of God, fires, and excusable inclement weather. An "act of God" means an earthquake, flood, cloudburst, cyclone, or other cataclysmic phenomena of nature beyond the power of the Contractor to foresee or to make preparation in defense against, but does not include ordinary inclement weather. Excusable inclement weather is any weather condition, the duration of which varies in excess of the average conditions expected, which is unusual for the particular time and place where the work is to be performed, or which could not have been reasonably anticipated by the Contractor, as determined from U.S. Weather Bureau records for the proceeding 3-year period or as provided for in the Special Provisions.
  6. Act of the public enemy, act of another governmental entity, public utility, epidemic, quarantine restriction, freight embargo, strike, or labor dispute. A delay to a subcontractor or supplier due to the above circumstances will be taken into consideration for extensions to the time of completion.

**5.05.02. Extensions of Time for Delay Due to Excusable Inclement Weather**

- A. The Contract time will be extended for as many days in excess of the average number of days of excusable inclement weather, as defined in Article 5.05.01.B.5., as the Contractor is specifically required under the Special Provisions to suspend construction operations, or as many days as the Contractor is prevented by excusable inclement weather, or conditions resulting immediately therefrom, from proceeding with at least 75 percent of the normal labor and equipment force engaged on critical items of work as shown on the schedule.

- B. Should the Contractor prepare to begin work at the regular starting time at the beginning of any regular work shift on any day on which excusable inclement weather, or the conditions resulting from the weather prevents work from beginning at the usual starting time and the crew is dismissed as a result thereof, the Contractor will be entitled to a 1–day extension whether or not conditions change thereafter during said day and the major portion of the day could be considered to be suitable for such construction operations.
- C. The Contractor shall base the construction schedule upon the inclusion of the number of days of excusable inclement weather specified in the Article titled “Excusable Inclement Weather Delays,” of the Special Provisions. No extension of the Contract time due to excusable inclement weather will be considered until after the said aggregate total number of days of excusable inclement weather has been reached; however, no reduction in Contract time would be made if said number of days of excusable inclement weather is not reached.

**5.06. Changed Site Conditions**

- A. If any work involves digging trenches or other excavations below the surface, the Contractor shall promptly and before the following conditions are disturbed, notify the District in writing of any:
  - 1. Material that the Contractor believes may be a regulated material that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
  - 2. Subsurface or latent physical conditions at the site differing from those indicated in this Contract.
  - 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. The District will promptly investigate the condition and if it finds that the conditions do materially so differ, or do involve regulated material, and cause a decrease or increase in the Contractor’s cost of, or the time required for, performance of any part of the work, the District will issue a change order under the procedures described in this Contract. For regulated materials, the District reserves the right to use other forces for exploratory work to identify and determine the extent of such material and for removing regulated material from such areas.
- C. In the event that a dispute arises between the District and the Contractor on whether the conditions materially differ or on 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 this Contract but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by this Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

**5.07. Cost Reduction Incentive**

- A. The Contractor may submit to the Engineer, in writing, proposals for modifying the Drawings, Specifications, or other requirements of the Contract for the sole purpose of reducing the total cost of construction as provided for in Section 5-1.14 of the State Specifications, wherein the words "State" and "Department" shall mean District.

**5.08. Disputes**

- A. It is the intention of this Article that disputes between parties arising under and by virtue of the Contract be brought to the attention of the Engineer at the earliest possible time in order that the matters may be resolved, if possible, or other appropriate action promptly taken. Disputes are divided into four categories: notice, protest, potential claim, and claim. During the course of the project and up to receiving the proposed final estimate, the Contractor must submit a contract dispute in the form of a written notice, protest, or a potential claim to the Engineer.
- B. Dispute Resolution Review Board process, if required, shall be in accordance with Article 5.10 of these Specifications.

**5.08.01. Protest**

- A. If the Contractor considers any work demanded to be outside of the requirements of the Contract, or considers any records or ruling or act or omission of the Engineers to be unfair, the Contractor shall immediately, upon such work being demanded, or such record or ruling being made, ask in writing for written instructions or decisions, whereupon the Contractor shall proceed without delay to perform the work or to conform to the record or ruling and, within 15 days after date of receipt of the written instructions or decisions, shall file a written protest with the Engineer stating clearly in detail the basis of the protest. Except for such protests as are made of record in the manner herein specified and within the time limit stated, the records, rulings, instructions, decisions, and acts or omissions of the Engineer shall be final and conclusive. Instructions and decisions of the Engineer contained in letters transmitting Drawings to the Contractor shall be considered as written instructions and decisions subject to protest as herein provided.

**5.08.02. Notice of Potential Claims**

- A. Contractor is not entitled to additional compensation for any cause unless Contractor submits to the District a written Notice of Potential Claim as hereinafter specified.
- B. The written Notice of Potential Claim must set forth the reasons for which Contractor believes additional compensation and/or time will or may be due, the nature of the costs and/or time involved, and, insofar as possible, the amount of the potential claim. The said notice as above required must have been submitted

to District before Contractor performs the work giving rise to the potential claim for additional compensation and/or time, if based on an act or failure to act by District, or in all other cases within fourteen (14) days after the happening of the event, thing or occurrence giving rise to the potential claim.

- C. Notice of Potential Claim shall be certified in accordance with Article 5.09.
- D. Compliance with the foregoing shall not be a prerequisite to any claim that is based on differences in measurement or errors of computations as to Contract quantities.

**5.09. Claims**

A. Claims by the Contractor must be submitted to the Engineer on or before the date of final payment. Claims shall be in writing, shall specify the basis for each claim, shall refer to the applicable provision or provisions of the Contract, and shall show the method of computation and the actual amount claimed. The claim shall include documents necessary to substantiate the claim and to establish liability, causation, and damages. All other factual data, including documentation of actual costs pertaining to that claim, shall be submitted. Each issue contained in a claim must include documentation including background, chronology, Contractor's position, supporting documentation of merit, supporting documentation of damages, schedules (if appropriate) and productivity exhibits (if appropriate).

B. Claims must be certified using the following language:

I, \_\_\_\_\_, BEING THE \_\_\_\_\_ (MUST BE AN OFFICER) OF \_\_\_\_\_ (CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND DO PERSONALLY CERTIFY AND ATTEST THAT: I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND SAID CLAIM IS TRUTHFUL AND ACCURATE; THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE DISTRICT IS LIABLE; AND, FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE SECTION 12650, ET SEQ, PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT AND/OR OTHER SEVERE LEGAL CONSEQUENCES.

C. The District, or their authorized representatives, shall have access, upon reasonable notice, during normal business hours, to Contractor and subcontractors' books, documents and accounting records, including but not limited to, bid worksheets, bids, subcontractor bids and proposals, estimates, cost accounting data, accounting records, payroll records, time sheets, canceled checks, profit and loss statements, balance sheets, project correspondence including but not limited to all correspondence between Contractor and its

sureties and subcontractors/vendors, project files, scheduling information, and other records of the Contractor and all subcontractors directly or indirectly pertinent to the work of the Project; original as well as changed and claimed extra work, to verify and evaluate the accuracy of cost and pricing data submitted with any Claim for which additional compensation has been requested or notice of potential Claims has been tendered. Such access shall include the right to examine and audit such records, and make excerpts, transcriptions, and photocopies at District's cost.

- D. The parties agree that in the event Contractor or any subcontractor fails to comply with this Article, the claim will not be considered by the District. Contractor agrees to impose upon its subcontractors by appropriate subcontract provision, the obligations of this Article of the Standard Provisions.
- E. No claim shall be considered where there has been a failure to comply with the requirements relative to Protest and Notice of Potential Claims as written elsewhere in these Specifications. The presentation of a claim shall be an express condition precedent to the Contractor's recourse to: (A) informal conference; (B) nonbinding mediation, and (C) judicial arbitration to resolve disputes on construction claims of \$375,000 or less, or court action upon the Contract for claim in excess of \$375,000 in compliance with Section 20104 of the Public Contract Codes.

**5.09.01. Claims Less Than Fifty Thousand Dollars**

- A. For claims of less than fifty thousand dollars (\$50,000), the Engineer shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the District may have against the Contractor.
- B. If additional information is thereafter required, it shall be requested and provided pursuant to this Article upon mutual agreement of the Engineer and the Contractor.
- C. The Engineer's written response to the claim, as further documented, shall be submitted to the Contractor within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater.

**5.09.02. Claims From Fifty Thousand Dollars to Three Hundred and Seventy-Five Thousand Dollars**

- A. For claims greater than or equal to fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the Engineer shall respond in writing to all written claims within 60 days of receipt of the claim, or may request in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the District may have against the Contractor.

- B. If additional information is thereafter required, it shall be requested and provided pursuant to this Article, upon mutual agreement of the Engineer and the Contractor.
- C. The Engineer's written response to the claims, as further documented, shall be submitted to the Contractor within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

**5.09.03. Informal Conferences**

- A. If the Contractor disputes the Engineer's written response, or the Engineer fails to respond within the time prescribed, the Contractor may so notify the Engineer, in writing, either within 15 days of receipt of the Engineer's response or within 15 days of the Engineer's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon such demand, the Engineer shall schedule a meet and confer conference within 30 days.
- B. If, following the meet and confer conference, the claim or any portion remains in dispute, the Contractor may file a claim pursuant to 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 Contractor submits his or her written claim pursuant to Article 5.09 until the time the claim is denied, including any period of time utilized by the meet and confer conference.

**5.09.04. Civil Actions**

- A. The following procedures are established for all civil actions filed to resolve claims:
  - 1. Within 60 days, but no earlier than 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 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.
  - 2. 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 Code

of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

- B. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

### **5.10. Dispute Review Board**

- A. When specified in the Special Provisions that a Dispute Review Board (DRB) process is required, the DRB process shall be in accordance with these Specifications.

#### **5.10.01. General**

- A. A DRB is to assist in and facilitate the avoidance and timely, impartial resolution of disputes.
- B. All disputes referred to the DRB shall be subject to the dispute resolution process herein described as a condition precedent to initiating a subsequent dispute resolution process such as arbitration or litigation for that dispute.
- C. Except as explicitly otherwise provided, all disputes that are actionable under the provisions of the prime contract between the District and the Contractor may be referred to the DRB.
- D. The DRB shall be utilized when dispute or potential claim resolution at the project level is unsuccessful. The DRB shall function until the day of acceptance of the Work by the District Board of Directors, at which time the work of the DRB will cease except for completion of unfinished dispute hearings and reports.
- E. The Contractor shall include in all subcontracts that subcontractors and suppliers of any tier (a) agree to submit subcontractor claims to the Contractor in a proper form and in sufficient time to allow processing by the Contractor in conformance with the DRB resolution specifications; (b) agree to be bound by the terms of the DRB provisions to the extent applicable to subcontractor claims; (c) agree that, to the extent a subcontractor claim is involved, completion of all steps required under these DRB special provisions shall be a condition precedent to pursuit by the subcontractor of other remedies permitted by law, including without limitation of a lawsuit against the Contractor; and (d) agree that the existence of a dispute resolution process for disputes involving subcontractor claims shall not be deemed to create any claim, right, or cause of action by any subcontractor or supplier against the District.
- F. The DRB reports shall not be binding on the District or the Contractor, and shall be admissible in subsequent dispute resolution proceedings.

**5.10.02. DRB Qualifications**

- A. Board members shall be experienced in the interpretation of contract documents and the resolution of construction disputes and in the type of construction to be performed.
- B. The following definitions apply for the purpose of setting forth experience and disclosure requirements.
  - 1. Party directly involved: The District or the Contractor of this Project.
  - 2. Contractor includes all joint-venture partners individually.
  - 3. Party indirectly involved: The construction manager, designers, architects, engineers, or other professional service firms or consultants, joint venture partners, subcontractors of any tier, and suppliers on this Project.
  - 4. Financial ties: any ownership interest, loans, receivables, or payables.
- C. Eligibility:
  - 1. Direct Employment:
    - a. Current employees of any of the parties directly or indirectly involved are prohibited from serving as Board members.
    - b. Prospective Board members who were past employees of one of the parties directly involved must obtain permission from the other party prior to appointment.
    - c. Previous direct employment by one of the parties indirectly involved must be disclosed.
  - 2. Consulting Assignments:
    - a. Individuals who are employed in a consulting capacity by any of the parties directly involved are prohibited from serving as Board members.
    - b. Prospective Board members who are currently employed as a consultant by one of the parties indirectly involved must obtain permission from the other party prior to appointment.
    - c. Previous employment as a consultant by any party directly or indirectly involved must be disclosed.

3. Financial Ties:
    - a. Individuals with financial ties to any of the parties directly involved are prohibited from serving as Board members.
    - b. Current financial ties to any of the parties indirectly involved must be disclosed.
    - c. Previous financial ties with any party, directly or indirectly involved must be disclosed.
  4. Close Personal or Professional Relationships:
    - a. Individuals with close personal or professional relationships with a key member of any party directly involved are prohibited from serving as Board members.
    - b. Such current relationships with a member of any party indirectly involved in the contract must be disclosed.
    - c. All past personal or professional relationships with a key member of one of the parties directly or indirectly involved must be disclosed.
  5. All past and current service as a Board member on projects where any of the parties directly or indirectly involved in this contract were also involved must be disclosed.
  6. No member shall have had substantial prior involvement in the Project, in the judgment of the District and the Contractor.
- D. Ongoing Responsibilities: While serving as a Board member on the DRB, no member shall participate in any discussion contemplating the creation of an agreement or making an agreement with any party directly or indirectly involved in the contract regarding employment or fee-based consulting services, or any other business arrangement after the contract is completed.

**5.10.03. Establishment of the DRB**

- A. The District and the Contractor shall jointly participate in the evaluation and selection of prospective nominees for the DRB.
- B. The District and the Contractor shall provide to the DRB nominees a list of the construction manager, designers, architects, engineers, professional service firms, consultants, joint-venture partners, subcontractors, and suppliers involved, or likely to be involved in the Project, with a listing of key personnel of each. DRB nominees shall provide the following, pursuant to the above requirements and in addition to the nominee's full name and contact information, to both parties:

1. Resume showing construction experience qualifying the person as a DRB member.
  2. Resume showing past DRB participation, if any. List each DRB assignment separately, indicating the name and location of the Project, dates of DRB service, name of owner, name of contractor, contract value, nominating party, if applicable, names of the other Board members and the number of disputes heard.
  3. Disclosure statement describing past, present, and anticipated relationships, including indirect relationships through the nominee's full-time employer, if any, to the Project, and with all parties directly and indirectly involved in the contract. Disclose close professional or personal relationships with key members of all these parties.
  4. Disclosure is a continuing obligation of all Board members throughout the life of the contract.
- C. The District and the Contractor shall then have three weeks to solicit and receive information from prospective candidates, and another two weeks to review and to jointly agree on the final selection of the three members to serve on the DRB. In the event that all three members were not selected from the initial pool of nominees, the process shall be repeated.
- D. If the DRB Chair has not already been appointed as part of the selection process, then as soon as is practicable the Board members shall nominate the Chair and submit the nominee's resume and request approval by the District and the Contractor.

**5.10.04. DRB Meetings**

- A. The DRB will visit the project site and meet with representatives of the parties at periodic intervals and at other times requested by the parties.
- B. Each meeting shall consist of an informal discussion and a field observation of the work in progress. The discussion and field observation shall be attended by personnel of the District and the Contractor.

**5.10.05. Dispute Resolution**

- A. Prior Good-Faith Negotiation:
  1. The District and the Contractor shall enter into good-faith negotiations to settle a dispute before referring such dispute to the DRB.
  2. These good-faith negotiations shall be founded on the principle of full and timely disclosure of each party's position to the other party, including the exchange of pertinent supporting records, analyses, expert reports, and similar documentation, and shall proceed without delay following the

inception of the dispute. Such good-faith negotiations may involve the solicitation and rendering of a DRB advisory opinion as described herein.

**B. Dispute Referral:**

1. A dispute may be referred to the DRB by either the District or the Contractor. The dispute referral shall be made in writing to the DRB Chair with a copy concurrently provided to the other Board members and the other party.
2. If the contract stipulates a precedent dispute resolution process prior to referral to the DRB, and if one party fails to meet or adhere to the time requirements set forth under the contract for this process, the other party may then refer the dispute to the DRB. In the event that the contract does not specify such precedent process, or specifies a precedent process without time requirements, either party may refer the dispute to the DRB after passage of a reasonable period of time without progress toward a negotiated settlement and the DRB will determine if the dispute should be heard.
3. The dispute referral shall concisely define the nature and specifics of the dispute that are to be considered by the DRB and the scope of the recommendation requested.
4. The DRB Chair shall confer with the parties to establish a due date for delivering pre-hearing submittals, and a date, time, and location for convening the DRB hearing. Hearings shall be convened at the next periodic meeting, unless the parties agree to a shorter or longer period.

**C. Pre-Hearing Submittal:**

1. The District and the Contractor shall each prepare a pre-hearing submittal and transmit it to all three members of the DRB and the other party. The pre-hearing submittal, comprising of a position paper with such backup data as is referenced in the position paper, shall be tabbed, indexed, and the pages consecutively numbered.
2. Both position papers shall, at a minimum, contain the following:
  - a. A joint statement of the dispute, and the scope of the desired report, placed in a prominent location. The language of this joint statement shall summarize in a few sentences the nature of the dispute. If the parties are unable to agree on the wording of the joint statement of dispute, each party's position paper shall contain both statements, and identify the party authoring each statement.
  - b. The basis and justification for the party's position, with reference to contract language and other supporting documents for each

element of the dispute. In order to minimize duplication and repetitiveness, the parties may identify a common set of documents that will be referred to by both parties and submit them in a separate package.

- c. When the scope of the hearing includes quantum, the referring party shall include a schedule impact analysis and full cost details, calculated in accordance with methods set forth in the contract. This requirement does not apply if the report is to be made for entitlement alone or for entitlement with guidelines for quantum.

- 3. The number of copies, distribution requirements, and time for submittal will be established by the DRB and communicated to the parties by the Chair.

D. DRB Hearings:

- 1. The District will arrange for or provide hearing facilities at or near the site.

- 2. Attendance:

- a. The District and Contractor shall both limit attendance at the hearing to personnel directly involved in the dispute and participants in the good-faith negotiations that were conducted prior to submittal to the DRB except as noted below.
- b. Prior to the date established for the hearing, each party shall provide a list of proposed attendees to the DRB and to the other party. In the event of any disagreement, the DRB shall make the final determination as to who attends the hearing.
- c. Attorneys shall not participate in the hearing. Attorneys representing the parties are permitted to attend dispute hearings, provided that prior permission is obtained from the other party.
- d. At DRB hearings regarding claims by a subcontractor, including pass-through claims by a lower tier subcontractor or supplier, against the Contractor which are actionable by the Contractor against the District, the Contractor shall require and ensure that each subcontractor involved in the dispute have presented an authorized representative with actual knowledge of the facts underlying the subcontractor claims.

- 3. The conduct of the hearing shall be established by the DRB according to their operating procedures and generally consistent with the following guidelines:

- a. The party who referred the dispute to the DRB shall present its position first, followed by the other party.

- b. Both parties shall be allowed successive rebuttals, assuring a full and adequate opportunity to present their position, and to rebut the opposing party's position, until, in the DRB's opinion, all aspects of the dispute have been fully and fairly covered.
  - c. The DRB shall be fully prepared to, and may at any time, ask questions, request clarifications, or ask for additional data and/or job records.
  - d. Either party may request that the DRB direct a question to, or request a clarification from the other party. The DRB shall determine at what point in the proceedings such requests may be made and if they will be granted. In general, the DRB will not allow one party to be questioned directly by the other party.
  - e. In difficult or complex cases, additional hearings may be necessary to facilitate full consideration and understanding of the dispute.
  - f. The DRB, in its discretion, may allow introduction of arguments, exhibits, handouts, or documentary evidence that were not included in that party's pre-hearing position paper and have not been previously submitted to the other party. In such cases the other party will be granted time to review and prepare a rebuttal to the new material.
- E. Failure to Prepare a Pre-Hearing Submittal or Attend a DRB Hearing:
- 1. In the event that either party fails to deliver a pre-hearing submittal by the date established by the DRB, the DRB shall, at its discretion, determine whether the hearing shall proceed as originally scheduled, or whether additional time shall be provided and a new date established. On the final date and time established for the hearing, the DRB shall proceed with the hearing utilizing the information that has been submitted.
  - 2. In the event that some or all of the representatives of either party fails to appear at the appointed time of a DRB hearing, the DRB shall proceed with the hearing. The hearing shall take place as if all party representatives were in attendance, and the DRB shall consider all evidence brought before it and hear testimony from those party representatives that are present.
- F. Use of Outside Experts:
- 1. By the District or Contractor:
    - a. A party intending to offer an outside expert's analysis at the hearing shall disclose such intention in writing to the other party and to the DRB no less than 30 days prior to the due date for

delivering the pre-hearing submittal. The expert's name and a general statement of the area of the dispute that will be covered by his or her testimony shall be included in the disclosure.

- b. Upon receipt of the above disclosure, the other party shall have the opportunity to secure the services of an outside expert to address or respond to those issues that may be raised by the other party's outside expert. The disclosure requirements shall be the same as that specified above, except the time requirement is 10 days.
- c. The cost for securing outside expert services shall be borne by the party securing such services.

2. By the DRB:

- a. Prior to arranging for outside experts, the DRB shall obtain prior approval from the District and the Contractor by providing:
  - (1) A statement explaining why the expert assistance is needed.
  - (2) An estimate of the cost of the expert assistance.
  - (3) A disclosure statement, in accordance with the requirements of 5.10.03.B.2 herein, using the criteria established in 5.10.02.C herein.
  - (4) A confidentiality statement, consistent with the DRB's such agreement, executed by the proposed expert.
- b. The Contractor and the District shall equally bear the cost of the services of the outside expert employed by the DRB.

G. DRB Report:

- 1. The DRB's recommendations for resolution of a dispute will be formalized in a written report with format as determined by the DRB and signed by all Board members. The report should consist of a concise description of the dispute, short statements of each party's position, findings as to the facts of the dispute, discussion and rationale for the recommendation(s), and the recommendation(s). The report shall be submitted concurrently to the parties, as soon as possible after completion of the hearing as agreed by all parties.
- 2. If the DRB cannot arrive at a unanimous report, the Board shall prepare minority findings and recommendation(s), which, together with the majority findings and recommendation(s) shall comprise the DRB report.

The report shall identify the issues of disagreement, along with the reasons for disagreement.

3. Clarification:
  - a. Either party may request clarification of a report within 10 days following receipt of the report. Within a reasonable period of time, the DRB shall provide written clarification to both parties.
  - b. Requests for clarification shall be submitted in writing simultaneously to the DRB and to the other party.
  - c. Only one request for clarification per dispute from each party will be allowed.
  
4. Reconsideration:
  - a. Either party may request reconsideration of a report, within 10 days following receipt of the report, when new information is obtained or developed that was not known at the time of the hearing, or when, in the party's opinion, the DRB misunderstood or failed to consider pertinent facts of the dispute. Within a reasonable period of time, the DRB shall provide written reconsideration to both parties.
  - b. Requests for reconsideration shall be submitted in writing simultaneously to the DRB and to the other party.
  - c. The Board will not entertain requests for reconsideration that amount to a renewal of prior argument or additional argument based on facts available at the time of the hearing.
  - d. Only one request for reconsideration per dispute from each party will be allowed.
  
5. Acceptance:
  - a. The District and the Contractor shall submit their written acceptance or rejection of the report concurrently to the other party and to the DRB within 14 days of receipt of the report or following receipt of responses to requests for clarification or reconsideration.
  - b. Failure by either party to accept or reject within the specified period shall be construed as acceptance of the report by that party.

- c. Acceptance by the District of a report on entitlement only, or on entitlement with guidelines for quantum, does not obligate the District to any particular quantum amount.
- H. Advisory Opinions:
- 1. An advisory opinion serves as a method for potentially avoiding a DRB hearing. It is not intended to replace the dispute resolution process specified herein, but may be implemented as part of the good faith negotiations conducted between the parties.
  - 2. When mutually agreed by the District and the Contractor, the DRB may, at its discretion, provide an advisory opinion on any issue.

**5.11. Escrow Bid Documents**

- A. When required by the Special Provisions, Escrow Bid Documents shall be prepared and submitted as specified herein.

**5.11.01. Introduction**

- A. The Escrow Bid Documents shall include complete documentation of all backup information used in the preparation of the Contractor's bid prices for this Project, as described below. The Escrow Bid Documents of the successful bidder will be held in escrow for the duration of the Contract or until all claims are resolved, whichever is later.
- B. The Escrow Bid Documents are, and shall always remain, the property of the Contractor, subject to joint review by the District and Contractor, as provided herein.
- C. The District stipulates and expressly acknowledges that the Escrow Bid Documents, as defined herein, constitute trade secrets.
  - 1. This acknowledgement is based on the District's express understanding that the information contained in the Escrow Bid Documents is not known outside the bidder's business, is known only to a limited extent and by a limited number of employees of the bidder, is safeguarded while in the bidder's possession, and is extremely valuable to the bidder's competitors by virtue of its reflecting bidder's construction strategies, assumptions and intended means, methods, and techniques of construction.
  - 2. The District acknowledges that the bidder expended substantial sums of money in developing the information included in the Escrow Bid Documents and further acknowledges that it would be difficult for a competitor to replicate the information contained therein.

3. The District further acknowledges that the Escrow Bid Documents and the information contained therein are being provided to District only because it is an express prerequisite to award of the Contract.
  4. The District further acknowledges that the Escrow Bid Documents include a compilation of information used in the bidder's business, intended to give the bidder an opportunity to obtain an advantage over competitors who do not know or use the contents of such information.
  5. The District further agrees to safeguard the Escrow Bid Documents against disclosure to the fullest extent permitted by law.
- D. The successful bidder agrees, as a condition of award of the Contract, that the Escrow Bid Documents constitute all of the information used in the preparation of its bid for this work, and that no other bid preparation information shall be considered in resolving disputes or claims. The successful bidder also agrees that nothing in the Escrow Bid Documents shall change or modify the terms or conditions of the Contract Documents.

**5.11.02. Purpose**

- A. The Escrow Bid Documents will be used solely to assist in the settlement of disputes and claims. They will not be used for pre-award evaluation of the Contractor's anticipated methods of construction nor to assess the Contractor's qualifications for performing the work.

**5.11.03. Format and Contents**

- A. The bidders may submit the Escrow Bid Documents in their usual cost estimating format: a standard format is not required. However, sufficient detail shall be included to ensure that the Escrow Documents enable complete understanding and proper interpretation of their content.
- B. The Escrow Bid Documents shall clearly itemize and separate the estimated cost of performing each bid item contained in the bid. Bid items should be separated into sub-items consistent with the Schedule of Values format to present a detailed cost estimate. Crews, equipment, estimated quantities, and the rate of production shall be detailed. Increments of cost shall include, but not be limited to, such items as direct labor, permanent materials, supplies, consumables, subcontracts, equipment charges, and allocations of overheads and profit. Plant, equipment, and indirect costs should be detailed. All costs included in the bid prices must be specifically identified and the methods of application described.
- C. The Escrow Bid Documents shall include all quantity take-offs, calculations of rates of production and progress, copies of quotes from subcontractors and suppliers, and memoranda, narratives and all other information used by the bidder to arrive at the prices contained in its bid.

**5.11.04. Submittal**

- A. The Escrow Bid Documents shall be submitted by the three apparent low bidders in a sealed container separate from their proposal no later than 8 A.M. on the first Monday, or Tuesday if Monday is a holiday, following the bid opening day. Each container shall be clearly marked on the outside with the bidder's name, date of submittal, project name, and the words "Escrow Documents."
- B. The Escrow Bid Documents shall be accompanied by a separate certification, signed by an individual authorized by the bidder to execute the bidding proposal, stating that the material in the Escrow Documents constitutes all of the documentary information used in preparation of this bid, and that he/she has personally examined the contents of the Escrow Documents container and has found that the documents in the container are complete.
- C. The Escrow Bid Documents of the apparent successful bidder will be opened and examined by an appointed member of the District in the presence of the bidder before the Contract is awarded. The apparent successful bidder and applicable subcontractors as stated in paragraph G below shall attend this examination.
- D. This examination is to ensure that the Escrow Bid Documents are legible and complete. It will not include a review of, or constitute approval of, proposed construction methods, estimating assumptions or interpretations of Contract Documents. The examination will not alter any condition or term of the Contract. Should the examination indicate that any data is incomplete or missing, the bidder shall supply the missing information within 24 hours or such other time as is mutually agreeable.
- E. The timely submittal of complete Escrow Bid Documents is an essential element of the bidding process and a prerequisite to contract award. Failure to provide the necessary Escrow Bid Documents will be sufficient cause for the District to reject the bid as non-responsive.
- F. If the Contract is not awarded to the apparent successful bidder, the Escrow Bid Documents of the bidder next to be considered for award shall be processed as described above. The Escrow Bid Documents of the unsuccessful bidders will be held in escrow until such time that they are returned unopened upon execution of the Contract by the successful bidder.
- G. If any bidder's proposal is based upon subcontracting any part of this work, each subcontractor, whose total subcontract price exceeds the percentage of the total bid price specified in the Special Provisions, shall provide separate Escrow Bid Documents to be included with those of the bidder. Such documents shall be opened and reviewed in the presence of the subcontractor only in the same manner and at the same time as the review described above for the apparent successful bidder.

- H. It is the District's policy, in accordance with State law, that new subcontractors are not accepted after award. However, if the Contractor wishes to lawfully change a subcontractor or lawfully issue an additional subcontract for any portion of this work after award and the District grants a specific exception to this policy, the District retains the right to require the new subcontractor to submit Escrow Bid Documents before the new subcontract is approved.

**5.11.05. Storage**

- A. Upon completion of the examination, receipt of the apparent successful bidder's Escrow Bid Documents will be acknowledged in writing by the District and the documents will be placed in escrow, for the life of the Contract, at an escrow firm within the greater Santa Clara County area chosen by the District. The District will pay for storage and maintenance of the Escrow Bid Documents.

**5.11.06. Examination**

- A. The Escrow Bid Documents may be examined at any time deemed necessary by either the District or the Contractor in order to assist in the settlement of disputes and claims.
- B. An examination of the Escrow Bid Documents is subject to the following conditions:
  - 1. As trade secrets, the Escrow Bid Documents are proprietary and confidential.
  - 2. The District and Contractor (and any subcontractor, to the extent Escrow Bid Documents are required by a subcontractor) shall each designate in writing to the other party and seven (7) days prior to any examination, representatives who are authorized to examine the Escrow Bid Documents. With the consent of both the District and the Contractor, members of the Disputes Review Board may participate in the examination of the Escrow Bid Documents. No other person shall have access to the Escrow Bid Documents.
  - 3. Access to the Escrow Bid Documents may take place only in the presence of a duly designated representative of both the District and Contractor. If the Contractor fails to designate a representative or appear for joint examination on seven (7) days notice, then the District representative may examine the Escrow Bid Documents upon an additional three (3) days notice.

**5.11.07. Final Deposition**

- A. The Escrow Bid Documents will be returned to the Contractor after the work has been completed and accepted and all claims and disputes involving this work have been settled. The Contractor will thereupon be required to waive, in writing, any right to lodge further claims involving this work.

**5.12. Partnering****5.12.01. Partnering Relationship**

- A. The District intends to encourage the foundation of a cohesive partnership with the Contractor and its principal subcontractors and suppliers for this Project, and will promote the formation of a partnering relationship with the Contractor in order to effectively complete the Contract to the benefits of both parties.
- B. The purpose of the partnering relationship is to maintain a cooperative communication and to mutually resolve conflicts at the lowest responsible management level. It is intended to result in agreements which establish an environment of cooperation between all parties and will allow the Contract requirements to be achieved effectively and efficiently by both the Contractor and the District.
- C. The Contractor may request the formation of such a partnering relationship by submitting a request in writing to the Engineer after approval of Contract. If the Contractor's request for partnering is approved by the Engineer, scheduling of a partnering workshop, selecting the partnering facilitator and workshop site, and other administrative details shall be as agreed by both parties.

**5.12.02. Implementation**

- A. If approved, the partnering initiative is to be implemented prior to the preconstruction conference. The Contractor and the Engineer will initiate one two-day partnering development seminar/team building workshop prior to the preconstruction conference. A one-day partnering workshop will be held at every one to two months during construction, or as when needed, as determined by the Engineer and Contractor. Both parties will make arrangements to determine attendees at the workshop, agenda of the workshop, duration, and location. Persons required to be in attendance will be the Engineer and/or the Engineer's authorized agents and key project personnel; the Contractor's authorized representative, on-site project manager and key project supervision personnel of both the prime and principal subcontractors and suppliers; and other personnel as deemed necessary by the District and Contractor.
- B. The District will obtain and pay for the services of a partnering facilitator and a meeting room. All other costs associated with the partnering workshops will be borne separately by the party incurring the costs, such as wages and travel expenses, and no additional compensation will be allowed therefore.

- C. The establishment of a partnering relationship will not change or modify the terms and conditions of the Contract and will not relieve either party of the legal requirements of the Contract.

**5.13. Dust Control**

- A. During the performance of all work under this Contract, the Contractor shall assume all responsibility for dust control and shall furnish all labor, equipment, and means required to carry out proper and efficient measures wherever and whenever dust control is necessary to prevent operations from producing dust damage and nuisance to persons and property. Any claims resulting therefrom shall be borne solely by the Contractor.

**5.14. Excavation Safety Plans**

- A. Attention is directed to Section 6705 of the Labor Code concerning trench excavation safety plans. Excavations five (5) feet or more in depth shall not begin until the Contractor has submitted and the Engineer has returned indicating "In Receipt Of" the Contractor's detailed plan for worker protection from the hazards of caving ground during such excavations. The plan may be reviewed by the Engineer for completeness in accordance with federal, state, and local regulations. The Engineer will not be responsible for reviewing the accuracy of assumptions, data and information used, and procedures contained in the plan or the adequacy thereof. Such plans shall show the details of the design of shoring, bracing, sloping, or other provisions to be made for worker protection during such excavation. The plan shall not allow the use of shoring, sloping, or a protective system less effective than that required by the Construction Safety Orders; and if such plan varies from the shoring system standards established by the Construction Safety Orders, the plan (including calculations) shall be prepared, signed and stamped by an Engineer registered as a Civil or Structural Engineer, and by an Engineer registered as a Geotechnical Engineer, in the State of California.
- B. Such plans shall be accompanied by a copy of the Permit to Excavate that has been issued by the Division of Occupational Safety and Health as required by Labor Code Section 6500 and following.
- C. This Article shall be applicable regardless of Contract price.

**5.15. Asbestos-Related Work**

- A. The Contractor's attention is directed to Section 7058.5 of the Business and Professions Code which states that from and after January 1, 1987, no Contractor shall engage in asbestos-related work, as defined, who is not certified by the Contractor's State License Board to do so.
- B. The Contractor's attention is also directed to Section 6501.5, and following, of the Labor Code relative to asbestos-related work and to provisions of the General

Industry Safety Orders of Title 8 of the Code of Regulations and to the BAAQMD's Regulation 11, Rule 2.

**5.16. Substitutions**

- A. If a specific means, method, technique, sequence, or procedure of construction is indicated in or required by the Contract Documents, the Contractor may furnish or utilize a substitute means, method, sequence, technique, or procedure of construction acceptable to the Engineer, if the Contractor submits sufficient information to allow the Engineer to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents.
- B. The Engineer will respond in writing to the Contractor within 10 days indicating the time necessary to evaluate each proposed substitute. The Engineer will be the sole judge of acceptability, and no substitute will be ordered, installed, or utilized without the Engineer's prior written acceptance, which will be evidenced by either a change order or an approved shop drawing. The District may require the Contractor to furnish at the Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- C. The Engineer will record time required by the Engineer and the Engineer's consultants in evaluating substitutions proposed by the Contractor and in making changes in the Contract Documents occasioned thereby. Regardless of whether or not the Engineer accepts a proposed substitute, the Contractor shall reimburse the District for the charges of the Engineer and Engineer's consultants for evaluating each proposed substitute.
- D. Cost or time impacts to other items of Contract work which are caused by any Contractor initiated request for substitution, whether anticipated or unforeseen, shall be the responsibility of the Contractor.
- E. Contractor's attention is directed to Article 10.06 – Equal, Sole or Single Source, and Substitutions.

## **SECTION 6. LEGAL RELATIONS AND RESPONSIBILITY**

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### **6.01. Laws to be Observed**

- A. The Contractor shall remain informed of and in compliance with applicable existing and future federal, state, county, and municipal laws, ordinances, rules and regulations, including but not limited to, those cited herein.

### **6.02 Equal Opportunity Requirements**

- A. The Santa Clara Valley Water District is an equal opportunity employer and requires its contractors to have and adhere to a policy of equal opportunity and non-discrimination. In the performance of the Contract, the Contractor will comply with all applicable federal, state, local laws and regulations, and will not discriminate against any subcontractor, employee, or applicant for employment, in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff rates of pay, or other forms of compensation, or against any other person, on the basis of race, color, religion, ancestry, gender, national origin, age (over 40), marital status, medical condition (including cancer), pregnancy, parental status, the exercise of family care leave rights, political affiliation, sexual orientation, gender identity, special disabled veteran status, Vietnam Era veteran and all other Veteran status, or because of a physical or mental disability (including HIV and AIDS). The Contractor's policy must conform with applicable state and federal guidelines including the Federal Equal Opportunity Clause, "Section 60-1.4 of Title 41, Part 60 of the Code of Federal Regulations," Title VII of the Civil Rights Act of 1964 as amended; the American's with Disabilities Act of 1990; the Rehabilitation Act of 1973 (sections 503 and 504); California Fair Employment and Housing Act (Government Code section 12900 et. Seq.); California Labor Code sections 1101 and 1102.

### **6.03. Employment of Labor**

- A. In the employment of labor in the performance of the Contract, the District desires that the Contractor and all subcontractors shall, wherever possible, give first consideration to residents of the District.

### **6.04. Prevailing Wages**

- A. The Work to be performed pursuant to this contract is "public works" subject to California Labor Code Section 1771, et. seq. and the applicable implementing regulations. The General Prevailing Wage Rates issued by the California Department of Industrial Relations may be adjusted by the State during the term of this contract. Notwithstanding any other provisions of this Contract, Contractor will not be entitled to any adjustment in compensation in the event there are adjustments to the General Prevailing Wage Rates.
  - 1. 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 available to the

particular craft, classification, or type of workers employed on the work. These rates are set forth in the latest determination obtained from the Director, which is on file in the office of the Clerk of the Board of Directors and incorporated herein by reference the same as though set out in full. The rates are also available on the State of California Department of Industrial Relations website at <http://www.dir.ca.gov>.

2. The Contractor shall forfeit as a penalty to the District, \$50 for each day, or portion thereof, for each worker paid less than the stipulated prevailing rates for any public work done under the Contract by the Contractor or by any subcontractor in violation of the provisions of the Labor Code, particularly Sections 1770 through 1780, inclusive.
- B. Each Contractor and Subcontractor shall keep 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 journeyman, apprentice, worker, or other employee by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor in accordance with the provisions of Section 1776 of the Labor Code.
1. Contractor and each Subcontractor must, pursuant to California labor Code §1776, submit a certified weekly payroll within ten (10) Days after the Owner's request for submission of certified weekly payroll records. The certified payroll must include the date of actual payment of wages for each worker employed on the project and a breakdown of each payment including all fringe benefits included in such wage for each worker.
  2. Pursuant to California labor code §1776, in the event that the Contractor fails to comply with the 10-day submission deadline, the contractor must forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, of each worker, until strict compliance is effectuated.
  3. The Contractor shall inform the District of the location of the payroll records, including the street address, city, and county, and shall, within 5 working days, provide a notice of a change in location and address. The responsibility for compliance with payroll record requirements imposed by said Section 1776 of the Labor Code is on the prime Contractor.
- C. The Contractor must submit certified weekly payroll(s) in support of the monthly request for payment as required in Article 8.03. Certified weekly payroll(s) must be submitted within 10 calendar days from the progress payment end date. Payroll(s) shall contain the full name, address, and Social Security number of each employee, his or her correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made, and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and Social Security number need only appear on the first payroll on which his or her name appears. The payroll shall be accompanied by

a "Statement of Compliance" signed by the employer or agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the Contract. The "Statement of Compliance" shall be on forms furnished by the District or on any form with identical wording. The Contractor shall be responsible for the submission of copies of payrolls of all subcontractors.

1. The District will take all actions reasonably necessary to enforce the prevailing wage requirements of this contract including retaining progress payment funds not supported by certified payroll(s).
  2. Retentions for failure to submit satisfactory payrolls are in addition to all other retentions provided for in the Contract.
- D. The Contractor and each subcontractor shall preserve their respective payroll records for a period of 4 years from the date of filing a Notice of Completion and Acceptance under the Contract.
1. The work of installing, assembling, repairing or reconditioning, or other work of any nature on machinery, equipment, or tools used in or upon the work, is considered a part of the work to be performed under the Contract and any laborers, workers, or mechanics working on such machinery, equipment, or tools, are subject to all of the requirements relating to labor set forth in the Contract.
  2. The construction, erection, and operation of material production, proportioning, or mixing plants from which material is used wholly on the Contract or on contracts under the supervision of the District, shall be considered a part of the work to be performed under the Contract and any laborers, workers, or mechanics working on such plants shall be subject to all of the requirements relating to labor set forth in the Contract.

#### **6.05. Hours of Labor**

- A. Eight hours' labor constitutes a legal day's work. The Contractor shall forfeit as a penalty to the District, \$25 for each worker employed in the execution of the Contract by the Contractor or by any subcontractor for each day during which such worker is required or permitted to labor more than 8 hours in violation of Labor Code Sections 1810 to 1815, inclusive, except as provided for under Labor Code Section 1815.

#### **6.06. Apprentices**

- A. The Contractor's attention is directed to the provisions in Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor.
- B. Section 1777.5 requires the Contractor or subcontractor employing persons, as defined, in any apprenticeable occupation to apply to the joint apprenticeship

committee which is nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen that will be used in the performance of the Contract. The ratio of work performed by apprentices to journeymen in such cases shall not be less than 1 hour to 5 hours, except when the committee finds that any one of the following conditions is met:

1. In the event unemployment for the previous 3-month period in the project site area exceeds an average of 15 percent, or
  2. In the event the number of apprentices in training in such area exceeds a ratio of 1 to 5, or
  3. If there is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either (1) on a statewide basis, or (2) on a local basis, or
  4. If assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his/her life or the life, safety, or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.
- C. The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if the Contractor employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.
- D. The Contractor and any subcontractor shall comply with the requirements of Sections 1777.5 and 1777.6 in the employment of apprentices.
- E. 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.

**6.07. Permits and Licenses**

- A. The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the prosecution of the work, except as provided in the Special Provisions.

**6.08. Patents and Copyrights**

- A. The Contractor shall assume all costs including any costs of defense arising from the use of any copyrighted composition, secret process, patented or unpatented invention, article, equipment, device, or appliance manufactured, furnished, or used in the performance of the Contract, including their use by the District, unless otherwise specifically stipulated in the Specifications.

**6.09. Public Safety**

- A. The Contractor shall be solely and completely responsible for conditions of the jobsite including safety of all persons and property during the performance of the work, except from District's sole negligence or intentional misconduct. Contractor's compliance with this requirement is not limited to normal working hours.
- B. At all times the Contractor shall provide for public safety and convenience. The Contractor's operations shall be conducted so as to offer the least possible obstruction and inconvenience to the public along with the greatest safety to the public. At no time shall the Contractor have more work underway than can be prosecuted with proper regard to these considerations to the public.
- C. The Contractor shall furnish, erect, and maintain such fences, barriers, lights, and signs and provide such flagging and guards as are necessary in the opinion of the Engineer or public agency having jurisdiction, to give adequate warning to the public of the construction and of any dangerous condition to be encountered as a result thereof.

**6.10. Accident Prevention**

- A. The Contractor shall comply with the California Occupational Safety and Health Act (Labor Code Section 6300 et seq.) and Title 8 of the Code of Regulations, and will also take, or cause to be taken, such additional measures as may be necessary for the prevention of accidents.
- B. Prior to commencement of work the Contractor shall (1) submit proposals in writing for effectuating provisions for accident prevention, and (2) meet in conference with the Engineer to discuss and develop mutual understandings relative to administration of an overall safety program.
- C. During the performance of work under the Contract, the Contractor shall institute controls and procedures for the control and safety of persons visiting the jobsite.
- D. The Contractor shall maintain an accurate record of, and shall report to the Engineer in writing, exposure data and all accidents resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment incident to work performed under the Contract.
- E. The Engineer will notify the Contractor of any noncompliance with the foregoing provisions. The Contractor shall, after receipt of such notice, immediately take corrective action. If the Contractor fails or refuses to comply immediately, the matter will be referred to the proper authority. No part of the time lost due to any stop order issued by proper authority shall be made the subject or claim for extension of time or for extra costs or damages by the Contractor.
- F. Compliance with the provisions of this Article by subcontractors will be the responsibility of the Contractor.

**6.11. Explosives and Stream Pollution**

- A. When the use of explosives is necessary for the prosecution of the work, the Contractor shall not endanger life or property.
- B. All explosives shall be stored in accordance with the provisions of Division XI of the Health and Safety Code and applicable county and city ordinances.
- C. Attention is called to the necessity of obtaining a permit from the Department of Fish and Game of the State of California in advance of use of underwater explosives. Attention is directed to the Fish and Game Code relating to stream pollution, particularly Section 5650.

**6.12. Fires**

- A. The Contractor shall obtain any necessary fire permits from the properly constituted authority and comply with all regulations of the BAAQMD.

**6.13. Interference With Fire Hydrants, Highways, and Fences**

- A. The Contractor shall conduct operations as not to close or obstruct any portion of any highway, road, or street, or prevent in any way free access to fire hydrants until permits have been obtained therefor from the proper authorities. If any highway required to be kept open shall be rendered unsafe by the Contractor's operations, the Contractor shall make such repairs or provide such temporary guards as shall be acceptable to the authorities having jurisdiction and to the Engineer. Any highway or street maintenance or repair work required by local authorities in connection with necessary operations under the Contract shall be performed by the Contractor at the Contractor's own cost and expense. Fences subject to interference shall be maintained as effective barriers consistent with the original intent but, upon approval of the Engineer, they may be moved or rearranged to facilitate prosecution of the work until the work is finished, after which they shall be restored to their original location in an equal or better condition that existed prior to rearrangement.

**6.14. Preservation of Property**

- A. Due care shall be exercised to avoid damage to existing improvements, utility facilities, and adjacent property, real and personal. The fact that any existing underground improvement or facility is not shown on the Drawings shall not relieve the Contractor of responsibility to ascertain the existence of any underground improvement or facility which may be subject to damage by reason of the Contractor's operations.
- B. Any damage to improvements or property, whether above or below the ground, private or public, within or adjacent to the project limits, arising from, or in consequence of, the performance of the Contract shall be repaired at once by the Contractor. If the Engineer requires such repair to be made prior to the execution or continued performance of any part of the work included in this

Contract, the Engineer will so notify the Contractor who shall delay or discontinue the performance of that part of the work until the necessary repair has been made. Such delay shall not be considered unavoidable, and no extension of time for completion of the Contract will be allowed therefor.

- C. When ordered by the Engineer to make any such repair, the Contractor shall start work thereon within four (4) hours and shall prosecute the same with diligence to completion. Upon failure of the Contractor to so comply with such order, or upon the Contractor's failure to make immediate emergency repairs reasonably determined by the Engineer to be necessary in the best interests of the public, the Engineer shall have authority to cause such repair to be made and to deduct the costs thereof from any money due, or which may become due, the Contractor.
- D. In an emergency affecting the safety of life or property including adjoining property, the Contractor shall act to prevent, to the extent possible, such threatened loss or injury, whether or not instructed to do so by the Engineer.

#### **6.15. Contractor's Responsibility for Work**

- A. Until the formal acceptance of the work, the Contractor shall have the charge and care of the work and of the materials to be used therein, and shall bear the risk of injury, loss, 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 materials to be used in the work include both those furnished by the District and those furnished by the Contractor, including materials for which the Contractor has received partial payment as provided in Article 8.03.

#### **6.16. Indemnification**

- A. The Contractor shall defend, indemnify and save harmless the District and its Directors, officers, employees, and agents from liability, loss, suits, actions, or claims brought for or on account of violation of laws, ordinances, rules or regulations, or injury, damage, or loss including death caused by acts or omissions of the Contractor, its employees, or agents.
- B. The Contractor shall defend, indemnify and save harmless the agencies/parties named in Article 13.16.02.A. of the Special Provisions, including their officers, employees, and agents from liability, loss, suits, actions, or claims brought for or on account of any violation of laws, ordinances, rules or regulations, or injury, damage, or loss including death caused by acts or omissions of the Contractor, its employees, or agents.

#### **6.17. Contractor's Insurance**

##### **6.17.01. General**

- A. No Contract between the parties is formed until all insurance required by this Article has been obtained and such insurance and insurers have been approved

by the District. The insurance procured by Contractor for the benefit of Santa Clara Valley Water District shall not be deemed to release or limit any liability of Contractor. Damages recoverable by Santa Clara Valley Water District for any liability of Contractor shall, in any event, not be limited by the amount of the required insurance coverage. Any delay in the commencement of work beyond the date of the first chargeable day in the Notice to Begin Work, caused by the Contractor's failure to comply with the insurance requirements specified in these Specifications, is the responsibility of the Contractor. Failure by the Contractor to maintain all required insurance at all times during the performance of this Contract, and until acceptance by the District, shall, at the discretion of the District, result in temporary suspension of work, or termination of control, or termination of contract in accordance with Articles 7.05, 7.07, 7.08 respectively, and shall not be a basis for a time extension. Contractor's insurance shall be primary with respect to any other insurance which may be carried by Santa Clara Valley Water District.

- B. The District has the right to require Contractor to provide complete, certified copies of all required pertinent insurance policies, including endorsements affecting the coverage required by the Agreement.
- C. The specific insurance requirements and coverages shall be in accordance with the Special Provisions.

**6.17.02. Insurance on Work and Materials**

- A. The Contractor shall secure and maintain such direct damage insurance against such perils as the Contractor may deem necessary to protect the work called for in this Contract, including work completed, material in place or to be used in the performance of this Contract, and such other miscellaneous items as may be necessary to the performance of this Contract.

**6.18. Payment of Taxes**

- A. Except as otherwise specifically provided in the Special Provisions, the Contract prices shall include full compensation for all current and future taxes which the Contractor is required to pay, whether imposed by federal, state, or local government, and no tax exemption certificate or any other document designed to exempt the Contractor from payment of tax will be furnished to the Contractor by the District.

**6.19. Cooperation With Others**

- A. The District reserves the right to do other work on or near the project. The Contractor shall cooperate with others and conduct work so as to facilitate work by the District or others and prevent delay, additional expense, or hindrance thereto. The Contractor shall request from, and exchange with others, Drawings, data, and information as necessary to insure proper completion of the project and work of others. The Contractor shall furnish copies of correspondence and Drawings exchanged with other contractors to the Engineer.

- B. The Contractor shall conduct, adjust, correct, and coordinate work with work of others so that the project shall be free of defects.

**6.20. Property Rights in Materials**

- A. Nothing in the Contract shall be construed as vesting in the Contractor any right of property in the materials used after they have been attached or affixed to the work or the soil, or after payment has been made for 90 percent of the value of materials delivered to the site of the work, whether or not they have been so attached or affixed. All such materials shall become the property of the District upon being so attached or affixed or upon payment of such 90 percent of the value of materials delivered by the Contractor on the ground and not used, as provided in Article 8.03.

**6.21. Rights in Land and Improvements**

- A. Nothing in these Specifications shall be construed as allowing the Contractor to make any arrangements with any person to permit occupancy or use of any land, structure, or building within the limits of the Contract for any purpose whatsoever, either with or without compensation, in conflict with any agreement between the District and any owner, former owner, or tenant of such land, structure, or building.

**6.22. Title to Materials Found on the Work**

- A. The title to all water and to the right to the use of all water, to all soil, stone, gravel, sand, minerals, and all other materials developed or obtained in the excavation or other operations by the Contractor or any subcontractor, or any of their employees, and the right to use or dispose of the same, are hereby expressly reserved by the District, and neither the Contractor, nor any subcontractor, nor any of their employees shall have any right, title, or interest in, or to any part thereof; neither shall they, nor any of them, assert or make any claim thereto. The Contractor may be permitted to use in the work, without charge, any such materials which meet the requirements of these Specifications.

**6.23. Trespass**

- A. The Contractor shall be responsible for all damage or injury which may be caused on any property by trespass by the Contractor, any subcontractor, or their employees in the course of their employment, whether the said trespass was committed with or without the consent or knowledge of the Contractor.

**6.24. Subcontracting**

- A. The Contractor shall comply with Subletting and Subcontracting Fair Practices Act commencing with Section 4100 of the Public Contract Code. Violations shall subject Contractor to penalties described in the Act.

- B. In accordance with Section 4107 of the Public Contract Code, the Designated Engineer is an authorized officer to act for the Board for the purposes of consenting to a substitute subcontractor.

**6.25. Tunnel Construction Safety**

- A. Attention is directed to Labor Code Sections 7950 and following, concerning tunnel safety. The Contractor shall notify the Division of Occupational Safety and Health and the Engineer before any initial construction may be started at any tunnels. A prejob safety conference, to be arranged for by the Contractor, shall be held for all underground operations. The Engineer shall be notified of the time and place of such conference. The tunnel classification prepared by the Division of Occupational Safety and Health shall be prominently posted at the site by the Contractor. The District will obtain this classification prior to the request for bids, whenever possible, and make it available to the Contractor.

**6.26. Assignment of Antitrust Claims**

- A. Sections 4550 through 4554 of the Government Code pertaining to the assignment of antitrust claims are incorporated herein in full by this reference.

**6.27. Burial Sites**

- A. Pursuant to Ordinance Code Section B6-18 of the County of Santa Clara and requirements of Public Resources Code Section 5097.94 and Health and Safety Code Section 7050.5, upon discovering or unearthing any burial site as evidenced by human skeletal remains, the person making such discovery shall immediately notify the County Coroner. The Contractor shall also notify the Engineer. The Contractor shall immediately secure the site and protect any human remains from further disturbance.
- B. Upon determination by the County Coroner that the remains are Native American, the Coroner will contact the California Native American Heritage Commission and the County Coordinator of Indian Affairs. No further excavation or disturbance within 30 feet of the site or of any nearby area reasonably suspected to overlie adjacent remains may be made except as authorized by the California Native American Heritage Commission and/or the County Coordinator of Indian Affairs.
- C. The Contractor is advised that if burials are encountered, it may be necessary to suspend work on the project in order to comply with the above requirements. Payment for a delay of more than 1 working day for each occurrence will be made in accordance with Article 5.04 and Article 5.05.

**6.28. Delay Due to Archeological Discovery**

- A. The Contractor is advised that if archeological artifacts are encountered, it may be necessary to suspend work on the project in order to comply with this Article.

- B. Work in areas where artifacts are found shall be restricted or stopped as directed by the Engineer until proper protocols are met.
- C. Work at the location of the find shall halt immediately within 30 feet of the find. If an archaeologist is not present at the time of the discovery, the Engineer will contact an archaeologist for identification and evaluation pursuant to Section 21083.2 of the Public Resources Code, Section 15126.4 of the California Code of Regulations (California Environmental Quality Act [CEQA] Guidelines), and the mitigation measures of the project CEQA document. If the archaeologist determines that the artifact is not significant, the Engineer will authorize the Contractor to resume construction.
- D. If the archaeologist determines that the artifact is significant, the archaeologist will determine if the artifact can be avoided and, if so, will detail avoidance procedures. The Contractor shall comply with these avoidance procedures.
- E. If the artifact cannot be avoided, the archaeologist will develop within 48 hours an Action Plan which will include provisions to minimize impacts and, if required, a Data Recovery Plan for recovery of artifacts in accordance with Public Resources Code Section 21083.2 and Section 15126.4 of the CEQA Guidelines.
- F. The Contractor shall delay work until the Action Plan and, if required, the Data Recovery Plan, are approved by the Engineer. Once the Action Plan and the Data Recovery Plan are approved, the Contractor shall comply with the requirements of these plans.
- G. Payment for a delay of more than 1 working day for each occurrence will be made in accordance with Article 5.04 and 5.05.

**6.29. Noise Pollution and Vibration**

- A. The Contractor shall be responsible for ensuring that noise produced by construction activities does not exceed the applicable local noise ordinance standards and is in compliance with the performance standards set forth in the Special Provisions.
- B. At a minimum, the Contractor shall exercise precautionary measures listed below. Installation of these measures shall in no way relieve the Contractor of the responsibility of compliance with the noise criteria.
  - 1. Air compressors and internal combustion engines shall be in good operating condition that meet or exceed original factory specifications and shall be equipped with high-grade mufflers, air-inlet silencers, where appropriate, and noise suppressers.
  - 2. All mobile or fixed noise producing machinery and equipment, including "package" equipment such as fans, cranes, arc-welders, air compressors, electrical operators and the like, shall be suitably housed, enclosed,

shielded, equipped with noise control features, or muffled to meet the noise limits specified in the Special Provisions.

3. All mobile or fixed noise producing equipment used by the Contractor that is regulated for noise output by local, state, or federal law shall comply with such regulation while in use. This shall include vehicles licensed for use on public highways.
  4. Electrically-powered equipment instead of pneumatic or internal combustion powered equipment shall be used, where feasible.
  5. The use of noise-producing signals, including horns, whistles, alarms, and bells shall be for safety warning and emergency purposes only.
  6. No music system including personal or vehicle radio, tape, or CD players or the like shall be audible at the Project right of way line.
  7. Trucks or other mobile equipment shall not use engine decompression ("Jake Brakes") for deceleration on grades, where feasible.
- C. The Contractor shall take all necessary precautions during its operations to limit peak particle velocities from vibratory compaction or percussion equipment so that they do not become a public nuisance or result in property damage.
- D. Any equipment causing incompliance with the noise or vibration criteria shall be removed from the job site as directed by the Engineer.

### **6.30. Air Pollution**

- A. Attention is directed to the BAAQMD and California Air Resources Board regulations. No burning will be allowed on this Project. Idling of internal combustion engines shall be held to an absolute minimum. All vehicles with internal combustion engines shall be fitted with spark arresters.
- B. Rapid-cure cutback asphalt shall not be used in accordance with BAAQMD, Regulations 8, Rule 15.
- C. Asbestos-containing serpentine material, as defined in the BAAQMD, Regulations 11, Rule 14, and 17 CCR 93106, shall not be used for surfacing.
- D. Except as provided by law, idling of heavy duty diesel trucks with gross vehicular weight ratings of greater than 10,000 pounds shall be no more than 5 minutes per 13 CCR 2485.

### **6.31. Spillage and Dust**

- A. Care shall be taken to prevent spillage when hauling is done. Spillage resulting from hauling operations along or across any public traveled way shall be removed immediately by the Contractor. The Contractor shall pay all expenses for removal of spillage.

- B. Dust nuisances originating from the Contractor's operations either inside or outside the right of way shall be controlled at the expense of the Contractor in accordance with Article 5.10.
- C. The Contractor shall provide all necessary precautionary measures to control dust and to prevent spillage on public traveled ways. At a minimum, the Contractor shall provide the measures listed below. Implementation of these measures shall in no way relieve the Contractor of the responsibility to comply with these Specifications.
  - 1. Active maintenance areas, unpaved access roads, and staging areas shall be kept sufficiently moist, and watered as necessary, or shall be applied with non-toxic soil stabilizers, to control dust generation.
  - 2. Trucks hauling sediments and other loose material shall be covered and shall maintain at least 6 inches of freeboard.
  - 3. Tailgates of trucks shall be sealed.
  - 4. If deemed necessary, trucks shall be brushed down before leaving the site.
  - 5. Paved site access roads shall be swept using vacuum powered street sweepers when visible soil material is carried onto the roadway.
  - 6. Water the excavation and grading activity during high winds, or suspend the activity, if necessary, to control dust.
  - 7. Inactive areas shall be sprayed with soil stabilizer or seeded to avoid erosion or dust.
  - 8. Exposed stockpiles shall be watered, enclosed, covered, or sprayed with soil stabilizers.
  - 9. Traffic speeds within the project right of way shall be limited to 15 mph. For off-site restriction, comply with local agencies' requirements.
  - 10. Sandbags or other bank protections shall be installed to prevent silt runoff to roadways.
- D. Contractor shall immediately remedy any spillage and dust nuisance or deficiency arising from, or in consequence of Contractor's failure to perform the work specified in these Specifications.
- E. Upon the Contractor's failure to make timely remedies determined by the Engineer to be necessary and in the best interests of the public, the Engineer may employ private or public work forces and equipment to perform the work. The actual cost of employing such forces and equipment shall be doubled and then subtracted from the monies due, or that may become due, the Contractor.

Such action(s) taken by the Engineer shall not preclude the District from taking other actions as deemed appropriate, and shall not relieve the Contractor of responsibility to comply with these Specifications.

**6.32. Traffic Control**

- A. Traffic control shall consist of all work and materials necessary to maintain safe vehicular, pedestrian, and cyclist traffic during construction and to perform “best management practices” to mitigate high peak and high volume construction traffic, prevent idling and queuing, establish site access limitations and mitigation measures, identify haul routes, and provide overall control of all construction traffic entering and exiting and operating within the project site.
- B. All traffic control work shall be performed in accordance with the requirements of the local agency having jurisdiction and the State Specifications. If required, the Contractor shall prepare a traffic control plan in accordance with these Specifications, and submit to the Engineer and the local agency having jurisdiction for review in advance of the work at the site.
- C. The Contractor shall cooperate with the local agency having jurisdiction relative to handling traffic around the construction area. The Contractor shall make his/her own arrangements relative to keeping the working area clear of parked vehicles to maintain sight visibility and access to adjacent properties. Existing road signs shall not be blocked at any time.
- D. Truck traffic and haul routes shall be in compliance with local permits and ordinances. The Contractor shall obtain, at Contractor’s expense, any required “Haul Route Permit” from the local authority having jurisdiction for transporting to and from the project site construction materials and disposal of surplus materials.
- E. The Contractor shall conduct his/her operations and schedule cleanups to cause the least possible obstruction and inconvenience to traffic, pedestrians, cyclists, and adjacent property owners.
- F. Damage done by the Contractor during the course of his/her work to adjacent city, town, county, or private property shall be repaired or replaced in kind and as directed by the Engineer.
- G. Personal vehicles of the Contractor's employees, and the Contractor's equipment and vehicles shall not be parked on the traveled way, shoulders, medians or lanes which have not been approved for closure, at any time. When entering or leaving roadways carrying public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic and shall travel in the direction of the traffic. Flaggers and traffic signs may be required to control this activity. No driveways or private roads shall be blocked. Safe access must be maintained for pedestrian traffic throughout the work areas at all times.

- H. Those parts of public streets, rights of way, and sidewalks that are occupied by the Contractor shall be immediately vacated by him/her and returned to public use when his/her use thereof is no longer necessary for the construction work.
- I. Attention is directed to Section 7-1.08, "Public Convenience"; Section 7-1.09, "Public Safety," and Section 12, "Construction Area Traffic Control Devices," of the State Specifications and Article 6.09, "Public Safety," of these Standard Provisions Specifications. Nothing in these Specifications shall be construed as relieving the Contractor from his/her responsibility as provided in said Section 7-1.09, "Public Safety," of the State Specifications.
- J. The Contractor shall coordinate with the appropriate local agencies having jurisdiction to receive their approval in the event any temporary lane closures on public streets are needed for the Contractor's operation. Any such traffic signing and flaggers as approved by the local agencies for said lane closure shall be in place prior to closing the lane to traffic.

**6.33. Water Quality**

- A. The Contractor shall meet all applicable regulatory requirements to ensure that any discharges to surface waters will not cause violation to the State water quality objectives or violation of regulatory permits issued by regulatory agencies.
- B. The Contractor shall prevent water quality degradation of water bodies and/or storm drains. Water quality is measured in terms of pollution substances, turbidity, dissolved oxygen, pH, and temperature.
- C. Oily, greasy, or sediment laden substances or other materials that originate from the Contractor's operation and may degrade the quality of surface water or adversely affect aquatic life, fish, or wildlife shall not be allowed to enter, or be placed where they may later enter, any reservoir, river, creek, or stream.
- D. The Contractor shall comply with the requirements of the following permits, where applicable, as specified in the Special Provisions:
  - 1. State Water Resources Control Board (SWRCB) National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities.
  - 2. U.S. Army Corps of Engineers CWA Section 404 Permit and Regional Water Quality Control Board/State Water Resources Control Board CWA Section 401 Water Quality Certification.
  - 3. Other individual RWQCB NPDES Permits.
  - 4. Department of Fish and Game 1602 Stream Bed Alteration Agreement.

**6.34. Regulated Material Management**

- A. Regulated material includes, but not be limited to, hazardous material and hazardous waste.
- B. The Contractor is responsible, and shall obtain all required permits and pay all fees and taxes, for satisfying the requirements of any regulatory agency for the storage, monitoring, usage, transportation, safety, reporting, or any other requirements regarding the management of regulated materials on and off the project site(s).
- C. The Contractor shall not allow regulated materials to spill on District property or easements or other public or private right of way. Any spillage of regulated materials resulting from the Contractor's operation shall be removed immediately by the Contractor at the Contractor's expense.
- D. The Contractor shall immediately notify the Engineer of any potentially hazardous materials or hazardous waste encountered at the work site and shall take all necessary action to prevent exposure of personnel until all material is identified and proper action can be taken.

**6.34.01. Storage of Regulated Materials**

- A. Prior to the storage or use of any regulated materials, the Contractor shall submit to the Engineer a "Regulated Materials Storage and Use Plan" (Plan). The Plan shall include: an inventory of all regulated materials to be stored or used at the project site (which equals or exceeds any of the following separate material phases: 55 gallons liquid, 200 cubic feet of compressed gas, or 500 lbs. solid); the maximum quantity of materials to be stored; the purpose of the materials; the MSDS for each material; a detailed description of how the materials will be stored (including secondary containment where required by applicable regulatory agencies); a site plan drawn to scale; storage area maps drawn to scale; a detailed description of how the materials will be monitored; a detailed description of how wastes from the materials will be stored and/or disposed; and a detailed description of the procedures to be followed in the event of an uncontrolled release of the regulated materials.
- B. The Plan shall be submitted to the Engineer for review, in accordance with Article 9.02, and acceptance at least 30 days prior to the storage or use of any regulated materials. The Plan shall be updated and submitted to the Engineer by the Contractor upon the addition of new regulated material not listed previously or a 100 percent (or greater) increase in quantity of a regulated material which is listed in the Plan.

**6.34.02. Regulated Material Discharges or Releases**

- A. The Contractor is responsible for all discarded or abandoned material, including regulated materials and hazardous wastes, generated as a result of the

Contractor's operations unless specifically noted otherwise in these Specifications. The Contractor's attention is directed to Article 5.06.

- B. In the event of a discharge or release of a regulated material from the Contractor's operation, the Contractor is responsible for notifying the proper authorities, providing containment of the material, identifying the contaminants, investigating the extent of all contaminants, testing and removing contaminated materials, disposing of contaminated materials, and verifying the removal of all contaminated materials. These activities shall be performed to the satisfaction of the Engineer at the Contractor's cost. The Contractor shall perform any work and provide any and all documentation required by the District and federal, state, and local agencies. The Contractor shall provide copies of all correspondence and reports related to these activities to the Engineer. All work performed to accomplish these activities shall be in accordance with federal, state, and local regulations.
- C. In the event of a discharge or release of regulated material, the Contractor shall notify the Engineer immediately. Immediate notifications may be verbal. The Contractor shall submit a detailed written report to the Engineer within 24 hours of the discharge or release. The written report shall include: a description of events leading to the discharge or release; action taken to prevent or control the discharge or release; a description of the discharge or release; the quantity of material discharged or released; method used to determine quantity discharged or released; type of material discharged or released; MSDS for the material(s) involved; a description of the area affected by the discharge or release; agencies notified and date and time of notification; and status of the cleanup. The report shall also include the proposed investigation, cleanup, and verification sampling activities.
- D. All expenses incurred by the Contractor as a result of or to remedy the discharge or release of regulated materials shall be borne solely by the Contractor and no additional compensation will be made therefor. The Contractor shall be responsible for signing the Nonhazardous Waste Manifests and the Hazardous Waste Manifests and paying the State Superfund fees, the generator's fees, and other costs of disposal of these wastes unless specifically stated otherwise in these Specifications. The Contractor shall be identified as the owner and generator of the wastes associated with unauthorized releases or discharges.

#### **6.34.03. Hazardous Waste**

- A. The Contractor shall manage the hazardous wastes generated from this operation in accordance with the Specifications below:
  - 1. Labeling: The Contractor shall completely fill out and affix a "Hazardous Waste" label to each hazardous waste container for the Contractor's operations. Each "Hazardous Waste" label shall contain, at a minimum, the word "HAZARDOUS WASTE," information on the generator (i.e., name, address, phone number), EPA identification number for the waste stream, EPA, and/or California waste code, waste accumulation starting

date, identification, and content of the waste, the physical state of the waste (i.e., solid or liquid), and the hazardous property (i.e., flammable, toxic, corrosive, reactive, or other). If the primary container is placed inside a secondary container, then the Contractor shall also prepare and affix another "Hazardous Waste" label on the secondary container.

2. **Secondary Containment:** The Contractor shall provide appropriate secondary containment for all storage areas for hazardous materials and hazardous wastes. In the case of an installation with one primary container, the secondary containment shall contain at least 110 percent of the volume of the primary container. In the case of an installation with multiple primary containers, the secondary containment shall contain 150 percent of the volume of the largest container or 10 percent of the aggregate internal volume of all primary containers in the storage facility—whichever amount is greater. If the storage facility or storage system is open to rainfall, then the secondary containment must be able to additionally accommodate the volume of a 24-hour rainfall as determined by a 25-year storm history.
  3. **Accumulation Time Limit:** The Contractor shall properly haul and dispose of all hazardous waste within 90 days from the accumulation starting date identified on each "Hazardous Waste" label or on the completion date of the Contract—whichever event comes first. The waste accumulation starting date for each waste stream begins when a first drop of the waste is placed in the container.
  4. **Hauling and Disposal of Waste:** The Contractor shall be responsible for using appropriate hazardous waste haulers and disposing of all hazardous wastes in accordance with local, state, and federal regulations.
- B. **Waste Manifests:** No later than 15 days after Contractor's request for final inspection, the Contractor shall submit copies of all Hazardous Waste Manifests signed by disposal facilities and certificates of disposal, to prove that Contractor has legally disposed such materials. Submit four (4) copies of each manifest.

### **6.35. Non-Regulated Materials**

- A. Non-regulated materials are any substance that is not required by any federal, state, or local regulations to have special management, storage, disposal or handling practices.
- B. Non-regulated materials may be disposed at state-permitted, non-hazardous waste landfills.
- C. For non-regulated material to be reused, or disposed on site or at a site other than a state-permitted landfill, the Contractor must obtain all required permits, agency approvals, property owner agreements, and pay all fees and taxes for all services and materials required in conjunction with the management, transportation, disposal and reuse of non-regulated materials.

**6.35.01. Disposal at Other Than State-Permitted Landfills**

- A. The Contractor shall enter into an agreement with property owner, prior to disposal of materials, and submit a copy thereof to the Engineer, conveying a written consent from the property owner receiving the materials, providing:
  - 1. A written authorization from property owner to accept materials at duly noting quantities, types of materials (soils, debris, etc.), and disposal property location address;
  - 2. A written release from the property owner fully absolving the Santa Clara Valley Water District from any and all responsibility and legal liability towards any damage to life, and environment in connection with the disposal of the materials on the property.
- B. The Contractor shall provide:
  - 1. Copies of all applicable regulatory agency permits, approvals, licenses, and environmental clearances;
  - 2. Site-specific health and ecological risk assessment and/or compliance with applicable regulatory agency regulations or guidelines, including but not limited to the Environmental Screening Levels per the latest guidelines from San Francisco Bay Regional Water Quality Control Board (SFBRWQCB);
  - 3. Copies of documentation of communication made by Contractor with appropriate regulatory agencies on evaluation of regulatory requirements and regulatory agency approvals for disposal of materials;
  - 4. Copies of laboratory testing reports for the materials to be disposed.
- C. Within 15 days after disposal of materials at property location, the Contractor shall submit an acknowledgement, duly signed by property owner, certifying date of receipt of materials including quantity and types of materials (soils, debris, etc.) received, to prove that Contractor has disposed materials at the location designated in the agreement.
- D. Waste Manifests: No later than 15 days after Contractor's request for final inspection, the Contractor must submit copies of all Non-Hazardous Waste Manifests signed by disposal facilities and certificates of disposal, to prove that Contractor has legally disposed such materials. Submit four (4) copies of each manifest.

**6.36. Imported Earthfill Material**

- A. The Contractor shall not import earthfill material that is contaminated with regulated materials.

- B. If imported earthfill materials are, or are found to be, contaminated by regulated materials, the Contractor shall immediately remove the contaminated material and dispose of it in accordance with all applicable laws, ordinances, and regulations; conduct necessary sampling and monitoring to verify that all contaminated material has been removed; and verify to the satisfaction of the Engineer and/or appropriate regulatory agencies that any surrounding areas, materials, soils, or waters have not been impacted by the contaminated materials. The subsequent disposal of the contaminated material shall be the responsibility of the Contractor. No compensation will be made to the Contractor by the District for removal, disposal, replacement, chemical analysis, or any other costs associated with the removal, disposal, and replacement of the contaminated material.
- C. For each imported earthfill material to be used on the Project, the Contractor shall submit to the Engineer for review and acceptance, in accordance with Articles 9.02 and 19.01, an "Imported Materials Certification Form." Copies of the form are available from the Engineer. If the imported earthfill materials are to be obtained from more than one source, the Contractor shall submit a separate form for each source of earthfill material. This form shall be submitted for review and acceptance at least 30 days prior to the delivery of the earthfill material to the construction site.
- D. The Engineer may obtain soil samples from the site and test them to monitor Contractor's compliance with these provisions.

**6.37. Migratory Birds, Other Wildlife and Fish Species**

- A. The Contractor shall comply with all applicable federal and state laws, rules and regulations related to protection of migratory birds. The Contractor's attention is directed to the federal Migratory Bird Treaty Act (16 USC 703-712 50 CFR Part 21 and 50 CFR Part 10), and the California Department of Fish and Game Code Sections 2000, 3503, 3503.5, 3513, and 3800, that protect migratory birds, their nests, and their eggs from disturbance or destruction.
- B. The Contractor shall ensure that birds are not allowed to nest in areas that may be impacted by the Project and shall not harm, or allow to be harmed, any migratory birds per provisions of all applicable statutes.
- C. The contractor shall comply with all regulatory and permit requirements pertaining to other wildlife and fish species with the potential to occur within the project area.

**6.38. Good Neighbor Requirements**

- A. The District is a public entity which takes seriously its responsibility to be a "Good Neighbor." Accordingly, the District seeks to perform its activities, including construction of its facilities, in a manner that takes into consideration the needs of the neighborhood, and is minimally disruptive.

- B. The Contractor hereby acknowledges the critical importance of meeting the Contract requirements as set forth in these Specifications regarding the “good neighbor requirements”, which include, but not be limited to: public safety, working hours, noise pollution and vibration, air pollution, spillage and dust, traffic control, parking restrictions, and storm water pollution.
- C. The Contractor agrees to adhere to the above “good neighbor requirements” which relate to the lessening of the impact which the work being performed under this Contract, might otherwise have upon the surrounding neighbors. The Contractor acknowledges that its responsibility to observe the restrictions of this Contract relating to the above requirements is significant, critical, and a material provision of this Contract. Therefore any breach of any applicable provision related to these requirements constitutes a material breach of this Contract which shall give rise to the right on the part of the District to immediately terminate this Contract, without any further showing of cause.
- D. No decision, action or inaction on the part of the District with respect to one such violation may be deemed to be a waiver of any remedy available to the District in the event of any other violation of the provisions of this Contract, including the right to terminate this Contract at any time and at any stage of the work should a material breach occur.

## **SECTION 7. PROSECUTION AND PROGRESS OF WORK**

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### **7.01. Assignment**

- A. The performance of the Contract may not be assigned except upon the written consent of the Board of Directors. Consent will not be given to any proposed assignment which would relieve the original Contractor or surety of their responsibilities under the Contract.
- B. The Contractor may assign moneys due, or to become due under the Contract, and such assignment will be recognized by the District, if given proper notice thereof, to the extent permitted by law, but any assignment of moneys shall be subject to all proper setoffs in favor of the District and to all deductions provided for in the Contract and particularly all money withheld, whether assigned or not, shall be subject to being used by the District for the completion of the work in the event that the Contractor should be in default therein.

### **7.02. Notice to Begin Work**

- A. The Notice to Begin Work will be issued by the Designated Engineer within 10 days after receipt of the signed Agreement, and approval by District of the Contract Bonds and insurance documents. Reference is made to Article 4.04.

### **7.03. Commencement of Work**

- A. The Contractor shall not begin work until receipt from the District of the Notice to Begin Work, and shall, upon receiving Notice, begin work within the time specified in the notice. The time specified in said Notice will allow a period of at least 10 days after the date of said Notice for commencement of work. After receipt of said Notice, the Contractor shall diligently prosecute the Work to completion. The Contractor shall provide, at least 24 hours in advance, written notice to the Engineer of the Contractor's intention to start Work and specify the date on which the Contractor intends to start.

### **7.04. Work Progress Schedule**

- A. If required by the Special Provisions, the bidder to whom the Contract is awarded shall, prior to execution of the Contract, submit a practicable work schedule to the Engineer, showing the order and dates within which the Contractor proposes to carry out the work.
- B. If required by the Engineer, the Contractor shall submit supplementary work progress schedules to indicate approximately the percentage of work scheduled for completion at any time.
- C. The progress schedule and supplementary progress schedules submitted shall be consistent, in all respects, with the time requirements of the Contract.

**7.05. Temporary Suspension of Work**

- A. By written order to the Contractor, the Engineer may suspend the work wholly or in part for an indefinite period, or for such period as the Engineer may deem necessary, for any of the following reasons:
  - 1. Weather conditions or other conditions which are unfavorable for the proper prosecution of the work;
  - 2. Failure of the Contractor to carry out orders given or to perform any provisions of the Contract; or
  - 3. The convenience and benefit of the District.
- B. Such suspension shall be effective upon receipt by the Contractor of the written order suspending the work and shall be terminated upon receipt by the Contractor of the written order terminating the suspension.
- C. If, under authority of (A) or (C) above, the Engineer orders a suspension of all or a portion of the work which is the current controlling operation, it will be cause for a time extension if it affects the controlling item of work.

**7.06. Liquidated Damages**

- A. In case all the work called for under the Contract in all parts and requirements is not finished or completed within the number of days as set forth in the Special Provisions, it is agreed that damage will be sustained by the District, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the District will sustain in the event of and by reason of such delay; and it is, therefore, agreed that the Contractor will pay to the District the sum set forth in the Special Provisions per day for each and every day's delay in finishing the work in excess of the number of days prescribed; and the Contractor agrees to pay said liquidated damages herein provided for, and further agrees that the District may deduct the amount thereof from any moneys due, or that may become due, to the Contractor under the Contract.

**7.07. Termination of Control**

- A. Failure to supply an adequate working force or material of proper quality, or in any other respect to prosecute the work with the diligence and force specified by the Contract, is grounds for termination of the Contractor's control over the work and for taking over the work by the District.

**7.08. Termination of Contract**

- A. The District may terminate the Contract at any time upon a determination that the same is in the best interests of the District. Upon such termination, the rights, duties, and obligations of the parties shall be as stated in Section 8-1.11 of the

State Specifications, wherein the words "Director" and "Engineer" shall mean the Engineer, and the words "State" and "Department" shall mean District.

**7.09. Contractor's Cost Data**

- A. The District or any of its duly authorized representatives shall, until the expiration of 4 years after filing the Notice of Completion and Acceptance under this Contract or any subcontract under it, have access to and the right to examine any of the Contractor's or subcontractor's payrolls, records of personnel, invoices of materials, records of plant and equipment costs, and any and all other directly pertinent books, documents, papers, and records of such Contractor or subcontractors, involving transactions related to said Contract or subcontracts. In the event State or Federal funds are involved in the financing of the project, the State or Federal Government shall have the same rights of inspection as the District.

**7.10. Coordination With Utilities**

- A. In general, the location of existing utility facilities as shown on the Drawings is approximate. This information has been obtained from utility maps furnished by the various agencies involved, and the District does not guarantee either the correctness of locations or the extent of such locations.
- B. Service laterals, such as house sanitary, water, electrical, gas, cable TV, storm or telephone cables, or appurtenances, may not all be shown on the Drawings. Section 4215 of the California Government Code does not require public agencies to indicate the presence of service laterals or appurtenances whenever the presence of such utilities can be inferred from the presence of other visible facilities, such as buildings, meter boxes, or junction boxes, on or adjacent to the construction site. No changes in the Contract price or Contract time will be made due to the presence of unidentified or incorrectly located service laterals or appurtenances. It shall be the responsibility of the Contractor to ascertain the exact location of the utility facilities.
- C. Unless otherwise indicated on the Drawings or specified in the Specifications, the Contractor shall maintain in service all utilities including house services, power, lighting, and telephone conduits, and any other surface or subsurface structure or facility of any nature that may be affected by the work; provided, however, that the Contractor, for convenience, may arrange with the owner to temporarily disconnect house service lines or other facilities along the line of the work. The cost of disconnecting and restoring such utilities shall be borne by the Contractor.
- D. In the event that a main or trunk line utility facility is encountered which interferes with the work and is neither shown on the Drawings nor specified in the Specifications, the Contractor shall immediately notify the District in writing. The District will either have the appropriate utility company or public agency relocate the facility, or the District will direct the Contractor to relocate the facility in accordance with Article 5.03, Change in Work.

- E. In the event that a main or trunk line utility facility is encountered which interferes with the work and which the Contractor believes is not shown on the Drawings or indicated in the Specifications with reasonable accuracy, the Contractor shall immediately notify the District in writing. Reasonable accuracy is defined as being within the tolerances noted on the Drawings. If the Engineer determines that the main or trunk line utility facility was shown on the Drawings or indicated in the Specifications with reasonable accuracy, the Contractor shall be solely responsible for relocation or removal, and no additional time will be granted nor will additional compensation be made for any additional work required. If the Engineer determines that the main or trunk line utility facility was not shown on the Drawings or indicated in the Specifications with reasonable accuracy, the District will either have the appropriate utility company or public agency relocate the facility, or the District will direct the Contractor to relocate the facility in accordance with Article 5.03, Change in Work.
- F. When a delay in the completion of the project is caused by the failure of the District or the owner of a utility facility to provide for removal or relocation of existing main or trunk line utility facilities which are not shown on the Drawings or indicated in the Specifications, or which are not shown on the Drawings or indicated in the Specifications with reasonable accuracy, the Contract time will be extended in accordance with Article 5.05, Change of Contract Time.

## **SECTION 8. MEASUREMENT AND PAYMENT**

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### **8.01. Measurement of Quantities**

- A. All work except work based on time and materials will be paid for at a contract price per unit of measurement and will be measured by the Engineer in accordance with the United States Standard Measures. Unless otherwise specifically provided, the Engineer will compute quantities by a method which, in the Engineer's opinion, is best suited to obtain an accurate determination. The weights of metalwork, pipe, and other metal parts to be paid for on the basis of weight, will be determined by the Engineer. The District will not provide scales for weighing material. The Engineer will determine the weight of each part or item in the most practicable manner and will use for that purpose manufacturer's weights, or in their absence, catalog weights or estimated weights, in that order; provided, that weights of nonmetallic coatings will be excluded.

### **8.02. Deductions From Payments**

- A. The District may, at its option and at any time, retain out of any amounts due the Contractor, sums sufficient to cover claims, filed pursuant to Section 3179 et seq. of the Civil Code.

### **8.03. Progress Payment**

- A. On the 25th of each month, the Contractor will prepare and submit to the District an estimate in writing of the total amount of work done; an estimate of the acceptable materials furnished and delivered by the Contractor to the jobsite and not used up to the date of such estimate, and the value thereof. Small/Micro Business Enterprise (SBE) Utilization Report, if required, must be submitted with the payment request. The Contractor must also submit the certified weekly payroll(s) for the pay estimate period in accordance with Article 6.04.C. Each progress pay request is to include payment for work completed up to and including the 25th of the month. Acceptable materials shall be those materials which will become a part of the finished construction work. The basis for partial payments of lump sum or other unit Contract items will be determined by agreement between the Engineer and the Contractor.
- B. Payment requests shall be submitted on an approved Contractor Monthly Progress Pay Estimate Summary sheet. The pay request submitted by the Contractor shall contain a source document which provides back-up information on how the estimate was prepared. A source document is defined as the basic document used to record or calculate quantities. The source document must contain the appropriate Contract Bid Item, the location of the installation, the necessary measurement and/or calculations, and the name of the person preparing the document. Before any partial payment or the final payment is made, the Contractor shall submit satisfactory evidence that the Contractor is not delinquent in payments to employees or creditors (for example, subcontractors, suppliers, etc.) for labor and materials incorporated into the work. Request for payment of work performed on extra work shall be accompanied by the Daily

Extra Work Report Form FC204w. The form shall be signed by both the District inspector and the Contractor's representative.

- C. Upon receipt of a payment request, the District shall review the payment request for the purpose of determining that the payment request is a proper payment request. Any payment request determined not to be a proper payment request suitable for payment shall be returned to the Contractor no later than seven days, after receipt. A payment request returned pursuant to this paragraph shall be accompanied by a letter citing the reasons why the payment request is not proper. The following are examples of an improper payment request:
1. The item of work requested to be paid was not performed.
  2. The work being requested to be paid has already been paid in previous Progress Pay Estimates.
  3. The work performed and requested to be paid was not done in accordance with the contract (non-compliance).
  4. The quality of the finished product is unacceptable.
  5. The source documentation is inaccurate.
  6. The Daily Extra Work Reports (for extra work) are not properly filled out.
  7. Failure to submit SBE Utilization Report, if required.
- D. If the District fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from the Contractor, the District shall pay interest to the Contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.
- E. The number of days available to the District to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which the District exceeds the seven-day return requirement set forth in paragraph A.
1. The District shall retain 10 percent of such estimated value of work done and 10 percent of the value of the materials so estimated to have been furnished and delivered and unused as aforesaid, and shall pay to the Contractor, while carrying on the work, the balance not retained as aforesaid, after deducting therefrom all previous payments and all sums to be kept or retained under the provisions of the Contract. However, at any time after 50 percent of the work has been completed, the contractor may request in writing that progress payments be made in full and no further retainage withheld. If the District finds that satisfactory progress has been made, the District may make any remaining progress payments in full for actual work completed, or may withhold any amount up to 10 percent thereof, as the District may find appropriate, based on the Contractor's progress. No such estimate or payment shall be required to

be made when, in the judgment of the Engineer, the work is not proceeding in accordance with the provisions of the Contract, or when, in the Engineer's judgment, the total value of the work done since the last estimate amounts to less than \$1,000. No such estimate or payment shall be considered to be an acceptance of any defective work or improper materials. All progress estimates and payments shall be subject to correction in the final estimate.

2. At the request of the Contractor, the District will permit the substitution of securities or certificates of deposit equivalent to the amount of any monies withheld by the District as above provided. The deposit shall, in that event, be with the District, or with a state or federal chartered bank in California as the escrow agent.
  3. Alternatively, on written request of the Contractor, the District will make payments of the retention as it is earned directly to the escrow agent.
- F. The Contractor shall bear the expense of the District and the escrow agent in connection with the escrow deposit made.
- G. Securities or certificates of deposit to be placed in escrow shall be subject to approval of the District and, unless otherwise permitted by the escrow agreement, shall be of a value of at least equivalent to the amounts of retention to be paid to the Contractor pursuant to this Section.
- H. When the District makes payment of retentions directly to the escrow agent, the Contractor may direct, subject to approval of the District, the investment of the payments into securities.
- I. The Contractor shall enter into an escrow agreement satisfactory to the District, which agreement shall be substantially similar to that specified in Section 22300 of the Public Contract Code.
- J. The Contractor shall obtain the written consent of the surety to such agreement.

**8.04. Final Payment**

- A. As soon as practicable after completion of the work, the Engineer will prepare in writing and furnish to the Contractor the final estimate of the quantities of work done and all payments due under the Contract, which estimate will show deductions for prior payments and any other amounts to be retained under Article 8.02. The amount determined due, less the amount retained, will be paid. This retained amount will not be due or payable until 35 days after the completion of the work and the filing of Notice of Completion and Acceptance in the manner provided by law, and until after the Contractor has furnished the District a release of all claims by the Contractor against the District arising by virtue of this Contract, except such claims in definite amounts as the Contractor may specifically exempt from the operation of the release and the furnishing of any guaranty required by Article 3.11.

**8.05. Scope of Payment**

- A. Payment for all items of work at the unit or lump sum price shall be considered as full compensation for furnishing all labor, materials, tools, equipment, and incidentals necessary to complete the item of work, and no additional allowance will be made therefor. Payment for items of work which are called for in the Specifications or shown on the Drawings but which are not separately identified in the Proposal form shall be compensated as part of the bid price of one or more of the items which are listed, and no additional allowance will be made therefor.

**8.06. Acceptance of Final Payment Constitutes Release**

- A. Acceptance by the Contractor of final payment constitutes and shall be a release by the Contractor of all claims against the District, except disputed contract claims in stated amounts specifically excepted in writing.

**8.07. Small/Micro Business Enterprise Utilization Reporting Requirement**

- A. The Contractor must submit the properly completed SBE Utilization Report with the request for progress payment and request for final payment. All payment requests must include the Report, if required, to be considered a "properly submitted payment request."

## **SECTION 9. CONTROL OF WORK**

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### **9.01. Authority of Engineer**

- A. The Engineer shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed and rate of progress of the work, all questions which may arise as to the interpretation of the Drawings and Specifications, and all questions as to the acceptable fulfillment of the Contract on the part of the Contractor. The Engineer's decision shall be final. The Engineer shall have authority to enforce and make effective such decisions and orders which the Contractor fails to carry out promptly.

### **9.02. Submittals to be Furnished by the Contractor**

- A. The Drawings listed in the Specifications shall be supplemented by the Contractor with such submittals as may be required for the prosecution of the work and approval of equipment. Submittals may include shop detail drawings, fabrication drawings, falsework and formwork drawings, pipe layouts, and similar classes of drawings, calculations, specifications, product data, samples, manuals, spare parts, photographs, survey data, schedules, or similar items required to be submitted to the Engineer by the Contract Documents. These submittals shall be favorably reviewed by the Engineer before any work involving these submittals is performed. No change shall be made by the Contractor to any submittal after it has been favorably reviewed by the Engineer. Submittals shall contain all required detailed information at a reasonable scale with enough views to clearly show the work to be done or the item to be furnished, and shall be properly checked.
- B. It is expressly understood, however, that Engineer's review of the Contractor's submittals shall not relieve the Contractor of any responsibility for accuracy of dimensions and details, or for mutual agreement of dimensions and details. The Contractor shall be solely responsible for agreement and conformity of submittals with the Contract Drawings and Specifications.
- C. The sequence of submission of submittals shall be such that all information is available to the Engineer for review of each submittal as it is received. Five copies of each submittal shall be submitted. For submittals that require Engineer's review, one copy will be returned to the Contractor marked "No Exceptions Noted," "Make Corrections as Noted," "Revise and Resubmit," or "Rejected" within 20 days after receipt. The Contractor shall make any necessary corrections and revisions to returned submittals and shall resubmit the submittals within 20 days after receipt. For items that are required to be submitted to the Engineer but which do not require review, one copy will be returned to the Contractor marked "In Receipt Of." The Contractor is responsible for furnishing submittals in sufficient time for approval action, including resubmittal, without delaying construction.
- D. If a returned submittal is required to be resubmitted more than once due to Contractor's failure to comply with submittal requirements, the Contractor may be charged all costs associated with re-review of the submittal. The charges may

be deducted from progress payment due or become due to the Contractor and shall be based on actual review hours recorded by the Engineer. The hourly rate of the Engineer, and/or Engineer's consultant, shall be the actual wages times a multiplier specified in the Special Provisions.

**9.02.01. Submittal Requirements**

- A. All submittals shall be clearly identified by reference to the Project name, specification section, article, paragraph, drawing number or detail as applicable. Submittals shall be well-organized, and shall be clear and legible and of sufficient size for clear presentation of data. Data submitted shall describe the materials, equipment, or other items to be furnished and, where applicable, the system in sufficient detail to indicate full compliance with the requirements of these Contract Documents.
- B. All submittals shall be in the English language and customary American units (feet, inches, pounds, degrees Fahrenheit, etc.) Metric units may be provided in addition to customary American units.
- C. All submittals and supporting data, catalogs, schedules, etc., shall be submitted as the instruments of the Contractor, who shall be responsible for their accuracy, completeness, coordination and conformance with the Contract Documents. These submittals may be prepared by the Contractor, subcontractors, or suppliers, but the Contractor shall review and ascertain that submittals meet all of the requirements of the Contract Documents, while conforming to structural, space and access conditions at the point of installation prior to submission to the Engineer. Designation of work "by others," if shown in submittals, shall mean that the work will be the responsibility of the Contractor rather than the subcontractor or supplier who prepared these submittals. The Contractor shall ensure that there is no conflict with other submittals. The Contractor shall ensure coordination of submittals among the related crafts and subcontractors.
- D. If the submittals show any deviations from the Contract requirements, the Contractor shall include with the submittal a separate written description of such deviations and the reasons therefor. The Engineer will respond in writing within 10 days indicating the time necessary to evaluate the deviations. If any deviations from the Contract requirements are not clearly noted and prominently identified on the submittal, the review of the submittal shall not constitute acceptance of such deviations.
- E. The Contractor shall check all submittals before submitting them to the Engineer and shall certify on each transmittal letter and on each submittal that the submittal has been checked, is in compliance with the Contract Documents except as specifically noted, and that each deviation from the Contract Documents is specifically noted.

- F. Submittals shall include:
1. A separate transmittal form shall be used for each specific item, class of material, equipment, and items specified in separate, discrete Specification Sections or Articles, for which a submittal is required. Submittal documents common to more than one piece of equipment shall be identified with all the appropriate equipment numbers. Submittals for various items shall be made with a single form when the items taken together constitute a manufacturer's package or are so functionally related that expediency indicates checking or review of the group or package as a whole. The Specification Section or Article to which the submittal is related shall be indicated on the transmittal form.
  2. A sequential number, in chronological order, shall be assigned for each submittal and shall be noted on the transmittal form. Submittal numbers shall have the following format: "XXX.Y"; where "XXX" is the sequential number (001 to 999) assigned by the Contractor, "Y" is the resubmittal number (1 to 9). For each item submitted, the Contractor shall include the applicable Article number on the submittal and on the transmittal form.
  3. A separate written description of deviations from the Contract Documents, if any.
  4. The date of submission and the dates of any previous submissions.
  5. District's Name, the Project title and number.
  6. Contractor identification.
  7. The names of (as applicable):
    - a. Subcontractor
    - b. Supplier
    - c. Manufacturer
  8. Identification of the product, with the Specification Section or Article number, page and paragraph(s).
  9. Field dimensions, clearly identified as such.
  10. Relation to adjacent or critical features of the work or materials.
  11. Applicable standards, such as ASTM.
  12. Identification of revisions on resubmittals.
- G. All resubmittals shall be accompanied by a memorandum or letter from the Contractor that responds to each written review comment provided by the Engineer in the previous submittal. Each response shall describe the corrective action taken or reason for Contractor's actions.

**9.02.02. Submittal Review Procedures**

- A. Review of submittals has as its primary objective the completion of the work in full conformance with the Contract Documents, unmarred by field corrections, and within the construction time provided. In addition to this primary objective, submittal review as a secondary objective will assist the Contractor in its procurement of equipment that will meet all requirements of the Contract Documents, will fit the structures detailed on the Drawings, will be completed with respect to piping, electrical, and control connections, will have the proper functional characteristics, and will become an integral part of a complete operating facility.
- B. The review of shop drawings, product data, and samples will be for general conformance with the design concept and Contract Documents. They shall not be construed:
  - 1. as permitting any deviation from or non-compliance with the Contract requirements;
  - 2. as relieving the Contractor of responsibility for any errors, including details, dimensions, and materials;
  - 3. as approving departures from details furnished by the Engineer, except as otherwise provided herein.
- C. The Contractor remains responsible for details and accuracy, for coordinating the work with all other associated work and trades, for selecting fabrication processes, for techniques of assembly, and for performing work in a safe manner.
- D. If the Contractor submits an incomplete submittal, the submittal will be considered "Rejected" and will be returned to the Contractor without review except that the Engineer may, at Engineer's sole discretion, elect to provide a list of, or mark the submittal indicating some or all of the areas that are incomplete. A complete submittal shall contain sufficient data to demonstrate that the items comply with the Contract Documents; shall meet the minimum requirements for submissions cited in the technical specifications; and shall include any necessary revisions required for equipment other than first named manufacturer. The Engineer's determination whether a submittal is complete shall be final.
- E. After review by the Engineer of each of the Contractor's submissions, the material will be returned to the Contractor with actions defined as follows.
  - 1. **NO EXCEPTIONS NOTED**

The favorable review of submittal is subject to its compatibility with future submissions and additional partial submissions for portions of the work not covered in this submission. It does not constitute approval or deletion

of specified or required items not shown in the partial submission. The Contractor may proceed with the work shown in the submittal.

2. MAKE CORRECTIONS AS NOTED

Same as 1, except that minor corrections as noted shall be made by the Contractor. Contractor may proceed with the work providing corrections have been made. Resubmission is not required.

3. REVISE AND RESUBMIT

Rejected because of major inconsistencies or errors which shall be resolved or corrected by the Contractor prior to subsequent resubmission. The Contractor may not proceed with the work shown in the submittal.

4. REJECTED

Submitted material does not conform to Drawings and Specifications in major respect., i.e.: wrong size, model, capacity, or material. The Contractor may not proceed with the work shown in the submittal.

5. IN RECEIPT OF

The submittal does not require review by the Engineer.

- F. Resubmittals will be processed in the same manner as first submittals. On resubmittals the Contractor shall direct specific attention, in writing on the letter of transmittal and on resubmitted shop drawings by use of revision triangles or other similar methods, to revisions from previous submissions. Any such revisions which are not clearly identified shall be made at the risk of the Contractor and if any such revisions are installed, all portions thereof that do not fully conform to the Contract Documents shall be corrected by the Contractor at its expense as required by the Engineer.
- G. The favorable review of submittals (returned “No Exceptions Noted” or “Make Corrections as Noted”) shall be obtained from the Engineer prior to the fabrication, delivery, and construction of items requiring submittals.
- H. The favorable review of all submittals (returned “No Exceptions Noted” or “Make Corrections as Noted”) shall apply in general design only and shall in no way relieve the Contractor for responsibility for errors or omissions contained therein. Favorable review shall not relieve the Contractor of its obligation to meet safety requirements and all other requirements of laws, nor constitute a change order authorization. Favorable review will not constitute acceptance by the District of any responsibility for the accuracy, coordination, and completeness of the submittals or the items of equipment represented on the submittals.

**9.03. Drawings and Data to be Furnished by the District**

- A. The District may issue supplemental Drawings for the construction work under the Contract. These Drawings will show additional details as required for construction purposes. Installation instructions for District-furnished materials will be furnished if required.

**9.04. Superintendence**

- A. The Contractor shall designate, in writing before starting work, an authorized representative who shall have complete authority to represent and act for the Contractor. Said authorized representative of the Contractor shall normally be present at the site of the work at all times while work is actually in progress on the Contract. During any period when work is suspended, arrangements acceptable to the Engineer shall be made for any emergency work which may be required.
- B. Whenever the Contractor or an authorized representative is not present on any part of the work where it may be desired to give direction, orders will be given by the Engineer, which shall be received and obeyed by the superintendent who may have charge of the particular work in reference to which the orders are given. Any order given by the Engineer, not otherwise required by the Specifications to be in writing, will, on request of the Contractor, be given or confirmed by the Engineer in writing.
- C. The Contractor shall designate, in writing, the names and telephone numbers of at least three representatives who could be contacted at any time in the event that an emergency occurs.

**9.05. Character of Workers**

- A. Any subcontractor, or person employed by the Contractor or subcontractor, who fails or refuses to carry out the directions of the Engineer, or appears to the Engineer to be incompetent or to act in a disorderly or improper manner, shall be removed from the work immediately on the written request of the Engineer, and such person shall not again be employed on the work.

**9.06. Layout of Work and Surveys**

- A. The Engineer will establish lines and grades required for proper execution of the work. The Contractor shall, without additional cost to the District, give such assistance and provide such drill holes, forms, ladders, spikes, nails, and lights as may be required by the Engineer in layout of work and surveys. The Contractor shall adjust construction operations at such points and for such reasonable time as may be necessary to assist in the layout of work and surveys.
- B. The District will provide only the minimum of survey crew services essential to orderly performance of the work, and District survey crews will not be available at all times for the work under these Specifications.

- C. When the Contractor requires stakes or marks, the Engineer shall be notified of such requirements a reasonable length of time in advance of starting operations that require such stakes or marks. In no event shall a notice of less than 5 working days be considered a reasonable length of time.
- D. Where construction operations require removal of the District's stakes or other survey marks, the Contractor shall reference such points in an approved manner. Survey stakes or marks established by the District shall be preserved by the Contractor until their removal is authorized, and in case of their unauthorized destruction or removal by the Contractor's forces, they will be replaced at the Contractor's expense. Any cost to the District of replacing survey stakes or marks will be deducted from payments due the Contractor. Such cost will include a reasonable charge for use of District supplies, labor and equipment, plus overhead.

**9.07. Inspection**

- A. The Engineer shall at all times have access to the work during its construction, and shall be furnished with every reasonable facility for ascertaining that the materials and the quality of performance are in accordance with the requirements and intentions of the Drawings and Specifications. All work done and all materials furnished shall be subject to the Engineer's inspection and approval.
- B. The day-to-day inspection performed by the various inspectors employed by the District shall not constitute approval or ratification of work improperly done by the Contractor. The Engineer is the only person authorized to recommend acceptance or rejection of work and materials.
- C. The presence or absence of an inspector during performance of the work shall not relieve the Contractor of any obligation to fulfill the Contract. It shall be the duty of the Contractor to see that all provisions are complied with in detail, irrespective of the inspection given the work during its progress by the Engineer or representatives of the Engineer. Any plan or method suggested to the Contractor by the Engineer or an inspector, but not specified or required, if adopted or followed in whole or in part, shall be used at the risk and responsibility of the Contractor; and the District and the Engineer will assume no responsibility therefor.
- D. Should it be considered necessary or advisable by the District at any time before acceptance of the entire work to make an examination of work already completed by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect, due to the fault of the Contractor or subcontractors, the Contractor shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, an equitable adjustment shall be made in the Contract price to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the work

has been delayed thereby, the Contractor shall, in addition, be granted a suitable extension of time.

- E. Projects financed in whole or part with federal or state funds shall be subject to inspection at all times by the federal or state agency involved.
- F. No portion of any work, installed materials, products, or equipment, shall be covered or concealed in any manner without first being inspected by the Engineer. Whenever the Contractor is ready to backfill, bury, cast-in-concrete, hide, or otherwise cover any work under this Contract, the Contractor shall notify the Engineer not less than one Work Day in advance to request inspection before beginning any such work of covering. Failure of the Contractor to notify the Engineer at least one Work Day in advance of any such inspections shall be reasonable cause for the Engineer to order a sufficient delay in the Contractor's schedule to allow time for such inspection. If any work, materials, products, or equipment is covered prior to inspection or the express approval of the Engineer, that work, materials, products, or equipment shall be uncovered at no additional cost to the District. All associated costs, including its impact on other portions of the work, shall be borne by the Contractor.
- G. The Contractor shall not conceal any part of the work until record drawing information has been taken and recorded by the Contractor.
- H. The Engineer, at District's cost, may attend scheduled off-site plants for inspection of equipment, materials, or software to be incorporated into the work. Should such inspection attended by Engineer be delayed, the Contractor shall reimburse the District for the actual salary costs of Engineer times the overhead rate specified in the Special Provisions and the actual cost of other direct costs incurred due to the inspection delay.
- I. The Contractor shall accommodate inspection at the place of origin of materials, product, and equipment if specified or requested by the Engineer.
- J. The Contractor shall provide safe passage and access for inspection of the work in any area. Off-site storage areas and warehouse facilities are also subject to inspection if payment for any equipment or materials stored at these locations is claimed for progress payment.

**9.08. Defective and Unauthorized Works**

- A. All work which has been rejected shall be remedied or removed and replaced by the Contractor in an acceptable manner at no additional cost to the District.
- B. Payment will not be made for any work done beyond the lines and grades shown on the Drawings or established by the Engineer, or any extra work done without written authority, and such work will be considered as unauthorized. Work so done may be ordered remedied, removed, or replaced.

- C. If the Contractor should fail to comply promptly with any order of the Engineer made under the provisions of this Article, the Engineer may cause rejected or unauthorized work to be remedied, removed, or replaced, and the costs thereof to be deducted from any moneys due or to become due the Contractor.

**9.09. Construction Equipment and Plant**

- A. The Contractor shall provide and use construction equipment and plant capable of producing the quality and quantity of work required. Construction equipment shall be identified by readily visible numbers. If ordered, Contractor shall remove unsatisfactory construction equipment and discontinue the operation of unsatisfactory plants.

**9.10. Final Inspection and Acceptance of Work**

- A. When the work authorized by the Contract has been completed, the Engineer will make the final inspection. If the Engineer determines that the work has been completed, in accordance with the Contract, the Engineer will recommend that the work be accepted. The Contractor will be relieved of the responsibility imposed by Article 6.15 on the date of acceptance.

**9.11. Use Prior to Acceptance**

- A. The District may take possession of, and use, all or part of the project prior to acceptance.

## **SECTION 10. CONTROL OF MATERIALS AND INSTALLED EQUIPMENT**

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### **10.01. Furnishing and Quality of Materials and Equipment**

- A. Contractor shall furnish materials and equipment as specified.
- B. Only materials and equipment conforming to the requirements of the Contract shall be incorporated in the project. Except as otherwise specified or approved, materials and equipment shall be new and unused.

### **10.02. Source of Materials and Equipment**

- A. The Contractor shall furnish a list of sources of materials and equipment to the Engineer on a District form in sufficient time to permit proper inspection and testing of materials and equipment in advance of their use. Inspection and tests will be made and reports rendered, but it is understood that such inspections and tests shall not be considered as a guarantee of acceptance of any material or equipment which may be delivered later for incorporation in the work. No equipment or materials which, after approval, have in any way become unfit for use, shall be used in the work.
- B. At the option of the Engineer, the source of supply of each of the materials shall be approved before the delivery is started. All materials proposed for use may be inspected or tested at any time during their preparation and use. After trial, if it is found that sources of supply which appeared satisfactory do not furnish a uniform product, or if the product from any source proves unacceptable at any time, the Contractor shall furnish approved material from other sources.

### **10.03. Product Data and Samples**

- A. The Contractor shall submit five copies of approval data for materials and equipment proposed for installation. Approval data shall consist of complete material and equipment lists accompanied by catalog data sheets, cuts, performance curves, diagrams, or similar descriptive material. Material and equipment lists shall give, in each case, the name of the manufacturer, trade name, catalog reference, size, finish, and all other pertinent data. It is intended that approval data should not include such materials as small pipe and small pipe fittings, conduit and conduit fittings, or tubing. The Contractor shall furnish operation and maintenance manuals or instructions if required by the Special Provisions.
- B. The Contractor shall furnish without charge such samples as may be required.

### **10.04. Storage of Materials and Equipment**

- A. Materials and equipment shall be so stored as to ensure the preservation of their quality and fitness for the work. They shall be placed under cover when necessary and shall be stored in a manner that will facilitate prompt inspection.

**10.05. Defective Materials**

- A. All materials not conforming to the requirements of the Contract shall be considered as defective and all such materials shall be rejected, whether in place or not. They shall be removed immediately from the site of the work, unless otherwise permitted by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used unless approval in writing has been given by the Engineer. If the Contractor should fail to comply promptly with any order of the Engineer made under the provisions of this Article, the Engineer may cause defective materials to be removed and replaced, and the costs thereof to be deducted from moneys due, or to become due, the Contractor.

**10.06. Equal, Sole or Single Source, and Substitution**

- A. Specified Item: Material, equipment, product, thing, or service referenced in the Contract Documents that has been identified by specific brand, manufacturer, catalog number, or trade name.
- B. Equal Items: Items, as referenced in these Contract Documents are those, which, to the Engineer's knowledge, meet the requirements of the Contract Documents and are considered equal to the specified items.
- C. Substitutions: Substitutions are considered changes to the Contract.
- D. Sole source/ single source: If the material or equipment specification lists only one manufacturer, catalog number, or trade name, and is followed by the designation "no equal," "no others acceptable," "no alternatives allowed," "no other manufacturers accepted," and similar language, then the material or equipment is designated to be a sole source item based on one or more of the reasons stated in the Public Contract Code 3400 (b). No substitution of sole-source items will be allowed.
- E. Whenever an item has been designated in the Contract Documents as described in paragraph A, such designations shall be deemed to be used for the purpose of facilitating the description of the Specified Item and shall be deemed to be followed by the words "or equal," whether explicitly stated or not. Unless specifically noted to the contrary (see Paragraph D above), if only one manufacturer, catalog number, or trade name is listed, it is the only product known to the District that meets the requirements of the Contract Documents, but this does not preclude the provision of materials or equipment which are equal to the specified item.
- F. Submission of items which are proposed as equal to the Specified Items will be evaluated in accordance with the following provisions:
  - 1. The Contractor shall submit to the Engineer in accordance with Public Contract Code section 3400, after contract award, no later than 35 days after the date of Notice to Begin Work, proposal for replacement of a Specified Item with an Equal Item. At the sole discretion of the Engineer,

District may give written consent to the submission of the proposed Equal Item after the expiration of the thirty-five (35) day time limit.

2. Burden of proof as to the submitted items being equal to the Specified Items is the responsibility of the Contractor.
  3. The Contractor shall submit sufficient data, drawings, samples, literature, calculations, and all other information requested by District to demonstrate to the Engineer that the proposed items are equal to the Specified Items.
  4. Failure of the Contractor to submit the proposed Equal Item for review in the manner and time described above shall be sufficient cause for rejection by the Engineer of the proposed Equal Item.
  5. The Engineer's evaluation of the submitted items proposed as being equal to the Specified Items is based on, but not limited to, the following:
    - a. performance;
    - b. functionality, efficiency;
    - c. durability;
    - d. life cycle costs;
    - e. ease and economy of maintenance and operation;
    - f. construction and physical characteristics as compared to the specified items, or as delineated in the Contract Documents;
    - g. dimensional compatibility with the materials it combined to produce a unified design system;
    - h. compatibility with products in use;
    - i. all aspects of finished appearance including form, texture and color, that may affect other design elements;
    - j. impacts to Project design, construction schedule, or construction sequencing.
  6. The Engineer will be the sole judge in this matter. In the event the Engineer rejects the proposed items, the Contractor shall submit the Specified Items.
- G. Submission of items which are proposed as substitutions of the Specified Items shall be subject to the following provisions:

1. Except for the 35-day time limit specified in F.1, all provisions and evaluation criteria under Paragraph F above shall apply to the proposed substitutions.
2. Unless a written consent is provided by the Engineer, no submission of proposed substitutions will be accepted nor considered by the Engineer prior to contract award.
3. Other additional provisions and/or criteria as deemed necessary by the Engineer.
4. Substitution(s) of Specified Item(s) proposed by the Contractor may require modifications in the Project design, Project schedule, and/or construction sequencing. The Contractor shall identify all necessary project modifications required for the substitution(s). Necessary project modifications may include, but not be limited to, electrical, instrumentation, structural, mechanical, architectural, testing, engineering costs, and other related modifications.
5. The Contractor is responsible for all costs associated with the substitution(s), including submittal reviews and any project redesigns and modifications. Contractor refusal to accept any of these costs shall be just cause for disapproval of the substitution(s).
6. District will review and respond in writing to the Contractor's proposed substitution within twenty-one (21) days after receipt of all information District requires to make a final determination.
7. If the proposed items are accepted, 50 percent of all savings shall be credited to the District.

**10.07. Testing Materials**

- A. Unless otherwise specified in the Special Provisions or Technical Provisions or called for on the Drawings, the work shall be tested by the District or its authorized representative in order to determine compliance with the Drawings and the Specifications.
- B. Whenever a reference is made to a specification or test designation, whether of the American Society of Testing Materials, the American Water Works Association, or any other authority, and the number accompanying the specification or test method representing the year of its acceptance or adoption is omitted, the reference shall mean the specification of test method in effect on the date of the Notice to Bidders.
- C. Whenever said specification or test designation provides for test reports (such as certified mill test reports) from the manufacturer, copies of such reports, identified as to the lot of material, shall be furnished to the Engineer. The manufacturer's

test reports shall supplement the inspection, sampling, and testing provisions, and shall not constitute a waiver of the District's right to inspect.

**10.08. Plant Inspection**

- A. Materials and equipment which become a part of the completed work will be subject to inspection at the place of production or manufacture, at the shipping point, or at the site of the work. Materials and equipment requiring inspection at the place of production or manufacture will be designated by the Engineer. Where plant inspection is so designated, the Engineer shall be given 14 days' advance notice of the start of manufacture or production. The Contractor's purchase orders for materials and equipment, for which plant inspection has been designated by the Engineer, shall bear a suitable notation advising suppliers and subcontractors of inspection requirements.
- B. The Engineer or an authorized representative shall have free entry at all times to such parts of the plant as concerns the manufacture or production of materials and equipment for the District. Adequate facilities shall be furnished free of charge to make the necessary inspection.
- C. The District assumes no obligation to inspect materials or equipment at the place of manufacture or production, or at the shipping point.

**10.09. District-Furnished Materials**

- A. Materials furnished by the District will be available at locations designated in the Special Provisions. They shall be loaded, unloaded, and hauled to the site of the work by the Contractor at the Contractor's expense. The Contractor shall be held responsible for all materials furnished, and shall pay all demurrage and storage charges.