

ADDENDUM NO. 2

TO

BDVWA WATER SYSTEM IMPROVEMENTS AND CONSOLIDATION PROJECTS

October 9, 2026

All prospective bidders for the above-referenced project are to be aware that the following changes, additions, and/or clarifications shall be included as an integral part of the Contract Documents for the above-referenced project and that they are bound by the conditions set forth therein.

THIS ADDENDUM SHOULD BE ACKNOWLEDGED WHEN YOUR BID IS SUBMITTED.
FAILURE TO ACKNOWLEDGE THE ADDENDUM MAY CONSTITUTE GROUNDS FOR
REJECTION OF THE BID.

THE BIDDER SHALL ACKNOWLEDGE RECEIPT OF THIS ADDENDUM ON THE ADDENDA
ACKNOWLEDGEMENT FORM INCLUDED IN THE BID FORMS.

In accordance with the provisions of the Business and Professions Code of the State of California, this addendum has been prepared under the general supervision and direction of the following professional engineer, licensed in the State of California.

Jared Nelson

Name

Project Engineer

Title

California Rural Water Association

Company/Firm Name



Seal

October 9, 2026

Date

BIGHORN-DESERT VIEW WATER AGENCY

Water System Improvements and Consolidation Projects

ADDENDUM 2 October 9, 2026

This Addendum consists of the following Items:

- Title Page
- Project Questions/Answers
- Project Manual / Specification Amendments
- Attachment 1 – Amended Sections of the Project Manual

QUESTIONS – ANSWERS

1	Question: <i>Our insurance company wanted us to confirm the requirement for Contractor’s Public Liability and Property Damage Insurance and Vehicle Liability Insurance in Section 6.18 of the General Conditions. Their underwriter has not seen this phrase used much; however, they believe it is referencing the bodily injury and property damage coverage included within the per occurrence on the General Liability insurance. Is this correct or is it referencing a “professional coverage” policy?</i> Answer: Section 6.18 of the General Conditions has been revised by this Addendum to clarify the insurance requirements. Bodily injury and property damage coverage are addressed under the Contractor’s general liability coverage, automobile-related liability is addressed under the automobile liability coverage, and Contractor’s Pollution Liability coverage is required as specified in revised Section 6.18. Professional liability coverage is not required by Section 6.18.
2	Question: <i>Bid date vs. Addendum 2 (A1, Q12): Addendum 1 says Addendum No. 2 will be issued October 26, but bids are due 11:00 a.m. October 20. Will the bid opening be postponed until after Addendum 2 is issued? If not, will all answers be issued by addendum far enough ahead of the bid date to include in our pricing?</i> Answer: We apologize for the confusion, BDVWA anticipates issuing Addendum No. 3 by close of business Friday, October 16th which is intended to address questions received by the October 14th deadline. Bids remain due October 20, 2026 at 11:00 a.m.

SPECIFICATION AMENDMENTS

Item No.	Spec. Section	Description
		Note: Each amended section listed below is attached in its entirety to this addendum with Additions shown in red with deletions shown in red with strikeout.
1	Division 0 – Information for Bidders	Replace Information for Bidders in its entirety with the attached amendment. Affected sections include Section 5 and add Sections 11 through 19 addressing subcontractor designation, licensing, public works contractor registration, non-collusion, Iran contracting requirements, CARB requirements, prevailing wages, debarment, and bid protest procedures.
2	Division 0 – Proposal	Replace Proposal in its entirety with the attached amendment.

		Revisions affect the manufacturer-information requirement and the bidder entity/signature provisions.
3	Division 0 – Bid Forms	Replace Bid Forms in its entirety with the attached amendment. Revisions affect the Bid Bond, References, Non-Collusion Declaration, Acknowledgment of Insurance Requirements, Debarment and Suspension Certification, and Drug-Free Workplace Certification, and add the Public Works Contractor Registration Certification, Iran Contracting Act Certification, Economic Sanctions Certification, Fleet Compliance Certification, and Anti-Lobbying Certification.
4	Division 0 – Contract Agreement	Replace Agreement in its entirety with the attached amendment. Revisions are shown by redline and affect Sections 4, 6, 8, 12, 14, 17, 20, 24, 25, 27, 28, 29, 30, 31, 34, 35, 43, and 47.
5	Division 0 – Maintenance and Guarantee Bond	Replace Maintenance and Guarantee Bond in its entirety with the attached amendment. Revisions include correction of the project identification, confirmation of the two-year guarantee period, confirmation of the 70% bond amount, revisions to the bond expiration language, and correction of execution terminology.
6	Division 0 – General Conditions	Replace General Conditions in its entirety with the attached amendment. Revisions are shown by strikeout and redline and affect Sections 3.03, 3.07, 3.13, 3.14, 3.15, 3.19, 3.21, 3.23, 3.24, 3.27, 4.01, 4.08, 4.09, 5.06, 5.07, 5.09, 5.10, 5.13, 6.10, 6.11, 6.12, 6.13, 6.16, 6.17, 6.18, and 6.19. Revisions to Section 6.18 include updated contractor and subcontractor insurance requirements, including pollution liability coverage and related insurance limits.
7	Division 0 – Special Conditions	Replace Special Conditions in its entirety with the attached amendment. See changes to Section I, Item 13, Substantial Completion, and to the following parts of Section II: 3.A, 3.C.1, 3.C.6, 3.E, 3.F.10, 3.F.11, 3.F.13, 3.F.14, and 3.F.22.

Attachment 1

Amended Sections of the Project Manual

INFORMATION FOR BIDDERS

1. GENERAL

The work hereunder must be done in strict conformity with the plans and specifications adopted and approved by the Agency.

2. CONTRACT DOCUMENTS

- (a) The contract documents shall consist of the following:

- Notice Inviting Sealed Proposals (Bids)
- Information for Bidders
- Proposal (Bid)
- Bid Forms
- Agreement
- Payment Bond
- Performance Bond
- Maintenance and Guarantee Bond
- Competent Person Designation
- Qualifications of Successful Bidder
- Addenda issued Prior to Bid Opening
- General Conditions
- Special Provisions
- Technical Specifications

- (b) Terms and conditions contained in the contract documents are part of the contract. The governing board of the Agency may reject bids and waive informalities in bids. No bidder may withdraw a bid after bid opening, subject to applicable law.

3. MANDATORY PRE-BID MEETING AND SITE WALK

A mandatory pre-bid meeting and site walk will be held on **September 30, 2026, at 10 a.m.**, beginning at the Bighorn-Desert View Water Agency office located at 622 S. Jemez Trail, Yucca Valley, California. Attendance by a representative of each prospective Prime Contractor intending to submit a bid is mandatory. Bids submitted by Prime Contractors that do not attend the mandatory pre-bid meeting and site walk will be considered non-responsive and will not be considered for award. The purpose of the meeting and site walk is to familiarize prospective bidders with the Project, existing site conditions, access and staging constraints, environmental requirements, existing facilities, and other conditions that may affect prosecution of the Work. Subcontractors, suppliers, and other interested parties may attend but are not required to do so. Statements or interpretations made during the pre-bid meeting or site walk shall not modify the Contract Documents. Any clarification, interpretation, or modification of the Contract Documents considered necessary by the Agency will be issued by written Addendum.

Prospective bidders remain responsible for independently examining the Project sites and Contract Documents and for fully informing themselves of all conditions and requirements affecting the Work.

4. PROPOSALS

Bids shall be made upon the form of proposal furnished by the Agency and a part of the contract documents. Bids shall be properly executed and with all items filled in; the signatures of persons signing shall be in longhand. Erasures, inter-lineation or other corrections shall be authenticated by affixing in the margin immediately opposite the correction, the initials of a person signing the bid. If the unit price and the total amount named by a bidder for an item are not in agreement, the unit price alone shall be considered as representing the bidder's intention, and the totals shall be corrected to conform.

Persons bidding may submit bids on any of the schedules set forth in the bid form.

Bids shall not contain recapitulation of the work to be done. Alternative proposals will not be considered except as called for. No oral, telegraphic or telephonic proposals or modifications will be considered.

Bids shall be accompanied by a bidder bond in a form acceptable to the Agency or cash in the amount of ten percent (10%) of the bid price.

Before submitting a bid, bidders shall carefully examine all contract documents, shall visit the site of the work, shall fully inform themselves as to all the existing conditions and limitations, and shall include in the bid a sum to cover the cost of all items included in the contract. No allowance will be made because of lack of such examination or knowledge. Bids shall be sealed in an envelope marked "Bid for Water System Improvements and Consolidation Projects – Do Not Open Until Time of Bid" addressed to the Secretary of the Agency, and be delivered thereto on or before the day and hour set for the opening of bids in the notice inviting sealed proposals, and shall bear the name of the bidder. It is the SOLE responsibility of the bidder to see that his bid is delivered and received in proper time. Any bid received after that scheduled closing time for receipt of bids shall be returned to the bidder unopened.

The Agency shall have a period of 60 days after the opening of bids within which to accept or reject the bids. If no bid is accepted within the period, or if the successful bidder executes and delivers the necessary contract documents to the Agency, the Agency will return to each bidder all checks and bonds received by the Agency from unsuccessful bidders within 10 days after the execution of the contract and presentation of required certificates and bonds or within 10 days after being requested to do so by the bidder if no bid is accepted within the period.

5. AGREEMENT AND BONDS

The form of contract which the successful bidder, as Contractor, will be required to execute is included in the contract documents, and should be carefully examined by the bidder. The agreement, bonds, and other documents to be executed by the Contractor shall be executed in original triplicates stamped according to law, one of which original triplicate shall be filed with the Agency, and the others with the Agency's Attorney and the Agency's Engineer.

The successful bidder, simultaneously with the execution of the agreement, shall furnish and maintain a payment bond in an amount equal to one hundred percent (100%) of the contract price and change order prices, and a faithful performance bond in an amount equal to one hundred percent (100%) of the contract price and change order prices, **and a maintenance and guarantee bond for seventy percent (70%) of the contract price**. The bonds shall be secured from a surety company satisfactory to the Agency and whose name is on file with the County Clerk of San Bernardino County as an approved and financially sound surety company, authorized to transact business in this State.

The bonds shall meet all of the requirements and contain the conditions required by California Civil Code Section 9000 et seq., and other applicable provisions of the law and regulations of the State of California.

Failure to execute the contract and file acceptable bonds and proof of insurance coverage as provided therein within the time set forth herein shall be just cause for the annulment of the award and forfeiture of the proposed guarantee.

6. ADDENDA OR BULLETINS

Addenda or bulletins issued before the time to submit bids expires, or forming a part of the contract documents furnished to the bidder for preparation of his bid, shall be covered in the bid and shall be made a part of the contract.

7. WITHDRAWAL OF BID

A bidder may withdraw the bid personally or by a signed written request *prior* to the scheduled time for opening of the bids (but not after).

8. AWARD OR REJECTIONS OF BIDS

The contract will be awarded to the lowest responsible bidder complying with these instructions and with the notice inviting sealed proposals. The Agency may reject bids or waive informality in bids. If in the judgment of the Agency a bid is unbalanced, or if the bidder is not responsible, it shall be considered sufficient grounds for rejection of the entire bid.

9. BIDDERS INTERESTED IN MORE THAN ONE BID

No person, firm or corporation shall make or file, or be interested in more than one bid for the same work, unless alternative bids are solicited. A person, firm or corporation submitting

a subproposal to a bidder, or who has quoted prices on material to a bidder, is not disqualified from submitting a subproposal or quoting prices to other bidders.

10. OTHER REQUIREMENTS

Before award of the contract, a bidder upon request shall furnish a recent statement of financial condition and previous construction experience or other evidence of qualifications.

Before entering into a contract, the bidder to whom the contract has been awarded shall furnish satisfactory evidence of workers' compensation insurance and public liability and property damage insurance as specified in the special provisions.

Funding for the subject project will be provided in whole or in part by the State of California Department of Water Resources ("State") pursuant to Grant Agreement No. 4600014979 between the State and the Agency under the Proposition 1 Integrated Regional Water Management (IRWM) Program dated on or about March 13th, 2023, and by the State Water Resources Control Board ("State Water Board") pursuant to Grant Agreement No. D2102065 between the State Water Board and the Agency under the Drinking Water State Revolving Fund (DWSRF) Program dated on or about April 20th, 2023. These agreements are located in Attachments A and B, respectively.

All applicable requirements of these funding agreements are hereby incorporated into the Contract Documents and shall apply to the Work. The successful bidder shall comply with all applicable requirements of the State, the State Water Board, and any other federal, state, or local agencies having jurisdiction over the Project.

Certain requirements applicable to the State Water Board funding may originate from federal funding sources and shall apply to the Contract to the extent required by the funding agreements.

11. DESIGNATION OF SUBCONTRACTORS

Bidder shall set forth the name, address of the place of business, DIR public works contractor registration number unless exempt pursuant to Labor Code Sections 1725.5 and 1771.1, and contractor license number of each subcontractor who will perform work, labor, furnish materials or render services to the bidder on said contract and each subcontractor licensed by the State of California who, under subcontract to bidder, specially fabricates and installs a portion of the Work described in the Contract Documents in an amount in excess of one half of one percent (0.5%) of the total bid price, and shall indicate the portion of the work to be done by such subcontractor in accordance with Public Contract Code Section 4104.

12. LICENSING REQUIREMENTS

Pursuant to section 7028.15 of the Business and Professions Code and section 3300 of the Public Contract Code, all bidders must possess proper licenses for performance of this Contract. Subcontractors must possess the appropriate licenses for each specialty subcontracted. Pursuant to section 7028.5 of the Business and Professions Code, the Agency shall consider any bid submitted by a contractor not currently licensed in accordance with state law and pursuant to the

requirements found in the Contract Documents to be non-responsive, and the Authority shall reject the Bid. The Agency shall have the right to request, and Bidders shall provide within five (5) calendar days, evidence satisfactory to the Agency of all valid license(s) currently held by that Bidder and each of the bidder's subcontractors, before awarding the Contract.

13. PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bids will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. If awarded a Contract, the bidder and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project. To this end, bidder shall sign and submit with its Bid the Public Works Contractor Registration Certification on the form provided, attesting to the facts contained therein. Failure to submit this form may render the Bid non-responsive. In addition, each Bidder shall provide the registration number for each listed subcontractor in the space provided in the List of Subcontractors Form.

14. NON-COLLUSION DECLARATION

Bidders on all public works contracts are required to submit a declaration of non-collusion with their bid. This form is included with the bid package and must be signed and dated under penalty of perjury.

15. IRAN CONTRACTING ACT OF 2010

In accordance with Public Contract Code Section 2200 et seq., the Agency requires that any person that submits a bid or proposal or otherwise proposes to enter into or renew a contract with the Agency with respect to goods or services of one million dollars (\$1,000,000) or more, certify at the time the bid is submitted or the contract is renewed, that the person is not identified on a list created pursuant to subdivision (b) of Public Contract Code Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Public Contract Code Section 2202.5, or as a person described in subdivision (b) of Public Contract Code Section 2202.5, as applicable.

The form of such Iran Contracting Certificate is included with the bid package and must be signed and dated under penalty of perjury.

16. CALIFORNIA AIR RESOURCES BOARD REQUIREMENTS

The Agency is a Public Works Awarding Body, as defined under Title 13 California Code of Regulations section 2449(c)(46). Accordingly, bidders must submit, with their bids, a valid Certificate of Reported Compliance (CRC) for the bidder's and its listed subcontractors' fleet (including any applicable leased equipment or vehicles). Bidder must complete and submit the Fleet Compliance Certification on the form provided. Failure to provide a CRC for the Bidder, and for all listed subcontractors, or failure to complete the Fleet Compliance Certification, may render the bid non-responsive.

17. PREVAILING WAGES

The Agency has obtained from the Director of the Department of Industrial Relations the

general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the Contract. These rates are on file and available at the office of the Agency located at 622 Jemez Trail, Yucca Valley, California or may be obtained online at <https://www.dir.ca.gov/OPRL/dprevwagedetermination.htm>. Bidders are advised that a copy of these rates must be posted by the successful Bidder at the job site(s).

18. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

In accordance with the provisions of the Labor Code, contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to section 1777.1 or section 1777.7 of the Labor Code. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid to a debarred subcontractor by the contractor for the Project shall be returned to the Agency. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

19. BID PROTEST

Bidders may file a “protest” of a Bid with the Agency. In order for a bidder’s protest to be considered valid, the protest must comply with the following:

- A. Be filed in writing within five (5) calendar days after the bid opening date.
- B. Clearly identify the specific irregularity or accusation.
- C. Clearly identify the specific Agency staff determination or recommendation being protested.
- D. Specify, in detail, the grounds of the protest and the facts supporting the protest.
- E. Include all relevant, supporting documentation with the protest at time of filing.

If the protest does not comply with each of these requirements, it will be rejected as invalid.

If the protest is valid, the Agency, acting through its General Manager, shall review the basis of the protest and all relevant information. The Agency’s General Manager will provide a written decision to the protestor. The protestor may then appeal the decision of the Agency’s General Manager to the Agency’s Board of Directors.

PROPOSAL TO
BIGHORN-DESERT VIEW WATER AGENCY
FOR THE CONSTRUCTION OF THE
WATER SYSTEM IMPROVEMENTS AND CONSOLIDATION PROJECTS

Name of Bidder: _____

Business Address: _____

Telephone No. _____

Place of Residence: _____

The site of the work to be constructed and referred to herein is in the County of San Bernardino, California.

The work is to be in accordance with the specifications and contract documents and as shown on plans therefore entitled "**WATER SYSTEM IMPROVEMENTS AND CONSOLIDATION PROJECTS**" TO THE GOVERNING BOARD OF BIGHORN-DESERT VIEW WATER AGENCY.

In compliance with your notice inviting sealed proposals (bids) and other documents, the undersigned bidder proposes to perform the work and in a workmanlike manner, in strict conformity with the plans and specifications and other contract documents, including **Addenda Nos. _____, _____ and _____**, on file in the office of the Secretary of the Agency for the contract unit prices herein.

The undersigned agrees that the Total Base Bid shall be the sum of Bid Items 1 through 27 as set forth in the Bid Form – Schedule of Prices. The undersigned further acknowledges the Deductive Alternatives identified in the Bid Form and agrees that such Deductive Alternatives, if applied by the Agency, shall adjust the Contract Price in accordance with the unit prices and lump sum prices stated therein.

It is understood the foregoing quantities are approximate only and are solely for the purpose of facilitating the comparison of bids. The Contractor's compensation will be computed upon the basis of the actual quantities in the complete work, whether they be more or less than those shown.

Contractor shall ~~S~~state manufacturer's name and address for each type of material upon which this proposal is based.

Signature of Bidder:

Address

Authorized Officer of Bidder

DATED: _____

NOTE: If Bidder is a corporation, the legal name of the corporation shall be set forth above, together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation. If Bidder is a ~~co~~-partnership, the true name of the firm shall be set forth above, together with the signature of the partner or partners authorized to sign contracts on behalf of the co-partnership. If the Bidder is an individual, the signature shall be placed above. If a joint venture ~~of~~ or a ~~special~~-limited partnership, the names of the general partners and ~~special~~-limited partners shall be submitted.

BID FORMS

BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, _____ as principal and _____ as surety, are held and firmly bound unto BIGHORN-DESERT VIEW WATER AGENCY, hereinafter referred to as "OWNER," for the sum of _____ dollars, (\$_____), the amount being ten percent (10%) at least of the total amount of the bid, to be paid to the said OWNER, its successors, and assigns; for which payment, will and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the certain proposal of the above bounden for the completion of the Project as specifically set forth in documents entitled Contract Documents and Specifications for the Water System Improvements and Consolidation Projects in accordance with the Specifications and Construction Drawings on file at the office of the Owner, 622 S. Jemez Trail, Yucca Valley, California, is not withdrawn within the period specified in Section 4 of the Information for Bidders, unless otherwise required by law, and notwithstanding the award of the contract to another bidder, and that if said proposal is accepted by the OWNER through action of its legally constituted contracting authorities and if the above bounden his/her heirs, executors, administrators, successors and assigns, shall duly enter into and execute a contract for such construction and shall execute and deliver the required ~~Performance and Payment Bonds~~ **Performance, Payment and Maintenance and Guarantee Bonds** and proof of insurance coverage within fifteen (15) calendar days (not including holidays) after the date of notification by and from the said OWNER that the said Contract is ready for execution, then this obligation shall become null and void; otherwise it shall be and remain in full force and virtue.

IN WITNESS WHEREOF, we hereunto set our hands and seals this day of

_____ 20_____

Signature

Title

Note: The standard printed bond form of any bonding company acceptable to the OWNER may be used in lieu of the foregoing approved sample bond form provided the security stipulations protecting the OWNER are not in anyway reduced by use of the surety company's printed standard form.

LIST OF MATERIAL/EQUIPMENT SUPPLIERS

Name the manufacturer or manufacturers of the items listed below and every major product or major piece of equipment whose cost exceeds fifteen percent (15%) of the total bid amount.

In addition, the bidder is required to fill out the following blanks, listing manufacturers from whom it intends to purchase the indicated items and which selections will be considered as binding upon the Bidder, provided that all such selections shall comply with the provisions of the Contract Documents

No change shall be allowed by the Engineer of any material manufacturer or supplier listed after receipt of bids unless the manufacturer so listed cannot furnish materials meeting the specifications. Should such change be allowed, there will be no change in the amount of the bid originally submitted.

Item	Material	Manufacturer
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____
12.	_____	_____

Add additional sheet as required.

REFERENCES

~~(Offerer must complete the reference list as indicated for at least three (3) sites that are currently using a similar scope of work requested by the Agency. This reference list is mandatory.)~~ (Offerer must complete the reference list as indicated for at least three (3) projects completed by Offerer within the past twenty-four (24) months that involved a similar scope of work to that requested by the Agency. This reference list is mandatory.)

REFERENCE No. 1

City/Agency: _____

Contact Name: _____ Phone Number: _____

Address: _____

Contract Amount: \$ _____ Year: _____

Project Name & Description of work done: _____

REFERENCE No. 2

City/Agency: _____

Contact Name: _____ Phone Number: _____

Address: _____

Contract Amount: \$ _____ Year: _____

Project Name & Description of work done: _____

REFERENCE No. 3

City/Agency: _____

Contact Name: _____ Phone Number: _____

Address: _____

Contract Amount: \$ _____ Year: _____

Project Name & Description of work done: _____

COMPANY AND PARTNERSHIP IDENTIFICATION

Bidder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of this work.

Legal name of Bidder _____

Street Address _____

Mailing Address _____

Business Telephone _____

Business Facsimile _____

Email Address _____

Type of Business:

☐ **Sole Proprietor** ☐ **Partnership** ☐ **Corporation** ☐ **Other:** _____

If corporation, indicate State where incorporated: _____

Contractor's License Numbers: _____
(General Engineering Contractor Class "A") (Other)

Contractor's DIR* Registration: _____

DIR Number	Expiration Date
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*DIR – California Department of Industrial Relations

AFFIDAVIT

I, the undersigned, certify and declare that I have read all the answers contained in this identification form and known their contents. The matters stated in the form answers are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California, that the foregoing is correct.

Dated: _____

(Signature)

(Printed Name and Title)

DESIGNATION OF SUBCONTRACTORS

In accordance with the provisions of Section 4100 and 4104 et. seq. of the Government Code of the State of California, the bidder shall, in its bid, list the name, License Number and Classification, and place of business of each subcontractor who will perform work or labor or render service to the prime contractor in an amount in excess of one-half of 1 percent of the prime contractor's total bid, including the percentage of Prime Contractor's total base bid.

Description of Work	Subcontractor/License No.	% of Contract

ADDENDA ACKNOWLEDGEMENT

The undersigned acknowledges receipt of the following ADDENDA:

Addendum No. _____ Date: _____

Addendum No. _____ Date: _____

Addendum No. _____ Date: _____

Addendum No. _____ Date: _____

Addendum No. _____ Date: _____

Name of Bidder: _____

Address: _____

Telephone Number: _____

By: _____
Signature Title

WORKERS' COMPENSATION CERTIFICATE

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

Dated: _____

(Contractor (Type Full Name))

(Signature)

(Title)

(Street Address)

(City)

(State)

(Zip)

NOTE: If Contractor is a corporation, the legal name of the corporation shall be set forth above, together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation. If the Contractor is a partnership, the true name of the firm shall be set forth above, together with the signature of the partner or partners authorized to sign contracts on behalf of the co-partnerships. If the Contractor is an individual, the name of the firm shall be set forth together with the signature.

NON-COLLUSION DECLARATION

The undersigned declares under penalty of perjury as follows:

1. _____, being first duly sworn, deposes and says that he or she is (title) _____ of (company name) _____, the party making the foregoing bid.

2. The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation.

3. The bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding.

4. The bidder ~~had~~has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract.

5. All statements contained in the bid are true.

6. The bidder has not, directly or indirectly, submitted the bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Dated: _____

(Contractor (Type Full Name))

(Signature)

(Title)

(Street Address)

(City)

(State)

(Zip)

(Attach Notarial Acknowledgement of Contractor)

ACKNOWLEDGMENT OF INSURANCE REQUIREMENTS

By signing below, Bidder acknowledges the insurance requirements as listed in Section 6.18 of the General Conditions (and as supplemented by the Special Provisions Section II Part 1). By this acknowledgment, the Bidder and its insurance provider(s) and surety(ies) certify that they have read and understand the insurance and bonding requirements in their entirety, including limits of coverage, additional insureds and endorsements, and bonding requirements, and that the Bidder can provide the insurance coverage and bonds as required in the Contract documents without exception.

Bidder understands that if the insurance coverage provided in these referenced Sections above cannot be provided, its bid is subject to rejection by the Owner as non-responsive.

BIDDER

Company Name: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____

INSURANCE PROVIDER/SURETY REPRESENTATIVE

Insurer/Surety Name: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____

**Bidder Must Provide This Acknowledgment for Each Insurer or Surety Providing Insurance Coverage
or a Bond under this Contract**

Debarment and Suspension Certification

- 1) The Contractor certifies, to the best of its knowledge and belief, that he/she and its subcontractors and subrecipients:
 - a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity (federal, state, or local);
 - b) Have not, within the three (3) year period preceding this certification, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction, violation of Federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification; and
 - d) Have not, within the three (3) year period preceding this certification, had one or more public transactions (Federal, state, and local) terminated for cause or default.
- 2) The Contractor also certifies that, if Contractor later becomes aware of any information contradicting the statements of paragraph (1) above, it will promptly provide that information to the ~~State~~Agency.
- 3) If the Contractor is unable to certify to all statements in paragraphs (1) and (2) of this certification, through those means available to Applicant, including the System for Award Management (SAM) Exclusion list~~;~~, Contractor shall indicate so in its applications, or in the transmittal letter or message accompanying its annual certifications and assurances, and will provide a written explanation to the State.~~State~~Agency.

DEBARMENT AND SUSPENSION CERTIFICATION

SIGNATURE PAGE

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature _____

Date _____

Printed Name _____

As the undersigned Attorney for the above named Contractor, I hereby affirm to the Agency that it has the authority under state and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, these certifications and assurances have been legally made and constitute legal and binding obligations of the Contractor.

I further affirm to the Contractor that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances or of the performance of the described project.

AFFIRMATION OF CONTRACTOR'S ATTORNEY

For _____ (Name of Contractor)

Signature _____ Date _____

Printed Name of Applicant's Attorney _____

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The Contractor certifies that he/she, and his/her Subcontractors will provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the ~~grantee's~~ Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing a drug-free awareness program to inform employees about—
 - (1) The dangers of drug abuse in the workplace;
 - (2) The Contractor's/Subcontractor's policies of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation and employee assistance programs, and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after each conviction;
- (e) Notifying the Agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;
- (f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—
 - (1) Taking appropriate personnel action against such an employee, up to and including termination; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Typed Name and Title of Certification Official

Signature

Date

PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Bidder hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.

Name of Bidder:_____

DIR Registration Number:_____

DIR Registration Expiration:_____

Small Project Exemption: Yes or No (circle one)¹

Unless Bidder is exempt pursuant to the small project exemption, Bidder further acknowledges:

1. Bidder shall maintain a current DIR registration for the duration of the project.
2. Bidder shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
3. Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Name of Bidder_____

Signature_____

Name_____

Title_____

Dated_____

¹ If the Project is exempt from the contractor registration requirements pursuant to the small project exemption under Labor Code sections 1725.5 and 1771.1, please mark "Yes" in response to the "Small Project Exemption."

IRAN CONTRACTING ACT CERTIFICATION

(Public Contract Code sections 2202-2208)

Prior to bidding on, submitting a proposal, or executing a contract or renewal for a public entity contract for goods or services of \$1,000,000 or more, a vendor must either: a) certify it is not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services (“DGS”) pursuant to Public Contract Code section 2203(b) and is not a financial institution extending \$20,000,000 or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS; or b) demonstrate it has been exempted from the certification requirement for that solicitation or contract pursuant to Public Contract Code section 2203(c) or (d).

To comply with this requirement, please insert your vendor or financial institution name and Federal ID Number (if available) and complete **one** of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made, contract termination, and three-year ineligibility to bid on contracts. (Pub. Cont. Code § 2205.)

OPTION #1 - CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is not on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

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

Vendor Name/Financial Institution *Federal ID Number (or n/a)*
(Printed)

By (Authorized Signature)

Printed Name and Title of Person *Date Executed*
Signing

OPTION #2 – EXEMPTION

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

Vendor Name/Financial Institution *Federal ID Number (or n/a)*
(Printed)

By (Authorized Signature)

Printed Name and Title of Person *Date Executed*
Signing

COMPLIANCE WITH ECONOMIC SANCTIONS IN RESPONSE TO RUSSIA'S ACTIONS IN UKRAINE CERTIFICATION

Prior to bidding on, submitting a proposal, or executing a contract, a party/contractor must certify: 1) it is not a target of economic sanctions and 2) in compliance with economic sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any requirements related to the Russian sanctions imposed by the California Governor's Executive Order N-6-22 issued on March 4, 2022, and under state law, if any.

To comply with this requirement, please insert the party/contractor name and Federal ID Number (if available), complete the information described below and execute by an authorized representative of the contractor.

CERTIFICATION

I, the authorized representative for the contractor named below, certify I am duly authorized to execute this certification on behalf of the contractor below, and the contractor identified below has conducted a good faith review of existing contracts. I attest that the contractor is not a target of economic sanctions, and that contractor is in compliance with the economic sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any requirements related to the Russian sanctions imposed by the California Governor's Executive Order N-6-22 issued on March 4, 2022, and under state law, if any.

Party/Contractor Name (Printed)

Federal ID Number (or n/a)

By (Authorized Signature)

Printed Name and Title of Person Signing

Date

FLEET COMPLIANCE CERTIFICATION

Bidder hereby acknowledges that it has reviewed the California Air Resources Board's policies, rules, and regulations and is familiar with the requirements of Title 13, California Code of Regulations, Division 3, Chapter 9, effective on January 1, 2024 (Regulation). Bidder hereby certifies, under penalty of perjury, that the option checked below relating to the Bidder's fleet, and/or that of its subcontractor(s), is true and correct:

- ☐ The Fleet is subject to the requirements of the Regulation, and the appropriate Certificate(s) of Reported Compliance have been attached hereto.
- ☐ The Fleet is exempt from the Regulation under section 2449.1(f)(2), and a signed description of the subject vehicles, and reasoning for exemption has been attached hereto.
- ☐ Bidder and/or its subcontractor is unable to procure R99 or R100 renewable diesel fuel as defined in the Regulation pursuant to section 2449.1(f)(3). Bidder shall keep detailed records describing the normal refueling methods, its attempts to procure renewable diesel fuel and proof that shows it was not able to procure renewable diesel (i.e., third party correspondence or vendor bids).
- ☐ The Fleet is exempt from the requirements of the Regulation pursuant to section 2449(i)(4) because this Project has been deemed an emergency, as defined under section 2449(c)(18). Bidder shall only operate the exempted vehicles in the noted emergency operations, and records of the exempted vehicles must be maintained, pursuant to section 2449(i)(4).
- ☐ The Fleet does not fall under the Regulation or is otherwise exempted, and a detailed reasoning is attached hereto.

Name of Bidder: _____

Signature: _____

Name: _____

Title: _____

Dated: _____

ANTI-LOBBYING CERTIFICATION

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of the fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap.38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Name of Bidder: _____

Signature: _____

Name: _____

Title: _____

Dated: _____

AGREEMENT FOR THE CONSTRUCTION OF

As of _____, 202__, BIGHORN-DESERT VIEW WATER AGENCY, a public agency (herein "Agency"), and _____, a _____ (herein "Contractor"), agree as follows:

GENERAL

SECTION 1. SCOPE OF WORK

Contractor will furnish labor, equipment, and materials, and will perform work, for the construction of the facilities described in the Contract Documents set forth in Section 4 below.

SECTION 2. CONSIDERATION

Agency shall pay Contractor the sum set forth in Contractor's bid for the performance of the work.

SECTION 3. PAYMENTS

- (a) Monthly progress payments shall be as follows:
 - (1) On or about the 25th day of each month, Contractor shall submit to Agency an invoice including an estimate of the cumulative amount and value of the work performed by Contractor prior to that date and subsequent to prior estimates. The estimate may include **50%** of the value of acceptable materials and equipment delivered to the work site. The estimate shall be based on certified copies of paid invoices by the Contractor.
 - (2) The Agency shall review the request as soon as practicable to determine whether the payment request is proper. A payment request found not to be a proper payment shall be returned within seven days after receipt accompanied by a written description of the reasons why the request is not proper.
 - (3) Agency shall pay Contractor, within **30** days of receipt of the invoice, **ninety-five** percent of the invoice amount reduced by: amounts due to Agency for equipment, services or materials furnished by Agency; amounts of claims or liens by the Agency or others, and amounts required to be deducted by federal, state or local governmental authorities.
 - (4) If the Agency fails to make progress payment within thirty days after receipt of an undisputed and properly submitted invoice, the Agency shall pay to the Contractor interest at the legal rate set forth in Code of Civil Procedure

Section 685.101(a) from seven days after receipt of the invoice by the Agency until paid.

- (5) Progress payments do not signify acceptance of the work, or any portion of the work. Payments do not preclude Agency from demanding and recovering damages for failure to fully perform.

(b) On satisfactory completion of the work, Agency shall pay Contractor ninety-five percent of the value of the actual work less prior monthly progress payments.

(c) Within sixty (60) days after the date of completion of the Work, as defined by Public Contract Code Section 7107, the undisputed amounts withheld by the Agency shall be released. "Completion" occurs on the acceptance by the governing body of the Agency; or the filing of a notice of cessation of labor.

(d) Notwithstanding the foregoing, Contractor may receive payment in full, other than retention for claims by the Agency or third parties, if the Contractor deposits approved securities or enters into an agreement with an escrow agent to hold earned retentions. The substitution of securities or the use of an escrow account shall be in the form and manner permitted by law.

SECTION 4. CONTRACT DOCUMENTS –

The complete contract includes the ~~contract documents~~ **Contract Documents** set forth herein, to wit: the Notice Inviting Sealed Proposals (Bids), the Information for Bidders, the Proposal, the Bid Forms, the General Conditions, the Special Provisions, the Technical Specifications, this Agreement, and exhibits, attachments, the Payment Bond, the Performance Bond, the Maintenance and Guarantee Bond, the Competent Person Designation, the Qualifications of Successful Bidder, the Certificate of Insurance, any Plans and Specifications, and any Addenda.

SECTION 5. COMPLIANCE WITH PROVISIONS OF LAW

(a) This Agency is subject to laws relating to public agencies which are part of this contract as though fully set forth herein.

(b) Contractor shall comply with laws relating to the work.

SECTION 6. ~~ATTORNEYS' FEES~~ [intentionally omitted]

~~The Court shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party in an action or proceeding to enforce this Agreement.~~

SECTION 7. NOTICES

Notices required or permitted shall be given by personal delivery, by first class mail, postage prepaid, or facsimile transmission:

To Contractor: _____

To Agency: Bighorn-Desert View Water Agency
622 S. Jemez Trail
Yucca Valley, CA 92284-1440

SECTION 8. CONFLICT WITH PLANS AND SPECIFICATIONS

~~Conflict between the plans and specifications and this contract shall be brought~~ Conflict between the plans and specifications and this contract which Contractor identifies shall be promptly brought to the attention of the Agency which shall resolve such conflict.

SECTION 9. ASSIGNMENT

(a) Contractor shall not assign this contract or payments under this contract.

(b) Contractor and each subcontractor hereby assign to the Agency rights, title, and interest in and to causes of action under Section 4 of the Clayton Act (15 U.S.C.A. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials for this contract or the subcontract. This assignment shall be made and become effective without further acknowledgment by the parties at the time the Agency tenders final payment to the Contractor.

SECTION 10. SECTION HEADINGS

Section headings are for the convenience of the parties and shall not affect the interpretation of this contract.

SECTION 11. AUTHORITY OF AGENCY REPRESENTATIVE

Agency's representative shall decide questions about the quality or acceptability of materials furnished and work performed, manner of performance and rate of progress of the work, the interpretation of the plans and specifications and the fulfillment of the contract by Contractor.

WAGES, HOURS, AND WORKING CONDITIONS

SECTION 12. PREVAILING WAGES

(a) A determination of the general prevailing rates of per diem wages and holiday and overtime work where the work is to be performed is on file at the Agency's offices. Contractor and subcontractors will not pay less than the prevailing rates of wages. Contractor will post one copy of the prevailing rates of wages at the job site. ~~To the extent federal funds are used under this contract, Contractor shall comply with all federal Davis-Bacon Act requirements.~~

(b) Contractor shall forfeit as penalty to the Agency the sum set forth in Labor Code Section 1775 for each calendar day or portion thereof for each workman paid less than the prevailing rates under the contract or any subcontract.

SECTION 13. TRAVEL AND SUBSISTENCE PAYMENTS

Travel and subsistence payments shall be paid to each worker as defined in the applicable collective bargaining agreements filed with the Department of Industrial Relations for the particular craft, classification or type of work.

SECTION 14. ~~HOURS OF WORK~~HOURS OF WORK; PAYROLL RECORDS

(a) Eight hours labor constitutes a legal day's work. Workers shall be paid at a rate of one and one-half times the basic rate of pay for work in excess of eight hours during a calendar day or forty hours during a calendar week of the foregoing hours.

(b) Contractor shall keep and make available an accurate record showing the name each of each worker and hours worked each day and each week by each worker.

(c) As a penalty to the Agency, Contractor shall forfeit twenty-five dollars for each worker, including subcontractor's work, for each day the worker works more than eight hour or each week the worker works more than forty hours.

(d) Pursuant to Labor Code section 1776, the Contractor and each subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the work. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury.

(e) In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on a weekly basis and in the format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code section 1771.4.

(f) Any stop orders issued by the DIR against Contractor or any subcontractor that affect Contractor's performance of work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor-caused delay subject to any applicable liquidated damages and shall not be compensable by the Agency. Contractor shall defend, indemnify, and hold the Agency, its directors, officials, officers, employees, and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Contractor or any subcontractor.

(g) The payroll records described herein shall be certified and submitted by the Contractor at a time designated by the Agency. The Contractor shall also provide the following:

1) A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.

2) A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.

(h) Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.

(i) Any copy of records made available for inspection and furnished upon request to the public shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor or any subcontractor shall not be marked or obliterated.

(j) In the event of noncompliance with the requirements of this section, the Contractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance with this section. Should noncompliance still be evident after such ten (10) day period, the Contractor shall, as a penalty to the Agency, forfeit one hundred dollars (\$100.00) for each day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the DIR, such penalties shall be withheld from contract payments.

(k) The responsibility for compliance with these payroll record requirements shall rest upon the Contractor.

SECTION 15. APPRENTICES

Contractor shall comply with the Labor Code concerning the employment of apprentices.

SECTION 16. SUBCONTRACTORS

(a) Contractor shall comply with the *Subletting and Subcontracting Fair Practices Act* of the Public Contracts Code.

(b) Contractor shall submit to Agency the following information:

(i) The name and location of the place of business of each subcontractor performing work, labor or rendering construction services, and each subcontractor licensed by the State of California specially fabricating and installing improvements according to detailed drawings or the plans and specifications, in an amount in excess of one-half of one percent of the Contractor's total bid.

(ii) The portion of the work to be done by each subcontractor.

(c) The Contractor shall list only one subcontractor for each portion of the work identified in the bid.

SECTION 17. NON-DISCRIMINATION

The Contractor shall not refuse to employ or promote any person, and shall not discriminate against any person with respect to compensation or terms and conditions of employment, and shall not discipline or discharge any person employed because of the person's race, religion, creed, color, national origin, ~~ancestry or sex~~ ancestry, sex or any other characteristic protected under state or federal law. The Contractor shall not refuse to accept otherwise qualified employees as indentured apprentices solely on the grounds of race, religion, creed, color, national origin, ancestry, sex, or any other characteristic protected under state or federal law.

SECTION 18. SAFETY

Contractor and subcontractors shall comply with the provisions of the Safety and Health Regulations for Construction, promulgated by the Secretary of Labor under the *Contract Work Hours and Safety Standards Act*, as set forth in Title 29, C.F.R. and by the California Division of Industrial Safety.

SECTION 19. CHARACTER OF WORKERS

Only competent workers shall be employed on the work. Workers who are incompetent, intemperate, troublesome, disorderly or otherwise objectionable, or who fail to perform work properly and acceptably, shall be immediately removed from the work by the Contractor and not re-employed.

INSURANCE, INDEMNIFICATION AND BONDS

SECTION 20. INSURANCE

(a) Before beginning the performance of the work, Contractor shall purchase and maintain insurance to protect the Contractor and the Agency from claims: (i) arising from Contractor's operations under the contract by the Contractor, a subcontractor or anyone employed by them, or anyone for whose acts any of them may be liable; (ii) under workers' compensation, disability benefits and other similar benefits acts; (iii) for damages because of bodily injury, occupational sickness, or disease, or death of the Contractor's employees, or persons other than the Contractor's employees; (iv) for damages insured by usual personal injury liability coverage sustained by a person as a result of an offense related to employment of such person by the Contractor, or other persons; (v) for damages, other than the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (vi) for damages because of bodily injury, death of a person or property damages arising from ownership, maintenance or use of a motor vehicle; (vii) involving contractual liability insurance applicable to the Contractor's obligations; ~~and (viii) for damage to work in progress;~~ and (viii) for damage to work in progress; and (ix) for damages for any pollution event Contractor may cause during the work.

(b) The insurance required shall be written for not less than limits of liability specified in the ~~contract documents~~ **Contract Documents** or required by law, whichever is greater. The insurance shall be purchased from companies authorized to do business in the jurisdiction where the project is located. Coverages shall be written on an occurrence basis without interruption from the date of commencement of the work until date of final payment or until termination of coverage required to be maintained after final payment. Agency, its officers, agents and employees shall be named as additional insured.

(c) Certificates of insurance executed by the carrier(s) and acceptable to the Agency and copies of the policy shall be filed with the Agency prior to the commencement of the work. The Certificates and the insurance policies shall provide the policies will not be canceled or allowed to expire until at least thirty days prior written notice has been given to the Agency. If the insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

(d) Contractor shall require each subcontractor to maintain policies of insurance covering the hazards, and under the conditions mentioned above, and having the Agency, its officers, agents, volunteers and employees as additional insureds. Copies of the subcontractor's certificates of insurance and policies shall be filed with the Agency.

SECTION 21. INDEMNIFICATION

(a) Contractor shall indemnify and save the Agency, its officers, agents, volunteers and employees, free and harmless from costs, damages or liability, including attorneys' fees, arising out of any act or omission to act, including any negligent act or omission to act by Contractor, its officers, agents, subcontractors and employees with respect to the performance of the work or the Contractor's obligations under this contract.

(b) In addition to the foregoing, Contractor shall pay Agency costs, including attorneys' fees, incurred by the Agency in handling, responding to, or litigating stop notice claims or other demands against money due to the Contractor or against the Contractor's payment bond by Contractor's officers, agents, employees or subcontractors.

SECTION 22. PAYMENT BOND

(a) Before beginning the performance of the work, Contractor shall file a payment bond with the Agency for its approval and acceptance. The payment bond shall be in the sum of one hundred percent (100%) of the contract price.

(b) The payment bond shall be in substantially the form of the bond attached hereto. The bond shall be executed by a representative of the surety having no financial interest in the contractor. The payment bond shall be separate and distinct from any other bond required by this

contract. In addition to all other requirements imposed by law or by the Contract Documents listed in Section 4 of this Agreement, all surety companies executing bonds for the work to be performed hereunder shall possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance as defined in Section 105 of the California Insurance Code, and said sureties must also appear on the Treasury Department's most current list (Circular 570 as amended).

SECTION 23. PERFORMANCE BOND

(a) Before beginning the performance of the work, Contractor shall file a performance bond with the Agency for its approval and acceptance. The performance bond shall be in the sum of one hundred percent (100%) of the contract price. The bond shall be payable by surety or sureties to Agency if Contractor fails to fully perform his obligations hereunder.

(b) The performance bond shall be in substantially the form of the bond attached hereto. The bond shall be executed by a representative of the surety having no financial interest in the Contractor. The performance bond shall be separate and distinct from any other bond required by this contract. In addition to all other requirements imposed by law or by the Contract Documents listed in Section 4 of this Agreement, all surety companies executing bonds for the work to be performed hereunder shall possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance as defined in Section 105 of the California Insurance Code, and said sureties must also appear on the Treasury Department's most current list (Circular 570 as amended).

SECTION 24. MAINTENANCE AND GUARANTEE BOND

(a) Prior to or concurrently with issuance of the Notice of Substantial Completion, Contractor shall file a Maintenance and Guarantee Bond with the Agency for its approval and acceptance. The Maintenance and Guarantee Bond shall be in the sum of no less than seventy percent (70%) of the Contract Price. The bond shall be payable by surety or sureties to Agency if Contractor fails to fully perform its obligations hereunder.

(b) The maintenance and guarantee bond shall be in substantially the form of the bond attached hereto. The bond shall be executed by a representative of the surety having no financial interest in the Contractor. The maintenance and guarantee bond shall be separate and distinct from any other bond required by this contract. In addition to all other requirements imposed by law or by the Contract Documents listed in Section 4 of this Agreement, all surety companies executing bonds for the work to be performed hereunder shall possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance as defined in Section 105 of the California Insurance Code, and said sureties must also appear on the Treasury Department's most current list (Circular 570 as amended).

PERFORMANCE

SECTION 25. TIME FOR COMPLETION

(a) The work shall be completed by _____

(b) If the work is not completed before this date, the Agency will suffer damage. It is impractical and infeasible to determine the ~~amount of damage~~ amount of such damage. The Contractor shall pay to the Agency, as fixed and liquidated damages and not as a penalty, the sum of \$1,200 each calendar day of delay. The Contractor and Contractor's surety shall be liable for the amount. The Contractor shall not be charged liquidated damages because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor.

The amount of liquidated damages has been negotiated by the parties:

Contractor initials: _____ Agency initials: _____

The Contractor agrees to pay such liquidated damages and further agrees that Agency may offset the amount of liquidated damages from any monies due or that may become due Contractor under this Contract. (c)

If the work is not completed before this date, the Agency will incur substantial damages which cannot be ascertained at this time. Contractor shall pay to Agency damages caused by Contractor's delay in completing the work.

(d) Within ten (10) days from the beginning of such delay, the Contractor shall notify the Agency in writing of the cause of the delay. Agency shall ascertain the facts and extent of the delay and extend the time for completing the work if in the Agency's judgment the findings justify an extension. The findings of fact shall be final and conclusive.

(e) The Agency may extend the time for completion if Agency determines such extension to be in the best interest of the Agency. If the Agency extends the time limit for the completion of the work at the request of the Contractor, for other than acts of God and situations beyond the control of both parties, such extension will increase the Agency's financial obligations incurred for engineering, inspection, supervision, incidental and overhead expenses directly chargeable to the contract and accruing during the period of extension. The Contractor shall reimburse Agency for such reasonable charges before the final payment.

(f) The Agency may deduct the liquidated damages from progress payments or from the final payment. The payment of progress payments shall not constitute a waiver of liquidated damages.

SECTION 26. ACTS OF GOD

Contractor is not responsible for the cost of repairing or restoring damage to the work exceeding five percent of the contract price and determined to have been proximately caused by earthquakes in excess of the magnitude of 3.5 on the Richter Scale and tidal waves, if damaged work is built in accordance with accepted and applicable building standards and the plans and specifications.

SECTION 27. UTILITY RELOCATION

(a) As between the parties, Agency is responsible for the timely removal, relocation or protection of existing main or ~~truck~~trunk line underground utility facilities located on the job site, if such utilities are not identified by the Agency in the plans and specifications. As to such unidentified utilities, Contractor shall be compensated for: the costs of relocation; repairing damage not due to the failure of Contractor to exercise reasonable care; removing or relocating such utilities not included in the plans and specifications with reasonable accuracy, and equipment on the project necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay in completion of the project, when the delay is caused by the failure of the Agency or the owner of the utility to remove or relocate the facilities.

(b) The Agency is not required to indicate the presence of existing service laterals or appurtenances when the presence of such utilities on the work site can be inferred from other visible facilities, such as buildings, metering junction boxes, on or adjacent to the work site.

(c) Contractor shall immediately notify the Agency and utility in writing, if the Contractor discovers utility facilities not identified by the Agency in the contract plans and specifications.

SECTION 28. PUBLIC CONVENIENCE

(a) Contractor's operation shall cause no unnecessary public inconvenience. The access rights of the public shall be considered at all times. Unless otherwise authorized, traffic shall be permitted to pass through the work or an approved detour shall be provided. Safe, adequate, continuous and unobstructed pedestrian and vehicular access shall be maintained to fire hydrants, residences, commercial and industrial establishments, churches, schools, parking lots, service stations, motels, fire and police stations, and hospitals, unless other arrangements are made satisfactory to the owners.

(b) Vehicular access to residential driveways shall be maintained to the property line, except when necessary construction precludes such access for reasonable periods of time.

(c) Grading operations, roadway excavation and embankment construction shall provide a reasonably satisfactory surface for traffic. When rough grading is completed, the roadbed surface shall be brought to a smooth even condition satisfactory for traffic.

(d) The Contractor shall comply with applicable state and local requirements for closure of streets. Contractor shall provide barriers, guards, lights, signs, temporary bridges, flagmen and watchmen advising the public of detours and construction hazards. Contractor shall comply with additional public safety requirements arising during construction. Contractor shall furnish and install, ~~an upon completion of the work promptly remove~~and upon completion of the work, promptly remove, signs and warning devices.

(e) At least forty-eight hours in advance of closing or partial closing or of reopening any street, alley or other public thoroughfare, Contractor shall notify the police, fire, traffic and engineering departments of jurisdictional agencies involved and comply with their requirements.

SECTION 29. EXCAVATIONS

(a) Contractor shall submit for Agency approval, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of trenches five feet or more in depth. The plan shall be at least as effective as that required by the Construction Safety Orders of the California Division of Industrial Safety. If the plan varies from the shoring systems standards established by the Safety Orders, the plan shall be prepared by a registered civil or structural engineer. **Contractor shall comply with all Dig-Alert requirements prior to commencing any excavations.**

(b) At the close of each working day, Contractor shall completely backfill open excavation and cover the same with temporary asphalt mix in accordance with normal practice in the industry and the rules, regulations, laws and ~~ordinance~~**ordinances** of the State of California and the San Bernardino County Public Works Department.

(c) If the work involves digging ~~trenches of excavation~~**trenches or excavations** extending deeper than four feet below the surface, the Contractor shall promptly, and before the conditions are disturbed, notify the Agency, in writing, of any: (1) material the Contractor believes to be hazardous waste, as defined in Section 25117 of the Health and Safety Code, and required to be removed to a Class I, Class II, or Class III disposal site; (2) subsurface or latent physical conditions at the work site differing from those indicated; (3) unknown physical conditions at the work site of unusual nature, or different material from those ordinarily encountered and generally recognized as inherent in the work of the character provided in the contract. The Agency shall promptly investigate the conditions. If the Agency finds the conditions are as alleged by the Contractor and conditions cause a change in the Contractor's cost, or the time required for performance, the Agency shall issue a change order. If a dispute arising whether the Agency's findings are correct, the Contractor shall proceed with the work. The Contractor shall retain rights by contract or law pertaining to resolution of disputes and protests between the parties.

SECTION 30. EXTRA WORK

(a) The Agency may require changes in, additions to, or deductions from the work to be performed or to the materials to be furnished under this contract. No extra work shall be performed or change made except in pursuance of a written order from the Agency stating the extra work or change is authorized, and setting forth the basis upon which payment is to be made. No claim for additional compensation shall be valid unless pursuant to such change order. Nothing in this section shall excuse the Contractor from proceeding with the prosecution of the changed work. When required by the Agency, the Contractor shall furnish an itemized breakdown of the quantities and prices used in computing the value of any ordered change.

(b) Adjustments in the amounts to be paid to the Contractor by reason of any such change, addition or deduction shall be determined by one or more of the following methods:

(i) By an acceptable lump sum proposed from the Contractor.

- (ii) By unit prices contained in the Contractor's original bid and incorporated in the contract documents or fixed by subsequent agreement between the Agency and the Contractor.
- (iii) By ordering the Contractor to proceed with the work and to furnish daily reports of extra work. The reports shall itemize all costs for labor, material, and equipment rental. The reports for workmen shall include hours worked, rates of pay, names and classifications; and for equipment shall include size, type, identification number and hours of operation. Records and reports shall be made immediately available to the engineer upon his request.

(c) When the Agency orders extra work and there is an agreement between the Agency and the Contractor to perform the work, the Agency may approve the method used by the Contractor to accomplish the work. At the request of the Agency, the method to be used shall be memorialized in a writing prior to work being performed.

(d) If the Contractor contends a proposed change is a substantial revision in the character of the work, the question shall be immediately ~~submitted to an arbitrator for decision.~~ ~~submitted to an arbitrator with the American Arbitration Association for decision under the American Arbitration Association's Construction Industry Rules.~~ The arbitrator's decision will be final and conclusive unless it is fraudulent, capricious, arbitrary or so grossly erroneous as to imply bad faith. Each party shall advise the other in advance of the arbitration of the material on which the party intends to rely and give the other a reasonable opportunity to refute or supplement such factual material.

SECTION 31. CLEAN-UP

On completion of the work, Contractor shall remove debris and surplus materials from the work site. ~~and leave the site in a clean condition.~~

SECTION 32. MATERIALS

(a) Unless otherwise specified, show, or permitted by the Agency, materials and equipment incorporated in the work shall be new and current manufacture. The Agency may request the Contractor to furnish manufacturer's certificates to this effect.

(b) Materials furnished and work performed shall be subject to inspection and testing by Agency's authorized agents at Agency's expenses. If such inspection and testing reveals non-compliance with the requirements of this contract, the Contractor shall bear the cost of necessary corrective measures and the cost of subsequent inspecting and testing.

(c) The inspection of the work shall not relieve the Contractor of the obligations under the contract. Even though equipment, materials, or work required under the contract have been inspected, accepted, and estimated for payment, the Contractor shall replace or repair such equipment, materials, or work found to be defective or otherwise not to comply with the

requirements of the contract up to the end of the maintenance and guarantee period.

SECTION 33. PERMITS AND LICENSES

- (a) Contractor shall apply for and procure permits and licenses necessary for the work.
- (b) Contractor shall give notices necessary and incidental to the due and lawful prosecution of the work and shall comply duly with the terms and conditions of permits and licenses.
- (c) Contractor shall pay charges and fees in connection with permits and licenses.

SECTION 34. LAND AND RIGHTS OF WAY

- (a) Agency shall provide land and rights-of-way where the work is constructed.
- (b) Contractor shall procure additional rights-of-way desired by the Contractor to facilitate construction. Contractor shall enter into written agreements with property owners for such purposes and provide Agency with copies of the agreements.
- (c) Except as provided above relating to utility relocation, when the work is to be performed in the vicinity of existing improvements, such improvements shall not be disturbed or damaged except for such removal or relocation in the land and rights-of-way provided by the Agency or unavoidable to accommodate the work. **Contractor shall comply with all Dig-Alert requirements prior to commencing any excavations.**

SECTION 35. PLANS AND WORKING DRAWINGS SUBMITTED BY AGENCY

- (a) The approved plans shall be supplemented by working drawings necessary to control the work adequately. Such drawings shall be consistent with the ~~contract documents~~**Contract Documents**. Such drawings delivered to the Contractor shall be deemed written instructions to the Contractor.
- (b) The Agency will furnish to the Contractor copies of drawings and specifications reasonably necessary for the execution of the work. The Contractor shall keep one set of drawings and specifications in good order available to the Agency's representative at the site of the work.
- (c) The plans for the work show conditions supposed or believed by the engineer to exist. It is not intended or inferred the plans constitute a representation such conditions actually exist. The Agency, its officers, agents and employees shall not be liable for loss sustained by the Contractor as a result of variance of the conditions as shown on the plans and the actual conditions revealed during the progress of the work.

SECTION 36. SHOP DRAWINGS SUBMITTED BY CONTRACTOR

(a) Shop drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data prepared by the Contractor or any subcontractor, manufacturer, supplier or distributor, and illustrating some portion of the work.

(b) The Contractor shall review, stamp with approval, and submit for review by the Agency's representative, shop drawings for material and equipment to be incorporated into the work. Drawings shall be submitted in quadruplicate to the Agency's representative and be accompanied by a letter of transmittal listing the drawings submitted. Drawings shall show the name of the project, the name of the Contractor, the names of suppliers, manufacturers and subcontractors. Shop drawings shall be submitted with promptness and in orderly sequence to cause no delay in the work.

(c) Shop drawings shall be complete. If the shop drawings show deviations from the requirements of the plans and specifications because of standard shop practices or other reasons, the deviations and the reasons therefor shall be set forth in the letter of transmittal.

(d) By approving and submitting shop drawings, the Contractor represents material, equipment and other work shown thereon conforms to the plans and specifications except for the deviations set forth in the letter of transmittal.

(e) Within ten calendar days after receipt of the drawings, the Agency will return two prints of the drawings to the Contractor with comments. If noted by the Agency, the Contractor shall correct the drawings and resubmit in the same manner as the original submittal. The Contractor shall direct attention in the letter of transmittal accompanying resubmitted shop drawings to revisions other than the corrections requested by the Agency's representatives on previous submittals.

(f) The review by the Agency's representative is for general conformance with the design concept of the project and general compliance with the plans and specifications and shall not be construed as relieving the Contractor of the full responsibility for: providing materials, equipment and work required by the contract; the proper fitting and reconstruction of the work; the accuracy and completeness of the shop drawings; selection fabrication processes and techniques of construction; and performing the work in a safe manner.

(g) No portion of the work requiring a shop drawing submittal shall be commenced until the submittal has been reviewed by the Agency's representative and returned to the Contractor with a notation indicating re-submittal is not required.

SECTION 37. SUPERVISION BY THE CONTRACTOR

Before starting the work, the Contractor shall designate, in writing, a representative having authority to act for the Contractor. An alternate representative may be designated. (A joint venture shall designate only one representative and alternate). The representative or alternate shall be present at the work site when work is in progress. Orders or communications given to this representative shall be deemed delivered to the Contractor. In the absence of the Contractor or

designated representative, directions or instructions may be given by the Agency's representative to the superintendent or foreman having charge of the specific work to which the order applies. Such order shall be complied with promptly and referred to the Contractor or the representative.

SECTION 38. INSPECTION

(a) The Agency's representative shall have access to the work during construction and shall be furnished with reasonable facility for gaining knowledge of the progress, workmanship and character of materials used and employed in the work.

(b) When the Contractor varies the period during which work is carried on each day, Contractor shall give notice to the Agency's representative so proper inspection may be provided. Work done in the absence of the Agency's representative is subject to rejection.

(c) No materials shall be installed until approved by the Agency's representative. Installations to be backfilled shall be inspected and approved by the Agency's representative prior to backfilling. The Contractor shall give notice in advance of backfilling to the Agency's representative so proper inspection may be provided.

(d) The inspection of the work shall not relieve the Contractor of obligations to fulfill the contract. Defective work shall be made good, and unsuitable materials may be rejected notwithstanding the fact such defective work and unsuitable materials have been previously overlooked by the Agency's representative and accepted.

SECTION 39. REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK

(a) Rejected work shall be removed and replaced by the Contractor in an acceptable manner and no compensation will be allowed for such removal or replacement. Work done beyond the lines and grades shown on the plans or established by the Agency's representative, or work done without written authority will be considered as unauthorized and not be paid for. Such work may be ordered removed at the Contractor's expense.

(b) Upon failure on the part of the Contractor to comply promptly with an order of the Agency's representative under this section, the Agency's representative shall have authority to cause defective work to be removed and replaced, and unauthorized work to be removed, and to deduct the costs from monies due the Contractor.

SECTION 40. ERRORS OR DISCREPANCIES NOTED BY CONTRACTOR

(a) If the Contractor finds discrepancies between the specifications and the drawings, and the physical conditions at the site of the work, or finds errors or omissions in the drawings or in any survey, Contractor shall promptly notify the Agency in writing of any such discrepancy, error or omission. If the Contractor observes drawings or specifications at variance with applicable law, ordinance, regulation, order or decree, Contractor shall promptly notify the Agency in writing of such conflict.

(b) On receipt of any such notice, the Agency shall promptly investigate the circumstances and give appropriate instructions to the Contractor. Until such instructions are given, work done by the Contractor, after Contractor's discovery of such error, discrepancy or conflict, will be at Contractor's own risk and Contractor shall bear costs arising therefrom.

SECTION 41. EQUIPMENT

The Contractor must furnish adequate equipment and facilities to perform properly the work in a workmanlike manner in accordance with these specifications. Such equipment and facilities must be in a good state of repair and maintained in such state during the progress of the work and shall meet requirements of applicable ordinances and laws. No worn or obsolete equipment shall be used, and in no case shall the maker's rating of capacity for equipment be exceeded.

SECTION 42. STORAGE OF MATERIALS

Materials for use in the work shall be stored by the Contractor to prevent damage from exposure to the elements, admixture of foreign materials or from any other cause. Contractor is responsible for damage to or loss of materials by weather or other causes.

MISCELLANEOUS

SECTION 43. GUARANTEES

Contractor guarantees work from defect in workmanship for the period of two years from ~~the date of acceptance by the Agency~~ the date of the Notice of Substantial Completion of the Work and shall repair and replace such work, together with other displaced work, without expense to the Agency, ordinary wear and tear, usual abuse or neglect excepted. Agency may have the defects repaired and made good at the expense of the Contractor, if Contractor fails to comply with the above-mentioned conditions within a week after being notified in writing.

SECTION 44. RISK OF LOSS PRIOR TO FINAL ACCEPTANCE

Except as set forth above relating to acts of God, risk of loss from total or partial destruction of the work, prior to final acceptance, shall be borne by Contractor regardless of the cause. Contractor shall repair or replace such damages or destroyed work, to its prior undamaged condition before being entitled to additional progress payments or final payment. Total or partial destruction or damage shall not excuse Contractor from completion of the work.

SECTION 45. TERMINATION: CONTRACTOR AT FAULT

(a) The Agency may declare the Contractor in default, should the Contractor fail to meet the requirements of the contract, or be placed in bankruptcy, or should a receiver be appointed for Contractor's properties, or should Contractor make an assignment for the benefit of creditors.

In such event, the Agency will notify the Contractor in writing. On receipt of such written notice, the Contractor shall preserve site construction materials, equipment and plant, and undertake immediate steps to remedy such default.

If the Contractor fails to remedy such default within five calendar days after receipt of such written notice, the Agency may terminate the Contractor's right to proceed with the work as to which default has occurred. Upon receipt of such written notice, the Contractor shall for that work affected by any such termination:

- (1) Assist the Agency in making an inventory of materials and equipment in storage at the site, en route to the site, in storage or manufacture away from the site, and on order from suppliers;
- (2) Assign to the Agency, subcontractors, supply contracts and equipment rental agreements all as designated by the Agency; and
- (3) Remove from the site, all construction materials, equipment and plant listed in said inventory other than such construction materials, equipment and plant which are designated in writing by the Agency to be used by the Agency in completing such work.

(b) The Agency may complete the work to which notice applies by contract or otherwise, and may take possession of the materials, plant, tools, equipment, supplies and property furnished by the Contractor which is designated by the Agency in writing for such purpose.

(c) The expense of completing such work, together with a reasonable charge for administering a contract for such completion, shall be charged to the Contractor. Such expense shall be deducted by the Agency out of such monies as may become due to the Contractor. If this expense exceeds the sum otherwise payable under the contract, the Contractor and Contractor's sureties shall be liable. Upon written notice from the Agency, the Contractor shall promptly pay to the Agency, the amount of such excess. The Agency shall not be required to obtain the lowest bids for completing such work, but may make such expenditures as in the Agency's sole judgment will best accomplish such completion.

SECTION 46. TERMINATION: CONTRACTOR NOT AT FAULT

Agency may terminate the contract upon ten days written notice to the Contractor, if Agency finds reasons beyond the control of the parties which make it impossible or against the Agency's interests to complete the work. In such a case, the Contractor shall have no claims against the Agency, except for the value of work performed to the date of termination, and the cost of materials and equipment on hand, in transit, or on definite commitment, as of the date of termination if such materials and equipment would be needed in the work. The value of work performed and the cost of materials and shipment delivered to the site shall be determined by the Agency in accordance with the procedure prescribed for the making of a final estimate and payment.

SECTION 47. RESOLUTION OF CERTAIN CLAIMS

(a) Notwithstanding the foregoing, a demand of \$375,000 or less, by the Contractor for a time extension; payment of money or damages arising from the work done by or on behalf of the Contractor pursuant to this contract; or payment of an amount which is disputed by the Agency shall be processed in accordance with Public Contracts Code Sections 20104 *et seq.* relating to informal conferences, non-binding judicially supervised mediation and judicial arbitration.

(b) A single written claim shall be filed under this section prior to the date of final payment for all demands, including demands not subject to Public Contracts Code Sections 20104 *et seq.*, arising out of the contract.

(c) Within thirty (30) days of the receipt of the claim, the Agency may request additional documentation supporting the claim or relating to defenses or claims the Agency may have against the Contractor. If the amount of the claim is less than \$50,000, the Contractor shall respond to the request for additional information within fifteen (15) days after receipt of the request. The Contractor shall respond to the request within thirty (30) days of receipt if the amount of the claim exceeds \$50,000 but is less than \$375,000. **See also Section 7 of the Special Conditions.**

(d) Unless further documentation is requested, the Agency shall respond to the claim within forty-five (45) days if the amount of the claim is less than \$50,000, or within sixty (60) days if the amount of the claim is more than \$50,000 but less than \$375,000. If further documentation is requested, the Agency shall respond within the same amount of time taken by the Contractor to respond or fifteen (15) days, whichever is greater, after receipt of further information if the claim is less than \$50,000. If the claim is more than \$50,000 but less than \$375,000 and further documentation is required by the Agency, the Agency shall respond within the same amount of time taken by the Contractor to respond or thirty (30) days, whichever is greater.

(e) If the Contractor disputes the Agency's response, or the Agency fails to respond, the Contractor may demand an informal conference to meet and confer for settlement of the issues in dispute. The demand shall be served on the Agency within fifteen (15) days after the deadline of the Agency to respond or within fifteen (15) days of the Agency's response, whichever occurs first. The Agency shall schedule the meet and confer conference within thirty (30) days of the request.

(f) If the meet and confer conference does not produce a satisfactory result, the Contractor may pursue remedies authorized by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, or caused it to be executed as of the day, month and year first above written.

AGENCY

By: _____

CONTRACTOR

By: _____

MAINTENANCE AND GUARANTEE BOND

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the governing board of the Bighorn-Desert View Water Agency (sometimes referred to hereinafter as “Obligee”) has permitted _____ (sometimes referred to hereinafter as “Principal”) to construct the **Water System Improvements and Consolidation Projects** Project, San Bernardino County, California, commonly known as and located at/on Landers, California;

WHEREAS, the said project is more particularly set forth in that certain design plan and specification dated _____, _____, and identified as, _____ PROJECT which are incorporated herein by this reference; and

WHEREAS, the Principal is required by the Obligee to warrant the completed project against defective labor or workmanship and materials for a period of two (2) years after the ~~formal acceptance of the Work by the Agency~~ “**Notice of Substantial Completion**” and to provide a bond or letter of credit for guarantee of cost of repairs due to defective labor, workmanship, or materials.

NOW, THEREFORE, we _____, the undersigned as Principal, and _____, a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Obligee in the sum of \$_____, said sum being not less than seventy percent (70%) of the total cost for construction (including labor and materials) of the above project, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounded Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements to make all repairs to said project necessitated by defective labor, workmanship or materials and shall faithfully fulfill this two (2) year Guarantee of all materials, labor and workmanship and indemnify and save harmless the Obligee, its officers and agents, as stipulated herein, then this obligation shall become null and void two (2) years from the date of ~~Obligee’s formal acceptance of the project notice of substantial completion of the project~~; otherwise the bond shall remain in full force and effect and shall bind solely to perform the obligations of Principal.

In case suit is brought upon this bond, the said Surety will pay to the Obligee a reasonable attorney’s fee to be fixed by the Court.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the agreement between the Obligee and the Principal, or the work to be performed by the Principal or the specifications of the project, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to specifications.

IN WITNESS WHEREOF, the ~~Principle~~ **Principal** and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year set forth above.

Principle (Type Full Name)

Surety (Type Full Name)

(Signature)

(Signature)

(Title)

(Title)

(Street Address)

(Street Address)

(City) (State) (Zip)

(City) (State) (Zip)

(Attach Notarial Acknowledgement of Contractor and Surety)

IMPORTANT: Surety companies executing bonds must appear on the Treasury Department's most current list (circular 570 as amended) and be authorized to transact business, and admitted, in the State of California.

END OF SECTION

GENERAL CONDITIONS

1.01 DEFINITIONS

Wherever the words defined in this article, or pronouns used in their stead, occur in these Specifications or in any of the other Contract Documents, the intent and meaning shall be as follows:

AGENCY. The Bighorn-Desert View Water Agency, County of San Bernardino, State of California.

AGENCY BOARD. The duly elected Board of Directors of the Bighorn-Desert View Water Agency.

AGENCY ENGINEER OR ENGINEER. The Engineer of the Bighorn-Desert View Water Agency, or an authorized deputy, agent, representative or inspector.

CONTRACTOR. Contractor shall mean the party entering into contract with the Agency for performance of the Work called for in these Specifications and shown on the Drawings, including the Contractor's authorized agents.

SUBCONTRACTOR. Subcontractor shall mean any person, firm, or corporation entering into agreement with the Contractor for performance of any part of the Contractor's obligation under the Contract.

CONTRACT. Contract shall mean the Contract Documents and shall include the written agreement entered into by the Agency and the Contractor for the performance of work described in the Specifications and shown on the Drawings, together with the Notice Inviting Bids, the Instructions to Bidders, the Proposal, the Information Required of Bidders, the Specifications, the Drawings, all Addenda issued by the Agency with respect to the foregoing prior to the opening of bids, and all Change Orders issued by the Agency and signed by the Contractor pertaining to the Contract after the Contract is awarded.

SPECIFICATIONS. Specifications shall mean the General Conditions, the Special Provisions and the Technical Specifications of the Contract, together with all-Addenda and Change Orders issued with respect thereto. All work performed shall be in accordance with the Standard Specifications for Public Works Construction (SSPWC), the "Greenbook", current edition, except as modified herein.

DRAWINGS. Drawings or Contract Drawings shall mean those drawings accompanying the Specifications which show the location, nature, extent and form of the Work, together with applicable details.

SHOP DRAWINGS. Drawings, diagrams, illustrations, schedules, performance charts, brochures and other data prepared by the Contractor or any Subcontractor, manufacturer, supplier or distributor, which illustrates how specific portions of the Work shall be fabricated and/or installed. Shop Drawings are not considered to be part of the Contract Documents.

WORK. That which is proposed to be constructed or done under the Contract or permit, including the furnishing of all labor, materials, and equipment.

1.02 ABBREVIATIONS

Wherever the following abbreviations are used they shall have the meanings listed.

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGA	American Gas Association
AI	The Asphalt Institute
AIA	American Institute of Architects
AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
API	American Petroleum Institute
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigeration and Air Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society of Testing Materials
AWPA	American Wood Preservers Association
AWS	American Welding Society
AWWA	American Water Works Association, Inc.
CRSI	Concrete Reinforcement Steel Institute
NEMA	National Electrical Manufacturer's Association
NIC	Not in concrete
NTS	Not to Scale
OAE	Or Approved Equal
OSHA	Occupational Safety and Health Act
PCA	Portland Cement Association
SSPC	Steel Structures Painting Council
SSPWC	Standard Specifications for Public Works Construction
UBC	Uniform Building Code
UPC	Uniform Plumbing Code
U/L	Underwriters Laboratories, Inc.

2.0 INTERPRETATION OF SPECIFICATIONS AND DRAWINGS

The Specifications and the Drawings are intended to be explanatory of each other. Any work indicated in the Drawings and not in the Specifications, or vice versa, shall be executed as if indicated in both. As the figured dimensions shown on the Drawings and in the Specifications of the Contract may not in every case agree with scale dimensions, the figured dimensions shall be followed in preference to the scaled dimensions, and drawings to a large scale shall be followed in preference to the Drawings to a small scale. Should it appear that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Contract Documents, the Contractor shall apply to the Engineer for such further explanations as may be necessary, and shall conform thereto as part of the Contract. In the event of any doubt or question arising respecting the meaning of the Specifications or Drawings, reference shall be made to the Engineer and the Engineer's decision therein shall be final.

2.02 CONFLICTS BETWEEN SPECIFICATIONS AND DRAWINGS

In case of conflict between the Specifications and the Drawings, the Specifications shall govern over the Drawings. In cases of conflict between the General Conditions and Special Provisions of the Specifications, the Special Provisions shall govern over the General Conditions.

2.03 STANDARD SPECIFICATIONS

A reference to the Standard Specifications shall mean "Standard Specifications for Public Works Construction" (SSPWC), the current edition and amendments. All work performed shall conform to the SSPWC.

2.04 SHOP DRAWINGS

Wherever called for in these Specifications or on the Drawings, or where required by the Engineer, the Contractor shall furnish to the Engineer for review six (6) prints of each Shop Drawing. The Shop Drawings shall be approved by the Contractor prior to submittal to the Engineer. Unless otherwise required, said drawings shall be submitted at a time sufficiently early to allow review of same by the Engineer, and to accommodate the rate of construction progress required under the Contract.

The Contractor shall stamp all six copies of the Shop Drawings stating his approval of the submittal and that the Contractor has determined and verified all field measurements and quantities, field construction criteria, materials, catalog numbers and similar data, and that the Contractor has reviewed and coordinated the information in the Shop Drawings with the requirements of the Work and the Contract Documents. Any Shop Drawings submitted without complying with this Section will not be reviewed by the Engineer.

Except as may be otherwise provided in the Special Provisions, the Engineer will return two prints of each Shop Drawing to the Contractor, with comments noted thereon, within fifteen (15) calendar days following their receipt at the Engineer's office. The Contractor shall make a complete and acceptable submittal to the Engineer by the second submission of drawings. The Agency reserves the right to withhold moneys due the Contractor to cover additional costs of the

Engineer's review beyond the second submittal.

If the Shop Drawings are returned to the Contractor marked APPROVED AS SUBMITTED, formal revision and resubmittal of said drawing will not be required.

If the Shop Drawings are returned to the Contractor marked APPROVED AS NOTED, formal revision and resubmittal of said drawing will not be required, but the noted correction will be adhered to by the Contractor.

If one print of the Shop Drawing is returned to the Contractor marked REVISE AND RESUBMIT the Contractor shall revise said drawing and shall resubmit six (6) copies of said revised drawing to the Engineer.

If one print of the Shop Drawing is returned to the Contractor marked NOT APPROVED Contractor shall resubmit six (6) copies of a material or installation process specified in the Contract Documents and/or acceptable to the Engineer.

Fabrication of an item shall not be commenced before the Engineer has reviewed the pertinent Shop Drawings and returned copies to the Contractor marked either APPROVED AS SUBMITTED or APPROVED AS NOTED. Revisions indicated on shop Drawings shall be considered as changes necessary to meet the requirements of the Contract Drawings and Specifications and shall not be taken as the basis of claims for extra work. The Contractor shall have no claim for damages or extension of time due to any delay resulting from the Contractor's having to make the required revisions to Shop Drawings (unless review by the Engineer of said drawings is delayed beyond a reasonable period of time and unless the contractor can establish that the Engineer's delay in review actually resulted in a delay in the contractor's construction schedule). The review of said drawings by the Engineer will be limited to checking for general agreement with the Specifications and Drawings and shall in no way relieve the Contractor of responsibility for errors or omissions contained therein, nor shall such review operate to waive or modify any provision contained in the Specifications or Contract Drawings. Fabricating dimensions, quantities of material, applicable code requirements and other Contract requirements shall be the Contractor's responsibility.

2.05 REFERENCE TO STANDARDS, PUBLICATIONS OR STANDARD SPECIFICATIONS

Any reference made in the Specifications or Drawings to any specification, standard, or publication of any organization shall, in the absence of a specific designation to the contrary, be understood to refer to the latest edition of the specification, standard or publication in effect as of the date of advertising the Work.

2.06 REFERENCE TO PROPRIETARY PRODUCTS

Where references to proprietary products appear in the Specifications or Drawings, whether or not followed by the words "or approved equal", it is for the purpose of establishing an acceptable standard of quality or design. Unless a substitute is expressly prohibited, the Contractor may request approval of a substitute for any such proprietary product. Such approval normally will

not be given by the Engineer prior to award of a Contract. A request for substitution must be in writing and must include descriptive literature, specifications, test reports or samples, as appropriate, to enable the Engineer to determine the acceptability of the product proposed for substitution. If substitution is requested as part of a Shop Drawing submittal, the item(s) proposed for substitution shall be clearly indicated. No substitute product shall be used on the Work until written approval has been received from the Engineer. Any revisions to structures, piping, mechanical, electrical, instrumentation, or any other work made necessary by such substitution must be approved by the Engineer and the entire cost of these revisions shall be borne by the Contractor.

2.07 SPECIFICATIONS AND DRAWINGS FURNISHED TO CONTRACTOR

The Agency will furnish to the Contractor five (5) sets of Specifications together with Drawings. Additional quantities of Specifications and Drawings will be furnished at reproduction cost.

2.08 AS-BUILT DRAWINGS

The Contractor shall maintain, on the job site, a set of full-size blueline or blackline prints of the Contract Drawings. On these the Contractor shall mark all as-built conditions, locations, configurations, and other details which may vary from the details represented on the original drawings. This master record of as-built conditions, including all revisions made necessary by addenda, change orders and field conditions shall be maintained up-to-date during the progress of the Work.

In the case of those drawings which depict the detailed requirement for equipment to be assembled and wired in the factory, such as motor control centers and instrumentation, the as-built drawings shall be updated by indicating those portions which are superseded by final Shop Drawings, and by including a reference note describing the Shop Drawings by manufacturer, drawing and revision number and date.

Upon completion of the Work but prior to final acceptance, the as-built drawings maintained by the Contractor shall be delivered to the Agency.

3.01 AUTHORITY OF AGENCY

The Work and the manner of performing the same shall be done to the satisfaction and approval of the Agency.

The Contract Documents do not purport to control the method of performing the Work but only the requirements as to the nature of the completed work. The Contractor shall assume the entire responsibility for methods of performing the Work.

3.02 AUTHORITY OF THE ENGINEER

The Engineer is the agent of the Agency and is employed to act as advisor and consultant to the Agency in engineering matters relating to the Contract. The Agency has delegated its authority under this Contract to the Engineer to determine the amount, quality, acceptability and fitness of the several kinds of work, material and equipment which are to be paid for under the Contract; to decide for the Agency all questions relative to the construction, meaning and intent of the Contract documents; to decide all questions relative to the classifications, measurements of quantities, materials and the fulfillment of this Contract, and to reject or condemn all work or material which does not conform to the terms of this Contract to recommend, for consideration and action of the Agency, progress payments and change orders. The Engineer's decision in all matters is the decision of the Agency and can only be changed by the Agency.

If the Contractor files any suit arising under the Contract and names the Engineer as a party and if no recovery is had against the Engineer, then the Engineer shall recover damages from the Contractor for reasonable attorney's fees for time spent by the attorney for the Engineer in the defense of the suit and the Engineer shall recover from the Contractor and be paid by the Contractor at the rate of \$1,000.00 per day for the time of the Engineer required in connection with the preparation and defense of the suit.

3.03 INSPECTION AND TESTING

All materials furnished and all work performed under the Contract shall be subject to inspection by the Engineer. Such inspection may include mill, plant, shop or field inspection as required. The Engineer shall be permitted access to all parts of the Work, including plants where material or equipment are manufactured or fabricated, and the Engineer shall be furnished with such materials, information and assistance by the Contractor and Subcontractors and suppliers as is required to make a complete and detailed inspection.

Work done in the absence of prescribed inspection may be required to be removed and replaced under proper inspection, and the entire cost of removal and replacement, including the cost of all materials which may be furnished by the Agency and used in the Work thus removed, shall be borne by the Contractor, regardless of whether the work removed is found to be defective or not. Work shall not be covered up without the authority of the Engineer. If so covered, without authority, the work, upon order of the engineer, shall be uncovered to the extent required, and the Contractor similarly shall bear the entire cost of performing all the Work and furnishing all the material necessary for the removal of the covering and its subsequent replacement, as directed and approved by the Engineer.

All inspection fees and costs imposed by agencies other than the Agency shall be paid by the Contractor.

The Engineer will make, or have made, such tests as he deems necessary to ~~insure~~ensure that the Work is being accomplished in accordance with the requirements of the Contract. Unless otherwise specified in the special Provisions, the cost of such testing will be borne by the Agency. In the event such tests reveal non-compliance with the requirements of the contract, the contractor shall bear the cost of such corrective measures deemed necessary by the engineer, as well as the cost of subsequent re-testing.

The Agency will provide inspection for an 8-hour day and 40-hour week. The Contractor shall reimburse the Agency at rates established by the Agency for inspection in excess of the foregoing including legal holidays.

3.04 CHANGE ORDERS

The Agency, or its duly authorized representative, may order changes in the Work through additions, deletions or modifications. Such changes will be effected through written change orders delivered to the Contractor describing the change required in the Work, together with any adjustment in Contract price or time in completion as hereinafter provided. No such change shall constitute the basis of claims for damage or anticipated profits; however, the Engineer will make reasonable allowance for the value of any work, materials or equipment furnished and subsequently rendered useless because of such changes. Any adjustment in Contract price resulting from a change order will be considered in computing subsequent monthly payments due the Contractor. Any work performed in accordance with a change order shall be subject to all provisions of the original Contract, and the Contractor's sureties shall be bound thereby to the same degree as under the original Contract.

Any adjustment in Contract price shall be based on unit price bid items or, additive and deductive bid items submitted by the Contractor in the original bid on the Work where such bid items are applicable.

If the original bid prices are not applicable, the adjustment in Contract price shall be based on a lump sum or unit price agreed upon by the Agency and the Contractor prior to executing the change order.

If the original bid prices are not applicable and the Agency and Contractor are unable to agree upon a lump sum or unit price prior to executing the change order, the adjustment in Contract price shall be made on a test-plus basis. In such an event, the following items will be included as the direct costs:

- Materials and Supplies
- Labor (including foremen's wages)
- Workmen's compensation insurance
- Unemployment insurance contributions paid to the State
- Social Security taxes paid to the Federal Government

Labor union health and welfare, pension, vacation-holiday and apprenticeship fund contribution

Value for use of equipment for actual time of use according to Caltrans "Labor Surcharge and Equipment Rental Rates" for the current year

In addition to the direct costs enumerated above, the Agency will pay to the Contractor for said extra work a percentage of said direct costs to compensate for the following profit and overhead items:

Profit

General expenses

All insurance except workmen's compensation insurance

Excise taxes

Property taxes

License and inspection fees

Bond premiums

All other items of expense not specifically enumerated above

Said percentage will be fifteen (15) percent of said direct costs provided the Contractor actually performs, said extra work. In the event said extra work is performed by a subcontractor, percentage paid to the Contractor will be 20 percent of said Subcontractor's direct costs. Said 20 percent will include allowance for profit and overhead costs for both the Contractor through more than one Subcontractor in succession, said percentage will not exceed 25 percent.

When work is being performed on a cost-plus basis, the Contractor shall submit written reports as directed by the engineer, showing all items of direct cost which enter into the Work. If required by the Engineer, the Contractor shall furnish direct cost items listed in said reports.

3.05 CONTRACTOR'S PLANT AND EQUIPMENT

The Contractor shall at all times be responsible for the adequacy, efficiency and sufficiency of the Contractor's plant and equipment and any Subcontractor's plant and equipment.

3.06 ASSIGNMENT OF CONTRACT

The Contractor shall not assign, sublet, sell, transfer or otherwise dispose of the Contract or any portion thereof, or his right, title or interest therein, or his obligations thereunder, without the prior written consent of the Agency. The Agency shall have no obligation whatsoever to provide such written consent.

If the Contractor violates the provisions of this section, the Contract may be terminated at the option of the Agency and the Agency shall be relieved of all liability and obligations to the Contractor, and to his assignee or transferee, growing out of such termination.

3.07 SUBCONTRACTS

All proposed Subcontractors shall be listed by the Contractor at the time of bid opening and shall

be contained in the Information Required of Bidders. The Contractor may request a replacement of a previously approved Subcontractor only through the specific procedures contained in Public Contract Code Section 4107. Any such request is subject to approval by the Agency.

The Contractor shall perform not less than 50 percent of the Work with his own forces (i.e., without subcontracting). This requirement shall be understood to refer to work, the value of which totals not less than 50 percent of the Contract price. Refer to Section 2-3 of the SSPWC for clarification.

In the Agency's discretion, subject to the requirements of ~~Section 3-07(a) and (b)~~ ~~this section~~, subcontracts may be permitted to such extent as shall be shown to be necessary or advantageous to the Contractor in the prosecution of the Work and without injury to the Agency's interests. The re-subletting of work by a Subcontractor shall be subject to the same limitations as an original subletting. Each Subcontractor shall be properly licensed for the type of work which he is to perform.

A copy of each subcontract, if in writing (or if not in writing, then a written statement signed by the Contractor giving the name of the Subcontractor and the terms and conditions of each subcontract), shall be filed promptly with the Engineer upon the Engineer's request. Each subcontract shall contain a reference to the Contract between the Agency and the Contractor, and the terms of that Contract shall be made a part of each subcontract insofar as applicable to the Work covered thereby. Each subcontract shall provide for annulment of same by the Contractor upon written order of the Engineer if, in the Engineer's opinion, the Subcontractor fails to comply with the requirements of the prime Contract insofar as the same may be applicable to this work.

The Contractor shall be responsible to the Agency for the acts and omissions of his Subcontractors and their employees to the same extent as the Contractor is responsible for the acts and omissions of employees. Nothing contained in this section shall create any contractual relationship between and Subcontractor and the Agency or Engineer or relieve the Contractor of any liability or obligations under the prime Contract.

The Contractor shall be permitted to rent equipment maintained and operated as long as the work performed is directed and constantly supervised by the Contractor. Any other arrangement will be construed as unauthorized subcontracting and such action will be subject to Contract termination.

3.08 CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS

The Contractor shall at all times be responsible for the adequacy, efficiency and sufficiency of persons employed by the Contractor and any Subcontractor or persons employed by the Subcontractor. All workmen must have sufficient knowledge, skill and experience to perform properly the work assigned to them.

3.09 ATTENTION TO WORK

The Contractor shall supervise the Work and at all times shall be represented by a competent

English speaking superintendent who shall receive and obey all instructions or orders given under the Contract, and who shall have full authority to execute the same, and to supply materials, tools and labor without delay, and who shall be the legal representative of the Contractor.

3.10 SERVICE OF NOTICES

Any notice, order, direction, request or other communication given by the Agency to the Contractor under the Contract shall be deemed to be well and sufficiently given to the Contractor if left at any office used by the Contractor, or delivered to any of the Contractor's officers, or mailed in any post office addresses to the Contractor at the address mentioned in the Contract, or at the Contractor's last known place of business. If mailed it shall be deemed to have been given to and received by the Contractor two days after the day of mailing in any post office in the vicinity of the Work.

3.11 DEVIATION FROM CONTRACT

The Contractor shall not make any alteration or variation in or addition to or deviation or omission from the Contract without the advance written consent of the Agency.

3.12 SUSPENSION OF WORK

The Engineer acting on behalf of the Agency may, by written notice to the Contractor, suspend the Work, in whole or in part, for such period or periods as he may deem necessary due to unsuitable weather, delay in delivery of Agency furnished equipment or materials, or such other conditions as are considered unfavorable for prosecution of the Work, or failure on the part of the Contractor to carry out the provisions of the Contract or to provide material or workmanship meeting the requirements of the Specifications. Suspended work shall be resumed by the Contractor within a reasonable time, as designated by the Engineer, after receipt from the Engineer of written notice to proceed. Contractor shall not be entitled to receive extra or additional compensation, except as may otherwise be provided for explicitly in the Contract Documents, on account of suspension of work pursuant hereto.

3.13 TERMINATION OF CONTRACT BY AGENCY (CONTRACTOR NOT AT FAULT)

The Agency may terminate the Contract upon **at least** ten calendar days written notice to the Contractor, if it is found that reasons beyond the control of either the Agency or Contractor make it impossible or against the Agency's interests to complete the Work. In such a case, the Contractor shall have no claims against the Agency except (1) for the value of work performed up to the date the Contract is terminated, and (2) for the cost of materials and equipment on hand, in transit, or on definite commitment as of the date the Contract is terminated, which would be needed in the Work and which meet the requirements of the Specifications. The value of work performed and the cost of materials and equipment delivered to the site, as mentioned above, shall be determined by the Engineer in accordance with the procedure prescribed for the making of the final estimate and payment and shall be paid in accordance with the same procedure.

3.14 TERMINATION OF CONTRACT BY AGENCY (CONTRACTOR AT FAULT)

The Agency may terminate the Contract upon **at least** ten calendar days written notice to the Contractor in the event of any default by the Contractor. Without limitation, it shall be considered a Contract default whenever the Contractor shall: (1) declare bankruptcy, become insolvent or assign assets for the benefit of creditors, (2) disregard or violate important provisions of the Contract Documents or Engineer's instruction or fail to prosecute the Work according to the approved progress schedule, or (3) fail to provide a qualified superintendent, competent workmen or Subcontractors, or materials or equipment meeting the requirements of the Specifications and Drawings.

In the event the Contract is terminated, the Agency may take possession of the Work and of all materials, which have been provided in connection with the Work and may complete the Work by whatever method or means is selected. The cost of completing the Work shall be deducted from the balance which would have been due the Contractor had the Contract not been terminated and the Work completed in accordance with the Specifications and Drawings. If such cost exceeds the balance which would have been due, the Contractor shall pay the excess amount to the Agency. If such cost is less than the balance which would have been due, the Contractor shall have no claim to the difference except to such extent as may be necessary, in the opinion of the Engineer, to reimburse the Contractor or the Contractor's sureties for any expense properly incurred for materials, tools, equipment, property and labor devoted to the execution of the Work, of which the Agency shall have received the benefit. In computing such expense, as it relates to equipment and property, the salvage value at completion of the Work shall be deducted from the depreciated value at the time the Contract was terminated and the difference shall be considered as an expense.

3.15 TERMINATION OF CONTRACT BY CONTRACTOR

The Contractor may terminate the Contract upon **at least** ten calendar days written notice to the Agency whenever: (1) the entire work has been suspended in accordance with Section 3.12, for sixty (60) consecutive calendar days through no fault or negligence of the Contractor and notice to resume work or to terminate the Contract has not been received from the Agency within this time period, or (2) the Agency shall fail to pay the Contractor any substantial sums due in accordance with the terms of the Contract and within the time limits prescribed. In the event of such termination, the Contractor shall have no claims against the Agency except for those claims specifically enumerated in Section 3.13 and determined in accordance with that Section.

3.16 FAILURE TO COMPLY

If the Contractor should refuse or neglect to comply with the provisions of the Contract or the orders of the Engineer, the Agency may have such provisions or orders carried out by others at the expense of the Contractor.

3.17 PROTESTS

If the Contractor considers any work demanded of him to be outside the requirements of the

Contract, or if he considers any order or ruling of the Engineer, or of any inspector to be unfair, he shall, immediately upon such work being demanded or such order or ruling being made, ask for written instructions or decision, whereupon he shall proceed without delay to perform the Work or to conform to the order or ruling; but unless the Contractor finds such instructions or decisions satisfactory, he shall, within five (5) days after receipt of same, file a written protest with the Engineer, stating clearly and in detail any objections and the reasons therefor. The Engineer shall, as soon as practicable after receipt of such written protest from the Contractor, forward said protest through appropriate channels to the Agency including any written comments on the issue or issues involved. The decision of the Agency on all such matters shall be considered final and binding upon all parties concerned. Except for such grounds for protests or objections as are made of record in the manner specified and within the time stated herein, the Contractor hereby waives all grounds for protests or objections to the orders, rulings, instructions or decisions of the Engineer and hereby agrees that, as to all matters not included in such protest, the orders, instructions and decisions of the engineer shall be final and conclusive.

3.18 RIGHTS-OF-WAY

Lands or rights-of-way for the Work to be constructed under the Contract will be provided by the Agency as shown on the Drawings. Nothing contained in the Specifications or Drawings shall be interpreted as giving the Contractor exclusive occupancy of the lands or rights-of-way provided. Any additional lands or fights-of-way required for construction operations shall be provided by the Contractor at the Contractor's own expense.

Except as may otherwise be provided, the Contractor shall secure from the agencies having jurisdiction the necessary permits to create obstructions, to make excavations if required under the Contract and to otherwise encroach upon rights-of-way and shall present evidence to the Engineer that such permission has been granted before work is commenced. Regulations and requirements of all agencies concerned shall be strictly adhered to in the performance of this Contract, including the furnishing of insurance and bonds if required by such agencies. The enforcement of such requirements under this Contract shall not be made the basis for claims for additional compensation.

The Contractor shall not do any work that would affect any oil, gas, sewer, storm drain, or water pipeline, any telephone, telegraph, or electric transmission line, fence, or any other structure, nor enter upon the rights-of-way involved until notified by the Engineer that the Agency has secured authority therefor from the proper party. After authority has been obtained, the Contractor shall give said party due notice of any intention to begin work and shall give said party due notice of any intention to begin work and shall give said party convenient access and every facility for removing, shoring, supporting, or otherwise protecting such pipeline, transmission line, ditch, fence or structure and for replacing same. The Contractor shall not be entitled to any extension of time or extra compensation on account of any postponement, interference, or delay caused by any such pipeline, transmission line, fence or structure being on the line of the Work except as provided herein.

3.19 CONSTRUCTION INTERFERENCE

As used in this section, the word "Utility" shall be understood to include tracks, overhead or

underground wires, cables, pipelines, conduits, ducts, sewers or storm drains. The term “service connection” shall be understood to mean all or any portion of a pipeline (including sewer house laterals), conduit, wire, cable or duct, including meter, between a utility distribution line and an individual customer or customers when served by a single service connection. The term “construction interference” shall be understood to include any utility or service connection within the limits of excavation or over excavation required for the Work under the Contract as shown, or ordered by the Engineer, or any utility, or service connection located in the space which will be required by any of the Work under the Contract.

In the event any utility or service connection is required to be disturbed or removed to permit construction of a pipeline or other structure under the Contract, such disturbance or removal shall be done only with the approval of the Engineer and following notification to the owner of the interfering utility or service connection. Any such utility or service connection removed or otherwise disturbed shall be reconstructed as promptly as possible in its original or other authorized location in a condition at least as good as prior to such removal or disturbance, subject to the inspection of the owner of same. The Contractor’s responsibility under this section to remove or replace shall apply even in the event such damage or destruction occurs after backfilling or is not discovered until after completion of backfilling. The owner of the utility or service connection shall be notified immediately after damage or destruction occurs or is discovered.

During the performance of the Work under this Contract, the owner of any utility affected by the Work shall have the right to enter when necessary upon any portion of the Work for the purpose of maintaining service and to make repairs to said utility.

The drawings show the approximate positions of known utilities in the immediate vicinity of the Work done but the Agency does not guarantee that all existing utilities are shown. Service connections normally are not shown on the Drawings. The Contractor, before commencing any excavation, shall ascertain from records or otherwise, the existence, horizontal and vertical position and ownership of all existing utilities and service connections. If the Contractor discovers any utility in the line of the Work which is not shown on the Drawings, he or she shall immediately notify the Engineer of the existence of same. The Agency will not be liable for any consequences arising as a result of a service connection being incorrectly located in the field by the agency having jurisdiction over said service connection.

All costs involved in removing, relocating, protecting, supporting, repairing, maintaining or replacing a main or trunkline utility which actually constitutes a construction interference when said utility is not shown with reasonable accuracy as an interference or is omitted from the Drawings, will be paid for by the Agency as extra work. In such case, the Agency also will compensate the Contractor for equipment on the project necessarily idled during and by reason of such work. The Agency’s obligation to repair damage to such a facility and to compensate the Contractor for idled equipment shall not extend to damage resulting from the failure of the Contractor to use reasonable care.

All costs involved in removing, relocating, protecting, supporting, repairing, maintaining, or replacing any utility or service connection other than those described ~~in subsection (e)~~ herein shall be borne by the Contractor.

The Contractor shall not be assessed liquidated damages for failure to complete the Work on time to the extent that such delay was caused by failure of the Agency or of the agency having jurisdiction over the utility or service connection to authorize or otherwise provide for its removal, relocation, protection, support, repair, maintenance or replacement.

The Agency reserves the right, upon determination of the actual position of existing utilities and service connections, to order changes in alignment or grade of the Agency's pipelines when by so doing, the necessity for relocation of existing utilities or service connections will be avoided. Such changes will be ordered in writing by the Engineer. Where applicable, adjustment in the ~~contract~~Contract price will be on the basis of the unit prices stated in the proposal. Where unit prices in the proposal are not applicable, adjustment in Contract price will be in accordance with Section 3.04.

3.20 LINES AND GRADES

All surveying necessary and adequate for construction purposes will be done by the Agency Engineer or as modified in the Special Provisions.

The Contractor shall give two (2) working days notice, in writing, when the surveying services of the Agency Engineer will be required for laying out any portion of the Work, and he shall dig all holes necessary for line and grade stakes. The Contractor shall preserve all stakes set for the lines, grades or measurements of the Work in their proper places until authorized to remove them by the Agency Engineer. Any expenses incurred in replacing said stakes that the Contractor may have failed to preserve shall be borne by the Contractor.

Grades for all work will be set on the surface of the ground and the Contractor shall transfer them to the construction as necessary. At no time shall less than three (3) consecutive grade points be used in common so that any variation from a straight grade can be detected. Any such variation shall be reported to the Agency Engineer and in the absence of such report, the Contractor shall be responsible for any error in the grade of the finished work.

The Contractor shall preserve all bench marks, stakes and other survey marks, and in case of their removal or destruction by the Contractor's employees or by a Subcontractor's employees, he shall be liable for the cost of their replacement.

3.21 SUPERVISION AND INSPECTION

The Agency Engineer shall decide within the provisions of the Specifications all questions which may arise concerning the quality or acceptance of materials furnished and work performed and all questions concerning the acceptable fulfillment of the Contract by the Contractor.

All work shall be done in a thorough and workmanlike manner under the direction and to the satisfaction of the Agency Engineer, and the materials used shall comply with these Specifications. Work shall be started and continued at such time and at such points as may be designated by the Agency Engineer and shall be carried on diligently and without unnecessary delay.

Each day the Contractor shall furnish the Agency Engineer a duplicate copy of all delivery and shipment tags or slips for all materials delivered on the Work. Tags or slips shall show the actual quantity of material received on the Work. No materials shall be used on the Work until such tags or slips have been furnished to the Agency Engineer.

All tests of materials shall be made under the direction of the Agency Engineer. The costs of tests for materials shall be borne by the Agency. At the Contractor's own expense, the materials for testing shall be delivered at the time and to the place designated by the Agency Engineer. Should the materials fail, the retesting cost shall be borne by the Contractor.

The Contractor shall prosecute ~~work~~Work only in the presence of the Agency Engineer or his designated representative, and any work done in the absence of said Agency Engineer or his designated representative shall be subject to rejection for that reason. The Contractor shall give written notice to the Agency Engineer at least twenty-four (24) hours before beginning any ~~work~~Work and shall furnish said Agency Engineer all reasonable facilities for obtaining full information respecting the progress and manner of work.

Any day shall be considered as a normal work day except Saturdays, Sundays or legal holidays or days on which the Contractor is expressly required by the Specifications or by law to suspend construction operations, or is prevented from working at the beginning of the workday for cause defined in Section 6 of the Standard Specifications or conditions resulting therefrom.

3.22 OBSERVING LAWS AND ORDINANCES

The Contractor shall keep himself fully informed of all Federal, State and local laws, ordinances and regulations which may affect the conduct of the Work, those engaged or employed by the Contractor, the materials used, and all orders and decrees of bodies or tribunals having any jurisdiction or authority over the Work. The Contractor shall observe and comply therewith, and shall protect and indemnify the Agency against any claim or liability arising from or based on the violation thereof.

The Contractor shall secure and pay for all necessary permits, licenses and make all necessary deposits before starting work.

3.23 COORDINATION WITH COMMUNITY AGENCIES

The Contractor shall notify ~~the local Police~~~~law Department~~~~enforcement~~, Fire Department and refuse contractor of any construction causing street closure forty-eight (48) hours prior to start of construction or closure.

The contractor shall also be responsible for notifying, in writing, affected businesses forty-eight (48) hours prior to the start of construction or closures.

3.24 FIRE HYDRANTS

Free access shall be provided to all fire hydrants at all times. The Contractor shall not draw any

water from a fire hydrant for use on the Work, other than for extinguishing fire, without first obtaining permission from the ~~Public Works Director the owner of such water~~Engineer.

Whenever required by the ~~local water purveyor~~Agency, the Contractor shall obtain a fire hydrant meter to record water usage. A deposit as established by the ~~local water purveyor~~Agency shall be paid by Contractor and refunded upon return of said hydrant meter. The water usage fees shall be paid for by the Contractor.

3.25 LOSS AND DAMAGE

All loss or damage to the Agency or to third persons, occurring during the progress of the Work being performed under this Contract, which loss or damage occurs before acceptance of the Work by the Agency and which results from: (1) the negligence of the Contractor, or Contractor's agents or employees, or (2) any act or omission on the part of the Contractor or Contractor's agent or employees which is not authorized by these Specifications shall be sustained and borne by the Contractor.

Excavation shall be braced in accordance with CAL OSHA Standards so that they will be safe and the ground alongside the excavations will not slide or settle, and all existing improvements of any kind, either on public or private property, shall be fully protected from damage. If any damage does result, the necessary repairs as directed by the Agency Engineer, shall be made by and at the expense of the Contractor.

Performance under this Contract by the Contractor shall not be excused by any unforeseen obstruction or difficulties which may be encountered, including damage to or destruction of the project under construction by action of the elements or otherwise.

3.26 USE OF IMPROVEMENT DURING PROGRESS OF CONSTRUCTION

At any time during the progress of work, the Agency Engineer may, upon written notice to the Contractor, takeover and utilize the whole or any part of the improvement or appurtenance thereto which has been completed, giving if desired, permits to utilize same. Such uses by the Agency Engineer shall constitute a limited acceptance of that part of the improvement so taken over and utilized, but shall not relieve the Contractor and Contractor's sureties from responsibility for any damage to or defect in that or any part of the improvement.

3.27 ALTERNATIVE METHODS OF CONSTRUCTION

Whenever the Drawings and ~~specifications~~Specifications provide that more than one specified method of construction or more than one specified type of construction equipment may be used to perform portions of the Work and leave the selection of the method of construction or the type of equipment to be used up to the Contractor, it is understood that the Agency does not guarantee that every such method of construction or type of equipment can be successfully used throughout all or any part of any project. It shall be the Contractor's responsibility to select and use the alternative(s) which will satisfactorily perform the Work under the conditions encountered. In the event some of the alternatives are not encountered. In the event some of the alternatives are not feasible or it is necessary to use more than one of the alternatives on the project, full

compensation for any additional cost involved shall be considered as included in the Contract price paid for the item of work involved and no additional compensation will be allowed therefore.

3.28 EXAMINATION OF WORK

Contractor must examine the location, physical conditions and surroundings of the proposed work and judge for themselves the nature of the excavation to be made and the Work to be done. The Drawings for the Work show conditions as they are supposed or believed to exist by the Agency Engineer, but it is not intended or to be inferred that the conditions as shown thereon constitute a representative or warranty, express or implied, by the Agency or its officers, that such conditions are actually existent, nor shall the Contractor be relieved of the liability under this Contract, nor the Agency or any of its officers be liable for any loss sustained by the Contractor as a result of any variance between conditions as shown on the Drawings and the actual conditions revealed during the progress of the Work or otherwise.

Execution of the Contract shall be conclusive evidence that the Contractor has satisfied himself through his own investigation as to the conditions to be encountered; the character, quality and quantity of work to be performed; materials and equipment to be furnished; and all requirements of the Drawings and Specifications.

4.01 QUALITY

Material and equipment shall be new and of the quality specified. All ~~work~~Work shall be executed in conformity with the best accepted standard practice of the trade so as to contribute to maximum efficiency of operation, accessibility and appearance, and minimum cost of maintenance and construction of future alterations and additions.

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

4.02 SAMPLES AND TESTS OF MATERIAL

Samples of materials to be supplied by the Contractor shall be prepared and submitted for checking, if required by the Specifications or the Engineer. The samples or test specimens shall be prepared and furnished with information as to their source in such quantities and sizes as may be required, with all freight and charges prepaid.

All samples shall be submitted before shipment of the material to the site of the Work and in ample time to permit the making of proper tests, analyses, examinations, rejections and resubmissions before the time at which it is desired to incorporate the material into the Work. All tests of materials furnished by the Contractor will be made by the Engineer in accordance with recognized standard practice. No such materials shall be used in the Work unless or until they have been accepted in writing by the Engineer and samples of materials will be retained by the Engineer for reference and comparison purposes.

The cost of material, inspection and testing in the vicinity of the Work unless specified otherwise herein, will be borne by the Agency. If the inspection and testing of material in the vicinity of the Work is not practicable, the Contractor may request such inspection and testing take place at the point of manufacture. In such an event, the additional cost to the Agency of remote inspection and testing shall be paid for by the Contractor. Such additional cost will consist of reimbursement for travel time and expense to and from the remote point.

4.03 PROOF OF COMPLIANCE WITH CONTRACT

In order that the Engineer may determine whether the Contractor has complied with the requirements of the Contract Documents not readily determinable through inspection and tests of plant, equipment, work or materials, the Contractor shall, at any time when requested, submit to the Engineer properly authenticated documents or other satisfactory proof as to compliance with such requirements.

4.04 SAFEGUARDING OF EQUIPMENT, MATERIAL AND WORK

The Contractor shall properly safeguard all equipment, material and work against loss, damage, malicious mischief or tampering by unauthorized persons until acceptance of the Work by the Agency. Locked and covered storage or continuous surveillance by a watchman shall be provided if required to accomplish this purpose.

4.05 DEFECTIVE MATERIAL, EQUIPMENT AND WORKMANSHIP

Inspection of the Work shall not relieve the Contractor of any of his obligations under the Contract. Even though equipment, material or work required to be provided under the Contract have been inspected, accepted and estimated for payment, the Contractor shall, at the Contractor's own expense, replace or repair any such equipment, material or work found to be defective or otherwise not to comply with the requirements of the Contract up to the end of the maintenance and guarantee period.

Any equipment or material brought upon the job site by the Contractor and subsequently rejected by the Engineer as not complying with the requirements of the Contract shall be removed immediately by the Contractor.

If the Contractor shall fail to repair or replace unsatisfactory equipment or material from the job site within ten (10) calendar days after being ordered to do so by the Engineer, the engineer, acting on behalf of the Agency, may make the ordered repairs or remove the condemned equipment or material and the Agency will deduct the cost thereof from any moneys due or to become due the Contractor.

4.06 CHARACTER OF WORKMEN

Skilled workmen shall be employed on work requiring special qualifications. When requiring special qualifications. When required in writing by the Engineer, the Contractor or any Subcontractor shall discharge any person who is, in the opinion of the Engineer, incompetent, unfaithful, disorderly or otherwise unsatisfactory and shall not again employ such discharged person on the Work except with the consent of the Engineer. Such discharge shall not be the basis of any claim for compensation or damages against the Agency or any of its officers.

The Contractor shall provide, at all times, a superintendent on the job site who shall be able to speak, read and write the English language per Section 7-6 of the SSPWC.

4.07 RUBBISH AND DUST CONTROL

During the progress of the Work, the Contractor shall keep the site of the Work and other areas utilized by the contractor in a neat and clean condition and free from any accumulation of rubbish.

The Contractor shall at all times conduct work so as to avoid unnecessary dust. The Contractor shall provide adequate equipment, water and implement procedures to comply with the south Coast Air Quality Management Agency rules to prevent dust emissions.

4.08 CLEANING UP

The Contractor shall promptly remove from the vicinity of the completed ~~work~~Work, all rubbish, unused material, concrete forms, equipment and temporary structures used during construction. Additional clean-up work, if provided in the Special Provisions, shall be performed by the Contractor.

4.09 GUARANTEE

In addition to the guarantees required elsewhere in this Contract Document, the Contractor shall and hereby does guarantee all work for a period of two (2) years ~~from formal acceptance of the Work by the Agency~~from the date of the Notice of Substantial Completion of the Work and shall repair and replace any and all such work, together with any other work which may be displaced, that may prove defective in workmanship and/or materials within the two (2) year period ~~from the date of acceptance~~from the date of the Notice of Substantial Completion, without expense whatsoever to the Agency, ordinary wear and tear and usual abuse or neglect excepted. In the event of failure to comply with the above-mentioned conditions within seven (7) days after being notified in writing, or in the event of an emergency, the Agency is hereby authorized to proceed to have the defects repaired and make good at the expense of the Contractor, who hereby agrees to pay the cost and charges therefore immediately on demand.

The Contractor hereby guarantees that the entire ~~work~~Work constructed under this Contract will meet fully all requirements thereof as to quality of workmanship and of materials furnished by the Contractor. The Contractor hereby agrees to make any repairs or replacements made necessary by defects in materials or workmanship supplied by the Contractor that becomes evident within the guarantee period, and to restore to full compliance with the requirements of these Specifications, including the test requirements set forth herein for any part of the Work constructed hereunder, which during said period is found to be deficient with respect to any provision of the Specifications. The Contractor also agrees to hold the Agency harmless from claims of any kind arising from damage due to said defects. The Contractor shall make all repairs and replacements promptly upon receipt of written orders for same from the Engineer. If the Contractor fails to make the repairs and replacements promptly, the Agency may do the Work and the Contractor and the Contractor's surety shall be liable to the Agency for the cost of such work.

Upon acceptance of the Work by the Agency, any and all manufacturer's guarantees held by the Contractor shall be delivered to the Agency.

The guarantees and agreements set forth hereinbefore shall be secured by a surety bond which shall be delivered by the Contractor to the Agency before the notice of completion shall be filed by the Engineer. Said bond shall be in an approved form and executed by a surety company or companies satisfactory to the Agency. ~~in the amount of seventy percent of the Contract price.~~ Said bond shall remain in force for the period specified herein.

5.01 CONTRACT TIME

Time is of the essence of the Contract. The Contractor shall commence work promptly under the Contract and all portions of the Work shall be prosecuted so that the entire work shall be completed and ready for use within the time stipulated.

5.02 CONTRACT PRICE

Prior to commencement of the Work, the Contractor shall submit a detailed price breakdown of any of the bid items for the Work contained in lump sum items. Such price breakdown shall include quantities, unit prices, and any other information required in sufficient detail to enable it to be used in preparing monthly progress estimates.

5.03 CONSTRUCTION SCHEDULE

The Contractor shall submit a construction schedule showing the order in which the Contractor proposes to carry on the Work and the dates when the various parts are to be begun and completed. The timing associated with submitting the schedule will be determined by the Engineer. The schedule shall be subject to the approval of the Engineer and if in the Engineer's opinion a schedule submitted is inadequate to secure the completion of the Work in the time agreed upon, or is otherwise not in accordance with the Specifications, the Engineer may require the Contractor to submit a new schedule which will insure timely completion of the Work. It is mandatory that an up-to-date construction schedule be submitted with each request for progress payment.

5.04 OVERTIME WORK

Except as otherwise provided in this Section, the Contractor shall receive no additional compensation for overtime work even though such overtime work may be required under emergency conditions and may be ordered by the Engineer in writing. Additional compensation will be paid the Contractor for overtime work only in the event extra work is ordered by the Engineer and the change order specifically authorizes the use of overtime work, and then only to such extent as overtime wages are regularly being paid by the Contractor for overtime work of a similar nature in the same locality.

5.05 EXTENSION OF TIME

The Contractor may be entitled to an extension of Contract time: (1) if the Work has been suspended by the Agency, in whole or in part; or (2) where weather or other circumstances occur which delay progress and which are clearly beyond the control of the Contractor; provided that, in either case, the Contractor is not at fault and is not negligent under the terms of the Contract. The extension of time allowed shall be as determined by the Engineer.

To receive consideration, a request for extension of time must be made in writing to the Engineer stating the reason for said request, and such request must be received by the Engineer within ten days following the end of the delay-causing condition.

5.06 FAILURE TO COMPLETE ON TIME

The Contractor shall pay liquidated damages to the Agency in the amount specified in the Special Provisions if the Contractor fails to complete the Work within the time agreed upon. The period for which said damages shall be paid shall be the number of calendar days from the agreed date of completion as contained in the Contract, or from the date of termination of any extension of time approved by the Engineer, to the date the Engineer certifies completion of work to the Agency. The Agency may deduct the amount of said damages from any moneys due or to become due the Contractor.

The said amount is fixed and agreed upon by and between the Contractor and the Agency because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Agency would sustain. Said amount **has been negotiated by the parties and** is agreed to be the amount of damages which the Agency would sustain.

5.07 MONTHLY ESTIMATES AND PAYMENTS

On or about the 25th of each month, the Engineer will prepare and certify to the Agency an estimate of the cumulative amount and value of Work performed by the Contractor up to that date. All payments will be paid on or before the 15th day of the following month. Except as may otherwise be provided in the Special Provisions, said amount may include fifty percent (50%) of the value of acceptable materials and equipment delivered to and properly stored at the site of the Work. Said value shall be based on certified copies of paid invoices delivered by the Contractor to the Engineer. To this amount shall be added all amounts due the Contractor for performance of extra work in accordance with approved Change Orders.

From the total computed above, a deduction of five percent (5%) shall be made as retention. Further deductions shall be made for: (1) amounts due the Agency for equipment or materials furnished or services rendered; (2) amounts due the Agency under the terms of the Contract; (3) amounts of any claims of lien filed with the Agency in accordance with Section 6.02(b); and (4) amounts required to be deducted by federal, state, or local governmental authority. From the balance thus determined, the amount of all previous payments shall be deducted, and the remainder shall constitute the monthly payment due the Contractor.

Pursuant to the provisions of Public Contract Code Sections 10263 and 22300, the Contractor is permitted to substitute securities for any moneys withheld to ensure performance of this Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the State Treasurer or a state or federally chartered bank in California as the escrow agent, who shall then pay the moneys to the Contractor. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor.

Alternatively, the Contractor may request and the Agency shall make payment of retentions earned directly to the escrow agent. The Contractor may direct the investment of the payments into securities and the Contractor shall receive the interest earned on the investments upon the same terms provided for in this Section for securities deposited by the Contractor. Upon satisfactory completion of the Contract, the Contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the Agency pursuant to the

terms of this Section.

Securities eligible for investment under this Section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the Agency. Securities selected must also comply with the Agency's current investment policy and 1995 California State Senate Bills 564 and 866.

The Contractor shall be beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon. ~~The escrow agreement used pursuant to this Section shall be null, void and unenforceable unless it is substantially similar to the form enclosed.~~

The Engineer's estimate of the monthly payment due the Contractor will not be required to be made by strict measurement and an approximation will suffice. The monthly payments may be withheld or reduced if, in the Engineer's opinion, the Contractor is not diligently or efficiently endeavoring to comply with the intent of the Contract or if the Contractor fails to pay labor and material bills as they become due.

The Contractor shall furnish the Engineer promptly, upon request, all information and records necessary to determine the cost of the Work for purposes of estimating monthly payments, including an itemized statement, in a form satisfactory to the Engineer, of the actual cost of all acceptable materials delivered by the Contractor to the site.

No monthly payment shall be construed as an acceptance of the Work or of any portion of the Work, nor shall the making of such payment preclude the Agency from demanding and recovering from the Contractor such damages as it may sustain by reason of the Contractor's failure to comply with the requirements of the Contract.

In the event the Contract is terminated, any funds due the Contractor and retained by the Agency shall become the property of the Agency to the extent necessary to repay to the Agency any excess in the Contract price above the cost of the work completed at the time of the termination. After issuance of notice to discontinue work, no further payment will be made to the Contractor for the work covered by the notice until completion of the Work and final settlement has been made.

5.08 UNPAID CLAIMS

If, upon or before completion of the Work, or at any time prior to expiration of the period within which claims of lien or stop notices may be filed for record, any person claiming to have performed any labor or to have furnished any materials, supplies or services toward the performance of this Contract, or to have agreed to do so, shall file with the Agency a verified statement of such claim stating in general terms the kind of labor and materials, the value of same and the name of the person to or from whom the same was furnished, together with a statement that the same has not been paid; or if any person shall bring against the Agency or any of its agents any action to enforce such claim or stop notice, the Agency will, until the action is settled, withhold from moneys due to the Contractor an amount sufficient to satisfy the decision

of the court together with costs.

5.09 FULFILLMENT OF CONTRACT

The Contractor shall protect and care for all ~~work~~Work until the Contract has been fulfilled to the satisfaction of the Agency Engineer, and subsequent acceptance of the Work by the Agency Board of Directors.

The Contractor shall remove all rubbish, excess earth and rock, leaving the site in a neat, orderly and presentable condition before the Agency Engineer makes final inspection of the Work to determine the fulfillment of the Contract.

5.10 FINAL ESTIMATE OF PAYMENT

When the Engineer is of the opinion that the Contractor has completely performed all work required under the Contract, the Engineer shall certify to the Agency that the Work is complete and shall submit to the Contractor a draft of the final estimate. The Contractor shall submit a written approval of said final estimate within five (5) calendar days after receipt, or, in the event the Contractor disagrees with said final estimate, the Contractor shall, within said five-day period, file a written statement of all claims to be presented. If the Contractor delays more than five calendar days in approving said final estimate or in presenting claims, the Agency may, at its sole option, treat the delay as a waiver of the Contractor's right to file a written statement of all claims to be presented or extend the time for final payment by the period of such delay.

Pursuant to Section 7107(c) of the Public Contracts Code, within 60 days after the date of completion of the Work, the retention withheld by the Agency shall be released. In the event of a dispute between the Agency and the Contractor, the Agency may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. For purposes of this section, "completion" means any of the following:

The occupation, beneficial use, and enjoyment of the Work, excluding any operation only for testing, startup, or commissioning, by the Agency, or its agent, accompanied by cessation of labor on the Work.

The acceptance of the Work by the Agency.

(c) After the commencement of the Work, a cessation of labor on the Work for a continuous period of 100 days or more, due to factors beyond the control of the contractor.

After the commencement of the Work, a cessation of labor on the Work for a continuous period of 30 days or more, if the Agency files for record a notice of cessation or a notice of completion.

If the Contractor disagrees with the Engineer's final estimate and files a timely written statement of his claims, the Engineer will issue, as a semi-final estimate, the proposed estimate submitted to the Contractor, and the Agency will make payment to the Contractor based thereon in accordance with the provision of ~~Subsection~~this 5.10(b)section. The Engineer then will investigate the Contractor's claims, make any revisions to said semi-final estimate as the

Engineer deems appropriate and certify in writing to the Agency the amount and value of the work performed by the Contractor. The Agency then will make final payment to the Contractor based thereon in accordance with the provisions of ~~Subsection~~**this 5-10(b)section**.

5.11 FINAL PAYMENT TERMINATES LIABILITY OF AGENCY

The acceptance by the Contractor of the final payment shall be a release of the Agency and its agents from all claims of and liability to the Contractor for anything done or furnished for, or relating to, the Work or for any act or neglect of the Agency or of any person relating to or affecting the Work.

5.12 NOTICE OF COMPLETION

As required by the California Code of Civil Procedure, and within ten calendar days after date of acceptance of the Work by the Agency Board of Directors, the Agency will file, in the county recorder's office, a notice of completion of the Work.

5.13 CHANGES IN WORK

GENERAL. The Agency reserves and shall have the right to revise the details of the contemplated work or to delete work or add work of a different character or function and have the Contractor perform such revised, decreased or added work as a Contract Achange order≡.

“Extra work” is defined as added work of a different character or function and for which no basis for payment is prescribed, or that involving revisions of the details of the Work in such a manner as to render inequitable payment under items upon which the Contractor bid; or that work to be done under the stipulated prices given in the bidding schedule.

The signing of the Contract by the Contractor will be deemed to be an agreement on the part of the Contractor to perform extra work, as and when ordered by the Agency.

If, required extra work results in delay to the Work, the Contractor will be given an equivalent extension of time.

PROCEDURE. Upon decision of the Agency to have extra work performed, or to delete or modify work, the Agency's ~~representative~~**Engineer** will so inform the Contractor, acquainting the Contractor with the essential details. The Contractor shall thereupon prepare an estimate of cost and submit said price and estimate to the Agency's representative who will secure the Agency's approval in writing before work is started. The Agency reserves the right to reject any claims as a result of extending the Work under the bid prices, which has not been approved by the Agency in the same manner herein provided.

Adjustment in the compensation due the Contractor shall be determined by one or more of the following methods in the order of precedence listed below:

Mutually agreeable lump-sum or unit prices, based upon current prevailing fair prices for materials, labor, overhead, and profit. If requested by the Agency's

~~representative~~Engineer, the Contractor shall furnish an itemized breakdown of the quantities and prices used in computing proposed lump-sum and unit prices.

Force account whereby the Contractor is compensated for furnishing labor, materials, tools, and equipment as follows:

- a. Cost of labor plus 15 percent for workers directly engaged at the jobsite in the performance of the Work. Cost of labor shall include actual wages paid including employer payments to or on behalf of the workers for health and welfare, pension, vacation, and similar purposes plus payments imposed on payroll amounts by State and Federal laws plus subsistence and travel allowance payments to workers.
- b. Cost of material plus 15 percent. Cost of material shall include sales tax, freight, and delivery charges. The Agency reserves the right to furnish such materials as it deems advisable and the Contractor shall not be paid the 15 percent markup on such materials.
- c. For tools and equipment actually engaged in the performance of the Work, rental rates plus 15 percent. The rental rates shall be those prevailing in the area where the Work is performed. No rental charge shall be made for use of tools or equipment having a replacement value of \$500 or less.
- d. Subcontractor invoices to the Contractor plus five percent. Subcontractor invoices shall be based upon the above-described cost of labor plus fifteen percent, cost of material plus fifteen percent, and tool and equipment rates plus fifteen percent.
- e. The Contractor shall submit to the Agency's ~~representative~~Engineer for his verification, on a daily basis, work sheets showing an itemized breakdown of labor, materials, tools and equipment used in performing the Work. No payment will be made for work not verified by the Agency's representative.
- f. No payment shall be made for any item not set forth above, including without limitation, Contractor's overhead, general administrative expense, supervision, or damages claimed for delay in prosecuting the remainder of the Work.
- e. The completed change order, when signed by the Contractor and the Agency shall become a contractual extension of the Contract and all sureties, bonds and insurance in effect under the Contract shall be extended intact to include the work described in the change order.

6.01 RESPONSIBILITY OF CONTRACTOR

The Work shall be under the Contractor's responsible care and charge. The Contractor shall bear all loss and damage whatsoever and from whatever cause, except that caused solely and exclusively by the fault or negligence of the Agency which may occur on or to the Work during the fulfillment of the Contract. If any loss or damage occurs, the Contractor shall immediately make good any such loss or damage and in the event of the Contractor refusing or neglecting so to do, the Agency may itself or by the employment of some other person made good any such loss or damage and the cost and expense of so doing shall be charged to the Contractor.

The Contractor alone shall at all times be responsible for the safety of employees and any Subcontractor's employees and for plant and equipment and any Subcontractor's plant and equipment and the method of prosecuting the Work.

6.02 LIABILITY OF CONTRACTOR

The Contractor shall be liable for all damages and injury which shall be caused to Agency or property on or in the vicinity of the Work or which shall occur to any person or persons or property whatsoever arising out of the performance of this Contract, whether or not such damage or injury be caused by the negligence of the Contractor and whether or not such damage or injury be caused by the inherent nature of the Work as specified except the willful misconduct or sole negligent acts of the Agency, its officers or agents.

In case any suit or legal proceedings shall be brought against the Agency or the Engineer or any of their officers, agents or employees on account of loss or damage sustained by any person or property as a result of the performance of the Work covered by this Contract, whether or not such injuries or damage be due to the negligence of the Contractor and whether or not such injuries or damage be caused by the inherent nature of the Work as specified, the Contractor agrees to assume the defense thereof and to pay all expenses connected therewith including reasonable attorneys' fees and any judgment that may be obtained against the Agency or the Engineer or any of their officers, agents or employees in such suits, and in the event that any lien is placed upon the property of the Agency or the Engineer or any of their officers, agents or employees, as a result of such suits, the Contractor agrees to at once cause the same to be dissolved and discharges by giving bond or otherwise.

6.03 LAWS, REGULATIONS AND PERMITS

The Contractor shall give all notices required by law and comply with all laws, ordinances, rules and regulations pertaining to the conduct of the Work. The Contractor shall be liable for all violations of the law in connection with work furnished by the Contractor. If the Contractor observes that the Drawings or Specifications are at variance with any law, ordinance, rule or regulation, the Contractor shall promptly notify the Engineer in writing and any necessary changes shall be made by instruction or change order. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations and without giving such notice to the Engineer, the Contractor shall bear all cost arising therefrom.

Unless otherwise specified herein, permits and licenses which are necessary only for and during

the prosecution of the Work and the subsequent guaranty period thereafter shall be secured and paid for by the Contractor while those permits and licenses of regulatory agencies which are necessary to be maintained after the completion of the guaranty period of the Contract will be secured and paid for by the Agency.

6.04 PATENTS AND COPYRIGHTS

The Contractor shall hold harmless, indemnify and defend the Agency and Engineer, their officers, agents and employees against all claims of liability arising from the use of any patented or copyrighted design, device, material or process, furnished, or used by the Contractor or any Subcontractors in the performance of the Work.

6.05 PERMITS AND LICENSES

Unless otherwise provided in the Special Provisions, the Contractor shall obtain at the Contractor's own expense all permits and licenses required for prosecution of the Work and shall pay all fees and taxes properly assessed against equipment or property used in connection with the Work.

6.06 SALES AND USE TAXES

The Contractor shall pay all sales and use taxes assessed by the federal, state or local authorities on materials furnished by the Contract in the performance of the Work.

6.07 LABOR DISCRIMINATION

No discrimination shall be made in the employment of persons on the Work by the Contractor or by any Subcontractor because of race, color or religion of such persons.

6.08 WAGE DETERMINATIONS

As required by the California Labor Code, the Contractor shall pay not less than the prevailing rate of per diem wages as determined by the Director, Department of Industrial Relations, State of California. Copies of such prevailing rate of per diem wages are on file at the Agency office, which copies will be made available to any interested party upon request. The Contractor shall post a copy of such determination at each job site.

The Contractor shall forfeit to the Agency the amount of the penalty set forth in Labor Code Section 1777.7(b), or any subsequent amendments thereto, for each calendar day, or portion thereof, for each worker paid less than the specified prevailing rates for such work or craft in which such worker is employed, whether paid by the Contractor or by any Subcontractor.

In accordance with the provision of the California Labor Code, the Contractor shall secure the payment of compensation to employees.

6.09 APPRENTICES ON PUBLIC WORKS

The Contractor shall comply with all applicable provisions of the California Labor Code relating to employment of apprentices on public works projects.

6.10 WORKING HOURS

The Contractor shall comply with all applicable provisions of the California Labor Code relating to working hours. The Contractor shall, as a penalty to the Agency, forfeit \$25.00 for each worker employed in the execution of the Contract by the Contractor or by any Subcontractor, for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week, unless such worker received compensation for all hours worked in excess of 8 hours at not less than 1.5 times the basic rate of pay.

6.11 PUBLIC SAFETY AND CONVENIENCE

The Contractor shall at all times conduct ~~work~~the Work so as to assure the least possible obstruction to traffic and inconvenience to the general public and adequate protection of persons and property in the vicinity of the Work. No street shall be closed to the public without first obtaining permission of the Engineer and proper governmental authority. Where excavation is being performed in primary streets or highways, one lane in each direction shall be kept open to traffic at all times unless otherwise provided or shown. Toe boards shall be provided to retain excavated material. Fire hydrants on or adjacent to the Work shall be kept accessible to fire-fighting equipment at all times. Temporary provisions shall be made by the Contractor to assure the use of sidewalks and the proper functioning of all gutters, storm drain inlets and other drainage facilities.

The Contractor shall provide adequate barricades, signs, warning lights, watchmen and flagmen as required, as directed by the Engineer and agency having jurisdiction, to protect the Work and the safety of the public. Warning lights using inflammable liquids will not be permitted. Only electrically-operated warning lights will be approved for use. Warning lights shall operate from sunset to sunrise. Barricades shall be painted to increase their visibility at night.

“NO PARKING” signs with specific time frames shall be supplied and posted by the Contractor 48 hours prior to start of work. The Contractor shall notify the local ~~Police~~law ~~Department~~enforcement of such restrictions and obtain approval for the posting.

6.12 TRENCH EXCAVATION

Prior to excavating any trench five feet or more in depth the Contractor shall submit to the Engineer a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground. If such plan varies from the shoring system standards established by the Construction Safety Orders of the California Division of Industrial Safety, the plans shall be prepared by a civil engineer registered in California. In no case will the Contractor be permitted to use a shoring, sloping or other protection system less effective than that required by said Orders. Nothing contained herein shall be construed to impose a tort liability upon the Agency, Engineer or any of their officers, agents or employees.

Pursuant to Public Contract Code, Section 7104, any time during the excavation of a trench extending deeper than four feet, the Contractor shall promptly, and before the following conditions are disturbed, notify the Agency, in writing, of any:

- (1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required by law to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- (2) Subsurface or latent physical conditions at the site differing from those indicated.
- (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

The Agency shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or time required for performance of any part of the Work shall issue a change order under the procedures contained in Section 5.13 of the General Conditions.

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

6.13 CONCRETE FORMS, FALSEWORK AND SHORING

The Contractor shall comply with the requirements of CAL OSHA, Construction Safety Orders, regarding the design of concrete forms, falsework and shoring and the inspection of same prior to placement of concrete. The Contractor shall employ a civil engineer registered in California to prepare design calculations and working drawings of the falsework or shoring system, to inspect such system prior to placement of concrete and to certify in writing to the Engineer **at least** 24 hours prior to placing concrete that the falsework or shoring system complies with the design and that the materials and workmanship are satisfactory for the purpose intended.

6.14 SANITARY PROVISIONS

The Contractor shall provide and maintain sanitary facilities for the use of employees and Subcontractors necessary to comply with the requirements of state and local health departments.

6.15 SAFETY AND HEALTH REGULATIONS

All work shall be performed in accordance with requirements of the California Division of

Industrial Safety, the California Occupational Safety and Health Act and the William Steiger Occupational Safety and Health Act of 1970, and all applicable Federal health and safety laws. The Contractor shall submit, to the Engineer, a Mandatory Injury/Illness Program as mandated by S.B. 198. The Contractor shall post at an appropriate location notices pursuant to Proposition 65 or any hazardous chemicals listed by the State Health Department which are used as part of the construction of the project. The job safety conditions will be the responsibility of the Contractor.

6.16 ~~LABOR, MATERIAL AND PERFORMANCE~~ BONDS

The Contractor shall furnish ~~tw~~~~o~~~~a~~~~l~~ bonds each in the amount shown in the Notice Inviting Bids; ~~one as security for security~~ for the faithful performance of the Work ~~and the other as security~~, for the faithful payment and satisfaction of all persons furnishing materials and performing labor on the Work ~~and for the guarantee of the Work during the specified guarantee period~~. The bonds shall be issued by a corporation duly and legally licensed to transact surety business in the State of California. Such bonds shall remain in force throughout the period required to complete the Work. The bond must be executed by a duly licensed surety company approved by the Agency.

6.17 CONTRACTOR NOT RESPONSIBLE FOR DAMAGE RESULTING FROM CERTAIN ACTS OF GOD

As provided in Section 7105 of the Public Contract ~~Act~~~~C~~~~o~~~~d~~~~e~~, the Contractor shall not be responsible for the cost of repairing or restoring damaged portions of the Work determined to have been proximately caused by an act of God, in excess of five percent of the contracted amount, provided, that the Work damaged was constructed in accordance with accepted and applicable building standards and the Specifications and Drawings. The Contractor shall obtain insurance to indemnify the Agency for any damage to the Work caused by an act of God if the premium of said insurance coverage is called for as a separate bid item in the proposal for the Work. The term "Act of God" shall include only the following occurrences or conditions and effects: (1) earthquakes in excess of a magnitude 3.5 on the Richter Scale and (2) Tsunami.

6.18 INSURANCE

GENERAL. The Contractor shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by the Contractor, Contractor's agents, representatives, employees or subcontractors. The cost of said insurance shall be paid for by the Contractor. The Contractor shall not commence work under this Contract until ALL insurances required herein are obtained and until such insurance has been approved by the Agency. The Contractor shall not allow any Subcontractor to commence work on any subcontract until the insurance required of the Subcontractor has been so obtained and approved.

The ~~Insurance~~~~i~~~~n~~~~s~~~~u~~~~r~~~~a~~~~n~~~~c~~~~e~~ required herein shall be maintained continuously during the life of the Contract up to the date of acceptance of the Work by the Agency Board of Directors, governing body. However, the Contractor's liabilities under this Contract shall not be limited in any way to the insurance coverage required. Each insurance policy required herein shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except

after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Agency. Insurance is to be placed with insurer's having at least an "A:XIII" policyholder's rating in accordance with the current Best's Key Rating Guide or equivalent. In addition, any and all insurers must be authorized to conduct business in the State of California, as evidenced by a listing in the official publication of the Department of Insurance of the State of California.

The insurance policies required by this section shall waive all right to subrogation against the Agency and its officers, employees, representatives, and volunteers.

The Contractor's insurance coverage shall be primary insurance with respect to the Agency, its directors, officials, employees, designated agents and volunteers. Any insurance or self-insurance maintained by the Agency, its directors, officials, employees, designated agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

GENERAL LIABILITY AND AUTOMOBILE LIABILITY COVERAGE. The policies are to contain, or be endorsed to contain the following provisions:

The Agency, its directors, officials, employees, designated agents and volunteers, **as well as the State Water Resources Control Board and Department of Water Resources and their respective employees and agents**, are to be covered as ~~insures~~**additional insureds** with the following: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased or used by the afforded to the Agency, its directors, officials, employees, designated agents or volunteers.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Agency, its directors, officials, employees, designated agents or volunteers. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

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

WORKER'S COMPENSATION INSURANCE. The Contractor shall procure and maintain workers' compensation insurance as required by applicable state law for all employees to be engaged in work at the site of the project under this Contract and, in case of any such work sublet, the Contractor shall require the Subcontractor to provide workers' compensation insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's coverages shall be subject to all of the same requirements stated herein for the Contractor's insurance coverage. In case any class of employees engaged in hazardous work under this Contract is not protected under the worker's compensation statute, the Contractor shall provide and shall cause each Subcontractor to provide adequate employers' liability insurance for the protection of such employees that are not otherwise protected.

~~CONTRACTOR'S PUBLIC LIABILITY, POLLUTION LIABILITY AND PROPERTY~~

~~DAMAGE INSURANCE AND VEHICLE LIABILITY INSURANCE. The Contractor shall procure and maintain contractor's public liability, pollution liability insurance, contractor's property damage insurance and vehicle liability insurance.~~ CONTRACTOR'S POLLUTION LIABILITY. The Contractor shall procure and maintain contractor's pollution liability insurance covering third-party bodily injury, property damage (including loss of use of damaged property or of property that has not been physically injured), cleanup costs, and environmental damage caused by pollution conditions arising out of the Contractor's scope of work under this Agreement.

~~SUBCONTRACTOR'S PUBLIC LIABILITY, POLLUTION LIABILITY AND PROPERTY DAMAGE INSURANCE AND VEHICLE LIABILITY INSURANCE. The Contractor shall either: (1) require each subcontractor to procure and to maintain subcontractor's public liability, pollution liability and property damage insurance and vehicle liability insurance of the type and in amounts specified, or (2) insure the activities of Subcontractors in the Contractor's own policy, in like amount.~~ SUBCONTRACTOR'S GENERAL LIABILITY, AUTOMOBILE LIABILITY, AND CONTRACTOR'S POLLUTION LIABILITY INSURANCE. The Contractor shall either: (1) require each subcontractor to procure and to maintain subcontractor's general liability, automobile liability, and contractor's pollution liability insurance of the type and in amounts specified, or (2) insure the activities of Subcontractors in the Contractor's own policy, in like amount.

BUILDER'S RISK INSURANCE (ALL RISK COVERAGE). The Contractor shall procure and maintain builder's risk insurance (all risk coverage) on a 100 percent completed value basis for the benefit of the Agency, the Contractor and Subcontractors as their interest may appear.

MINIMUM SCOPE OF INSURANCE. Coverage shall be at least as broad as:

Insurance Services Office form number GL 0002 (Ed. 1/73) covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability Coverage ("occurrence" From CG 0001).

Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, covering Automobile Liability, code 1 "any auto" and endorsement CSA 0025.

Workers' Compensation insurance as required by the State of California and Employers Liability insurance.

MINIMUM LIMITS OF INSURANCE. Contractor shall maintain limits no less than the following unless modified in the Special Provisions:

Comprehensive General Liability: ~~\$1,000,000~~\$2,000,000 per occurrence for bodily injury, personal injury and property damage and \$3,000,000 aggregate. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

Workers' Compensation: Limits as required by the State of California and Employers Liability limits of \$1,000,000 per accident.

~~Contractors' Public Liability: \$1,000,000\$2,000,000 for all damages arising out of bodily injuries or death of one person, and, subject to that limit for each person, a total limit of \$1,000,000\$3,000,000 for all damages arising out of bodily injury to or death of two or more persons in any one accident.~~

~~Property Damage Liability: \$1,000,000 for all damages arising out of injury to or destruction of property in any one accident, and subject to that limit per accident, a total limit of \$1,000,000 for all damages arising out of injury to or destruction of property.~~

Contractors' Pollution Liability: \$1,000,000 for all damages arising out of a pollution occurrence caused by Contractor.

Coverage limits for the foregoing policies may be met through excess or umbrella insurance coverage.

DEDUCTIBLE AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to and approved by the Agency. At the option of the Agency, either the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the Agency, its directors, officials, employees, designated agents and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

VERIFICATION OF COVERAGE. The Contractor shall furnish the Agency with certificates of insurance and with original endorsements affecting coverage required by this Section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by the Agency and are to be received and approved by the Agency before work commences.

The certificates of insurance shall name as additionally insured the Agency agents listed in the Special Provisions.

Full compensation for all premiums which the Contractor and the subcontractors are required to pay on all the insurance described above shall be as included in the prices paid for the various items of work to be performed under the ~~contract~~Contract, and no additional allowance will be made therefor or for additional premiums which may be required by extension of the policies of insurance.

~~6.19 LIABILITY OF AGENCY AND ENGINEER~~

6.19 LIABILITY OF AGENCY, ENGINEER, STATE WATER RESOURCES CONTROL BOARD AND DEPARTMENT OF WATER RESOURCES

To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Agency, Engineer, ~~State Water Resources Control Board and Department of Water~~

Resources and ~~their~~**their respective** officers, agents and employees against and from all claims, suits or actions arising under or by reason of the Work agreed to be undertaken in the Contract or any performance of the Work from the ~~sole negligence~~**negligence or willful acts or omissions** of the Contractor or employees or agents or negligence which could be jointly attributed to Agency employees or the Contractor, but not from the sole negligence or willful misconduct of the Agency or the Engineer.

STANDARD SPECIFICATIONS

SPECIAL CONDITIONS

SECTION I GENERAL

1. Summary of Work

The work to be performed under this contract shall consist of all plant, labor, equipment, materials, tools, transportation, and services required for the fulfillment of the contract in strict accordance with the contract documents. The work shall be complete, and all work, materials, and services not expressly shown or called for in the contract documents which may be necessary for the complete and proper construction of the work in good faith shall be performed, furnished, and installed by the Contractor as though originally so specified or shown, at no increasing cost to the Owner.

2. Order of Work

The Contractor shall have the option of completing the work in any order unless noted otherwise within Section 01015 of the Technical Specifications. The order of work shall be consistent with the duration of contract to ensure that the work is completed within the time period allocated.

3. Completion of Work

The contract period shall commence fifteen (15) calendar days from the date established in the Notice-to-Proceed. All Work shall be completed within five hundred forty-eight (548) calendar days from the Contract start date stipulated in the Notice to Proceed. The Contractor shall also complete the Work in accordance with the construction milestones and time requirements specified in Section 01015 – Construction Sequencing.

4. Construction Surveying

A. Contractor Provided Surveying

- (1) Notwithstanding any provision of the General Conditions indicating that the Agency will retain a surveyor, the Contractor shall retain and pay for a Land Surveyor or Civil Engineer licensed in the State of California to perform all surveying required for construction of the Work.
- (2) Surveying services shall include, but not be limited to:
 - (a) Construction staking for lines and grades;
 - (b) Establishment and transfer of horizontal and vertical control;
 - (c) Offset stakes, hubs, blue tops, and slope stakes as required;
 - (d) Utility layout and structure staking;
 - (e) Verification of finished grades and elevations; and
 - (f) Preparation of cut sheets and grade verification documentation.

B. Basis of Control

- (1) Horizontal Control. All staking shall conform to the Basis of Bearings and coordinate system shown on the Plans.
- (2) Vertical Control. Contractor shall verify all benchmarks prior to use. Any discrepancy shall be immediately reported to the Engineer before proceeding.
- (3) Contractor is responsible for all calculations required to translate plan information into field layout.

C. Preservation of Survey Control

- (1) Contractor shall preserve all existing benchmarks, monuments, reference points, and survey control marks.
- (2) If such control is disturbed, destroyed, or removed by Contractor or its subcontractors, Contractor shall:
 - (a) Immediately notify the Engineer; and
 - (b) Retain a California-licensed Land Surveyor to reestablish such control at Contractor's expense.

D. Cut Sheets / Verification

- (1) Contractor's surveyor shall provide cut sheets or grade verification documentation to the Engineer upon request prior to placement of concrete, pipe bedding, base, asphalt, or other permanent improvements.
- (2) The Engineer's review of cut sheets does not relieve Contractor of responsibility for accuracy.

E. Tolerances and Responsibility

- (1) Contractor is solely responsible for constructing the Work to the lines and grades shown on the Plans within the tolerances specified in the Contract Documents.
- (2) Correction of work found to be out of tolerance due to surveying errors shall be performed at Contractor's sole expense.
- (3) Nothing in this Section transfers design responsibility to the Contractor.

F. Record (as-built) Survey

- (1) Upon completion of Work, Contractor shall provide record (as-built) survey information including:
 - a) Horizontal and vertical location of improvements;
 - b) Rim and invert elevations for pipelines and structures;
 - c) Coordinates of valves, fittings, and appurtenances; and
 - d) Digital file (AutoCAD or compatible) and signed hard copy.
- (2) Format shall be subject to Agency approval.

5. Special Requirements

A. Laws and Regulations

- (1) In performing the work within the jurisdiction of other public and private agencies, the Contractor shall comply with all applicable rules, regulations, ordinances, and all other lawful requirements of said entities. Except as otherwise provided, the Contractor shall obtain such paving, excavation, and related permits as may be required by said rules, regulations, ordinances, and requirements.

- (2) Wherever necessary or required for the convenience of the public or individual residents at street or highway crossings, private driveways, or elsewhere, the Contractor shall provide suitable temporary bridges over unfilled excavations, except in such cases as the Contractor shall secure the written consent of the individual or authorities concerned about owning such temporary bridges, or where bridges are impractical due to the limited width of the street, as determined by the Engineer. All such bridges shall be maintained in service until access is provided across the backfilled trench. Temporary bridges for street and highway crossings shall conform to the requirements of the authority having jurisdiction in each case, and the Contractor shall adopt designs furnished by the authority for such bridges, or shall submit designs to the authority for approval, as may be required.
- (3) Neither the terms hereof nor anything shown on the drawings in connection with rights-of-way provided by the Owner shall be construed to entitle the Contractor to conduct operations in the rights-of-way in violation of any city or county ordinance or regulation restricting interference with watercourses and drainage channels. The Contractor shall take adequate precautions against obstructing storm water flow in any affected watercourse or channel and shall not deposit excavated materials on any area where they might interfere with or be subject to erosion from such flow.
- (4) Except as may specifically be provided to the contrary, nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street or way during performance of the contract work, and he shall so conduct his operations as not to interfere unnecessarily with the authorized work of utility companies or other agencies in such streets and ways.
- (5) In addition to the requirements specified in the General Conditions, the Contractor shall, in particular and without limitation, comply with the Construction Safety Orders issued by the Division of Industrial Safety of the State of California and the Safety and Health regulations for Construction promulgated by the Bureau of Labor Standards of the United States Department of Labor, whichever is the more restrictive, and such other rules or regulations as now or in the future may be applicable to the work to be performed under the contract.

B. Improvements

- (1) The Project construction is in close proximity to improvements such as buildings and other structures, fences, paved areas, driveways, sewers, water mains, utilities, and other substructures, including trees and other vegetation. All said improvements shall be maintained in place and shall not be disturbed or damaged, except for such removal of improvements within the right-of-way as is unavoidable in order to accommodate required excavation.

- (2) Where necessary for purposes of construction, the Contractor shall move interfering structures, improvements, or portions thereof temporarily to provide space for his operations. Any such building, fence, block wall, sewer, storm drain, utility, traffic signal control pad, or other structure or improvement so moved, damaged, or disturbed by the Contractor shall be completely replaced and restored by him except as may otherwise be provided under this section, to a condition at least as good as its condition immediately prior to its disturbance by his operations, and the replacement and restoration of said improvements or structures shall be exactly in the respective positions which they occupied at the time of beginning of the work under the contract.
- C. Bench Marks and Monuments. The Contractor, prior to commencing any construction whereby he might move or disturb survey monuments or bench marks of others, shall give the Owner at least 15 days prior notice, in writing, in order that these monuments may be referenced for replacement. Shall the Contractor accidentally disturb or destroy any such monuments or bench marks, he shall immediately notify the agency having jurisdiction. Any monuments disturbed or destroyed during the work without being referenced shall be replaced to the satisfaction of the Owner thereof or public agency having jurisdiction therefor, at the cost and expense of the Contractor.
- D. Traffic
 - (1) For the protection of traffic in public streets and ways, the Contractor shall provide, place, and maintain all necessary barricades, traffic cones, warning signs, lights, and other safety devices in accordance with the requirements of the State of California Department of Transportation.
 - (2) Prior to the start of construction, the Contractor shall notify the Police, Fire, Traffic, and Engineering Departments of all jurisdictional agencies involved giving the approximate starting date, approximate completion date expected, and the name and telephone number of a responsible person who may be contacted in the event of a condition requiring immediate attention. The Contractor shall likewise notify the agencies at least 48 hours in advance of completely or partially closing any public thoroughfare or of opening any public thoroughfare which has been completely or partially closed.
 - (3) Any shifting of traffic from one lane to another, which is necessary in order to maintain the required number of lanes, shall be directed in such manner that traffic may move smoothly across the work without any sudden changes. The minimum radius allowed for transitioning traffic from one lane to another shall be 250 feet.
 - (4) The Contractor may post "No Parking" signs within the construction areas,

provided he has obtained permission therefor from the local agency having jurisdiction to regulate such parking.

- (5) Traffic lanes mentioned herein and not otherwise specified shall have a minimum width of 12 feet. Furthermore, all traffic lanes shall have 2 feet clearance from curbs and other obstructions, and 5 feet clearance from any excavation.
- (6) Ingress to and egress from private driveways shall be maintained and, unless otherwise specified herein, intersecting highways and streets shall be kept open at all times.
- (7) The Contractor shall protect and maintain in operation all street lighting systems and traffic signal control pads, and, shall these or other similar facilities be damaged in any way during construction, the Contractor shall repair or replace these facilities to the satisfaction of the agency having jurisdiction.
- (8) Temporary striping of pavement shall be removed by the Contractor by wet sandblasting at his expense.

E. Fire Prevention and Control

- (1) General. The Contractor, his employees, subcontractors and their employees, shall obey all Federal, State and local fire laws and ordinances. The Contractor shall abide by any requirements to clear away weeds, shrubs or other growth or debris, as may be made by the County and/or State fire prevention authorities, resulting from the Owner's pipeline construction. The Contractor shall furnish to the Engineer a current directory of available personnel and a list of project construction equipment suitable for fire-fighting purposes.
- (2) Spark Arrestors. The exhaust pipes of all internal combustion engines used in the work shall be equipped with approved spark arrestors.
- (3) Fire Suppression. If fire occurs in the construction area along the line of the work, the entire project crew shall immediately be alerted and, to the extent it can safely do so, the Contractor shall dispatch sufficient men and equipment, up to the total manpower and equipment available for fire-fighting on the project, to suppress said fire and prevent it from spreading.
- (4) Hydrants and Valves. Free access shall be maintained at all times to fire hydrants and water and gas valves.

F. Utility Companies and Agencies

- (1) Southern California Edison and The Gas Company. The Contractor's

attention is directed to overhead power and underground gas distribution lines within the project area. The Contractor shall notify proper representatives from each of these agencies not less than 72 hours prior to starting any work in the vicinity of said facilities.

- (2) General Telephone & Electric. The Contractor's attention is directed to the facilities owned by Verizon (formerly Frontier) and located in the vicinity of the proposed work. The Contractor shall notify Verizon and SCE not less than 72 hours prior to excavation in the vicinity of said facilities.

6. Pre-construction Verification of Underground Utilities

The Engineer has, by a search of known records, endeavored to locate and indicate on the Drawings all utilities which exist within the limits of the work. However, the accuracy or completeness of the utilities indicated on the Drawings is not guaranteed. Service connections to adjacent properties may or may not be shown on the drawings. It shall be the responsibility of the Contractor to determine the location of all utilities and their service connections which may interfere with construction. Within ten (10) calendar days of award of Contract, the Contractor shall submit to the Engineer a plan showing the Contractor's proposed method and location of field verification (potholing) of utilities as deemed necessary by the Contractor. Contractor shall perform and complete field verification of utilities within 5 calendar days of approval, of the Contractor's proposed plan, by the Engineer.

Upon completion of utility verifications, Contractor shall submit all utility verification findings to the Engineer. Upon review of findings by the Engineer, revisions to the design plans may be required as directed by the Engineer. Owner will have ten (10) working days to revise the design as may be required. Contractor shall allow sufficient time in the Contractor's schedule for performance of the above work.

7. Resolution of Construction Claims

- A. In accordance with section 20104 et. Seq. of the California Public Contractor Code, this section applies to all claims of \$375,000 or less which arise between the Contractor and the Agency under this Contract for:

- (1) A time extension;
- (2) Payment of money or damages arising from work done by or on behalf of the Contractor pursuant to this CONTRACT and payment of which is not otherwise expressly provided for as the Contractor is not otherwise entitled; or
- (3) An amount the payment of which is disputed by the Agency.

- B. For any claim set out in Paragraph "A", above, the following requirements apply:

- (1) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing herein is intended to extend the time limit or supersede notice requirements otherwise provide by Contractor for the filing of claims.
- (2) For claims of less than Fifty Thousand Dollars (\$50,000), the Agency 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 Agency may have against the Contractor.

If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the Agency and the Contractor.

The Agency's written response to the claim, as further documented, shall be submitted to the Contractor within 15 days after receipt of further documentation or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater.

- (3) For claims of over Fifty Thousand Dollars (\$50,000) and less than or equal to Three Hundred Seventy-Five Thousand Dollars (\$375,000), the Agency 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 Agency may have against the Contractor.

If additional information is therefore required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the Agency and the Contractor.

The Agency's written response to the claim, as further documented, shall be submitted to 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.

- (4) If the Contractor disputes the Agency's written response, or the Agency fails to respond within the time prescribed, the Contractor may notify the Agency, in writing, either within 15 days of receipt of the Agency response or within 15 days of the Agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the Agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

- (5) 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 Contractor submits its written claim pursuant to the subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference.
- C. In accordance with Public Contracts Code Section 9204, the following procedures are established for any claims that exceed Three Hundred Seventy-Five Thousand Dollars (\$375,000):
- (a) Upon receipt of such claim pursuant to this section, the Agency will conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, the Agency and Contractor may, by mutual agreement, extend the time period provided in this subsection.
 - (b) Contractor shall furnish reasonable documentation to support the claim.
 - (c) If the Agency needs approval from its Board of Directors to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the Board of Directors does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the Agency shall have up to three days following the next duly publicly noticed meeting of the Board of Directors after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.
 - (d) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the Agency issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.
- (2) If the Contractor disputes the Agency's written response, or if the Agency fails to respond to a claim issued pursuant to this section within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the Agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- (a) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the Agency shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is

undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the Agency issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the Agency and the Contractor sharing the associated costs equally. The Agency and the Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

- (b) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.
 - (c) Unless otherwise agreed to by the Agency and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under this Section 7 to mediate after litigation has been commenced.
 - (d) This section does not preclude the Agency from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.
- (3) Failure by the Agency to respond to a claim from the Contractor within the time periods described in this subsection or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the Agency's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the Contractor.
- (4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.
- (5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against the Agency because privity of contract does not exist, the Contractor may present to the Agency a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on their own behalf or on behalf of a lower tier subcontractor, that the Contractor present a claim for

work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the Agency shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the Contractor shall notify the subcontractor in writing as to whether the Contractor presented the claim to the public entity and, if the Contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

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

- (1) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.
- (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 the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

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 attorneys' fees on appeal of the other party.

- E. The Agency shall not fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in this Contract.
- F. In any suit filed under section 9204 or 20104.4 of the California Public Contract Code the Agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

8. Digging Trenches or Excavations; Notice on Discovery of Hazardous Waste or Other Unusual Conditions; Investigations; Change Orders; Effect on Contract

If this contract involves digging trenches or other excavations that extend deeper than four

feet below the surface, the following shall apply pursuant to Public Contract Code section 7104:

The Contractor shall promptly, and before the following conditions are disturbed, notify the Agency in writing, of any:

- A. Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- B. Subsurface or latent physical conditions at the site differing from those indicated.
- C. Unknown physical conditions at the site of any unusual nature, difference materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.
- D. The Agency shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order for the procedures described in the Contract.
- E. In the event that a dispute arises between the Agency and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, the Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

9. Retention Proceeds: Withholding; Disbursement

In accordance with section 7107 of the Public Contracts Code, the following shall apply to this Contract:

- A. The retention proceeds withheld from any payment by the Agency from the original Contractor, or by the original Contractor from any subcontractor shall be subject to this paragraph 9.
- B. Within 60 days after the date of completion of the Work, the retention withheld by the Agency shall be released. In the event of a dispute between the Agency and the original Contractor, the Agency may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. For the purposes of this paragraph, "completion" means any of the following:
 - (1) The occupation, beneficial use, and enjoyment of a work of improvement,

excluding any operation only for testing, startup or commissioning, by the Agency, accompanied by cessation of labor on the work of improvement.

- (2) The acceptance by the Agency of the work of improvement.
 - (3) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 days or more, due to factors beyond the control of the Contractor.
 - (4) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 days or more, if the Agency files for record of notice of cessation or a notice of completion.
- C. Subject to subparagraph B(4), within 7 days from the time that all or any portion of the retention proceeds are received by the original Contractor, the original Contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received. However, if a retention payment received by the original Contractor is specifically designated for a particular subcontract, payment of the retention shall be made to the designated subcontractor, if the payment is consistent with the terms of the subcontract.
- D. The original Contractor may withhold from a subcontractor its portion of the retention proceeds if a bonafide dispute exists between the subcontractor and the original Contractor. The amount withheld from the retention payment shall not exceed 150 percent of the estimated value of the disputed amount.
- E. In the event that retention payments are not made within the time periods required by this section, the Agency or original Contractor shall be subject to a charge of two percent per month on the improperly withheld amount, in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to attorneys' fees and costs.
- F. Any attempted waiver of the provisions of this section shall be void as against the public policy of this state.

10. Timely Progress Payments. Interest: Payment Requests

- A. In accordance with the provisions of the Public Contract Code Section 20104.50, if the Agency fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from the Contractor, the Agency 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.
- B. Upon receipt of a payment request, the Agency shall act in accordance with both of the following:
 - (1) Each payment request shall be reviewed by the Agency as soon as

practicable after receipt for the purpose of determining that the payment request is a proper payment request.

- (2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

C. The number of days available to the Agency to make a payment without incurring interest pursuant to this paragraph shall be reduced by the number of days by which the Agency exceeds the seven-day requirement set forth above.

D. For purposes of this paragraph:

- (1) A “progress payment” includes all payments due the Contractor, except that portion of the final payment designated by the contract as retention earnings.
- (2) A payment request shall be considered properly executed if funds are available for payment of the payment request, and payment is not delayed due to an audit inquiry by the financial officer of the Agency.

11. Public Works Contracts; Assignment to Awarding Body

In accordance with Section 7103.5 of the California Public Contract Code, the Contractor and Subcontractors shall conform to the following requirements. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act [Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code], arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

12. Certified Payroll Requirements

The Contractor and all subcontractors shall comply with California Labor Code Section 1776 and all applicable Department of Industrial Relations (DIR) requirements. Certified payroll records shall be submitted electronically through the DIR’s electronic Certified Payroll Reporting (eCPR) system on a weekly basis. Each payroll record shall include a Statement of Compliance and shall be submitted within seven (7) days of the end of each payroll period. The Contractor shall be responsible for ensuring that all subcontractors submit certified payroll records in a timely manner.

Certified payroll records shall be maintained for a minimum of three (3) years and shall be made available for inspection by the Agency upon request. Failure to comply with certified payroll reporting requirements may result in withholding of progress payments and other remedies as allowed by law.

13. Substantial Completion

Substantial Completion shall mean the stage in the progress of the Work when the entire Work is sufficiently complete in accordance with the Contract Documents so that the Agency can use or operate the Work for its intended purpose. Substantial Completion may occur notwithstanding the existence of minor incomplete or corrective work that does not materially interfere with such use or operation.

The date of Substantial Completion shall be the date established by the Agency Engineer in a written Notice of Substantial Completion issued to the Contractor. Substantial Completion shall not constitute final completion, final acceptance of the Work by the Agency, or release of retention. The Maintenance and Guarantee period shall commence on the date of Substantial Completion stated in the Notice of Substantial Completion.

SECTION II GRANT REQUIREMENTS – STATE REQUIREMENTS

1. Additional Insured

- A. Certificates and required endorsements shall be provided to and approved by the Agency prior to commencement of work and as a condition precedent to issuance of the Notice to Proceed.
- B. SWRCB (Agreement No. D2102065) – Additional Insured and Certificate Copies.
For any policy of insurance concerning or covering construction of the Project, Contractor shall cause, and shall require all contractors and subcontractors of any tier to cause, a certificate of insurance to be issued showing the State Water Resources Control Board, its officers, agents, employees, and servants as additional insured. Contractor shall provide the Agency copies of all such certificates (and additional insured endorsements, if requested) sufficiently in advance to allow Agency transmittal to the State Water Resources Control Board Division of Financial Assistance, and in all cases prior to the commencement of construction.
- C. DWR / IRWM (Grant Agreement No. 4600014979 via Mojave Water Agency) Additional Insured and Certificate Copies. For any policy of insurance concerning or covering construction of the Project, Contractor shall cause, and shall require all contractors and subcontractors of any tier to cause, a certificate of insurance to be issued showing the Mojave Water Agency, its officers, directors, employees, agents and its respective heirs, legal representatives, successors and assigns, from any and all claims, demands, liabilities, expenses (including reasonable attorney's fees and disbursements, court costs, judgement, settlements and fines) arising out of, resulting from, or in connection with the performance of this work.

2. Pipes Wash Biological Resources and Jurisdictional Areas

The following requirements are based on the California Department of Fish and Wildlife Streambed Alteration Agreement No. EPIMS-SBR-64495-R6, *Pipes Wash and Associated Streams*, included by reference in Attachment D. Prior to mobilization or commencement of any Project-related activity at the site, the Contractor shall attend a preconstruction biological coordination meeting with BDVWA and the Project Biologist to review the Contractor's responsibilities and applicable permit requirements. The Contractor shall not begin work until this meeting has been completed and authorization to proceed has been provided by BDVWA. The principal biological compliance and monitoring requirements affecting the Contractor's scheduling and construction activities are summarized below.

A. BIO-1 General Biological Compliance and Monitoring

- (1) The following measures are based on the Project's Biological Resources Assessment and Jurisdictional Delineation for improvements within Pipes Wash.
- (2) The Owner will furnish the CDFW-approved Designated Biologist(s), permit-required biological surveys and monitoring, and agency coordination, unless noted otherwise in the Contract Documents. Contractor shall provide access, cooperate with the Designated Biologist(s), and comply with directions applicable to

Contractor's work.

- (3) Contractor shall provide at least seven (7) calendar days' notice to Owner/Engineer before initial ground disturbance in sensitive areas and at least 48 hours' notice before re-initiating such work after a shutdown or relocation. Contractor shall not enter a sensitive area until Owner/Engineer confirms biological clearance.
- (4) If the Designated Biologist(s) directs that work stop to avoid take or comply with permit, CEQA/MMRP, or other environmental requirements, Contractor shall stop work in the affected area immediately and shall not resume until Owner/Engineer confirms biological clearance and receipt of any required agency approval.
- (5) The final CDFW Streambed Alteration Agreement EPIMS-SBR-64495-R6, including amendments, is incorporated herein by reference. Contractor shall keep a copy available at the Project site and comply with all provisions applicable to Contractor's work.
- (6) Before accessing the work area, all personnel shall complete a project-specific Worker Environmental Awareness Program conducted by the Designated Biologist(s). Training shall address special-status wildlife and plants, western Joshua trees, work limits, invasive species, trash control, and encounter and reporting procedures. Contractor shall maintain sign-in records and ensure new personnel are trained before entry.
- (7) The Owner's Designated Biologist(s) will perform permit-required surveys and pre-activity sweeps, including surveys for special-status plants and Le Conte's thrasher where applicable. Contractor shall not enter uncleared areas and shall immediately report wildlife or sensitive-plant observations, trapped wildlife, spills, disturbance outside approved limits, and potential permit violations to Owner/Engineer and the Designated Biologist(s).

B. BIO-2 Desert Tortoise – Preconstruction Surveys / Avoidance and Worker Awareness

- (1) All Contractor personnel, including subcontractors, inspectors, equipment operators, and delivery personnel who will access desert tortoise habitat shall complete the project-specific Worker Environmental Awareness Program required under BIO-1 before performing work.
- (2) Contractor shall enforce a maximum vehicle speed of fifteen (15) miles per hour for all on-road and off-road Project-related vehicles within the work area and on access routes within desert tortoise habitat, unless a lower speed is posted or directed by the Owner/Engineer.
- (3) The CDFW-approved Designated Biologist(s) shall conduct a protocol-level presence/absence survey within the Project area and a 50-foot buffer, or any greater buffer required by the Contract Documents, no more than 48 hours before Project activities and at other times required by applicable permits, the CEQA/MMRP, or Owner/Engineer.
- (4) Surveys shall be performed in accordance with USFWS 2019 desert tortoise survey methodology, providing 100 percent visual coverage using perpendicular transects.
- (5) Results and Actions.
 - a. If absence is confirmed, the Designated Biologist(s) shall implement measures to minimize the potential for desert tortoise to enter the work area during active work.
 - b. If a desert tortoise, active burrow, or sign is detected, Contractor shall stop work in the affected area and fully avoid impacts unless and until

Owner/Engineer confirms biological clearance and receipt of any required CDFW authorization.

C. BIO-3 Burrowing Owl – Focused and Preconstruction Surveys

- (1) A CDFW-approved Designated Biologist(s) shall conduct a western burrowing owl habitat assessment at least thirty (30) calendar days before Project activities. If suitable habitat, burrows, or sign are identified, focused surveys shall be completed consistent with the CDFW Staff Report on Burrowing Owl Mitigation (2012 or most current).
- (2) The Designated Biologist(s) shall inspect suitable burrows within three (3) days before Project initiation, including a final inspection within 24 hours before ground disturbance. Alternative focused-survey timing shall be subject to CDFW approval where the standard survey schedule is infeasible.
- (3) If a burrowing owl or evidence of occupancy is detected, Contractor shall stop work and fully avoid the occupied habitat. Contractor shall implement buffers and measures directed by the Designated Biologist(s) and Owner/Engineer. Exclusion or closure of occupied burrows shall not occur unless specifically authorized by CDFW and directed by Owner/Engineer.

D. BIO-4 American Badger – Burrow Surveys, Den Avoidance, and Inactive Den Procedures

- (1) Within 14 to 21 days before surface-disturbing activities, the CDFW-approved Designated Biologist(s) shall survey for American badger dens and sign within the Project site and a 50-foot buffer, subject to property-access limitations.
- (2) If an active or potentially occupied den is identified:
 - a. Active natal dens shall not be disturbed, and a minimum 500-foot no-disturbance buffer shall be maintained during the breeding season unless CDFW approves a reduced buffer.
 - b. Only confirmed inactive and unoccupied dens may be excavated. If the entire den cannot be visually inspected, the Designated Biologist(s) shall monitor the den for three consecutive nights using infrared cameras before authorizing excavation and backfill.

- (3) Contractor shall not block, excavate, or passively relocate an occupied den unless separately authorized by CDFW. Authorized excavation shall be performed cautiously under the direction of the Designated Biologist(s).

E. BIO-5 Desert Kit Fox – Pre-Activity Sweeps and Burrow Avoidance

- (1) Within 14 to 21 days before surface-disturbing activities, the Designated Biologist(s) shall survey for desert kit fox dens and sign within the Project site and a 50-foot buffer, subject to property-access limitations. The Designated Biologist(s) shall also conduct a pre-activity sweep of the work area, access routes, and an appropriate surrounding buffer within two (2) hours before initiating Project activities each day.
- (2) If a kit fox den or potential den is identified, work shall not proceed in the affected area until avoidance measures are established. Active natal dens shall receive a minimum 500-foot no-disturbance buffer unless CDFW approves a reduction. Contractor shall not capture, handle, block, or excavate wildlife or dens except as directed by the Designated Biologist(s) and authorized by CDFW.

F. BIO-6 Nesting Birds – Surveys, Buffers, and Monitoring

- (1) Nesting bird surveys shall be performed by the CDFW-approved Designated Biologist(s) no more than three (3) days before vegetation removal or ground

disturbance, regardless of time of year.

(2) Buffers (Minimums).

a. Passerines: minimum 300 feet

b. Raptors: minimum 500 feet

Buffers may be adjusted only as allowed by the applicable permit and CEQA/MMRP requirements and as directed by the Designated Biologist(s) and Owner/Engineer.

(3) Active nests and buffer adequacy shall be monitored daily until fledging or nest failure is confirmed. The biologist may stop work if nesting pairs show disturbance.

(4) Contractor shall secure open pipes, equipment, and construction materials as directed to discourage nesting. Deterrent materials shall not create an entanglement hazard. Contractor shall immediately report new nests or nesting behavior to the Designated Biologist(s).

G. BIO-7 Jurisdictional Area Limits and Permit Conditions (Pipes Wash)

(1) Work within the Pipes Wash jurisdictional area shall be performed only within the limits shown on the Plans, marked in the field, and allowed by permit conditions. Contractor shall use existing access routes and shall not conduct cross-country travel or disturb habitat outside approved limits.

(2) Contractor shall comply with conditions of all Owner-obtained permits and authorizations applicable to work in Pipes Wash, including the final CDFW Streambed Alteration Agreement. Contractor shall not place fill, spoil, equipment, staging, or stockpiles outside approved limits.

(3) Work within the streambed shall occur only during dry weather and no-flow conditions. Contractor shall cease work and install required erosion controls before anticipated precipitation. No streambed work shall occur within 24 hours after precipitation that results in stream flow.

(4) Open trenches, excavations, and holes shall be inspected at least twice daily and immediately before backfill. An escape ramp no steeper than 30 degrees shall be provided at each end of open trenches. Open pipes and similar materials shall be inspected for wildlife before movement, burial, or capping.

(5) Welded-weave and monofilament erosion-control netting are prohibited. Fiber rolls and wattles shall be certified weed-free and wildlife-safe. Fueling and equipment maintenance shall occur outside Fish and Game Code section 1602 resources; decontamination runoff shall be contained. Food and trash shall be stored in animal-resistant, closable containers, and dust control shall not create standing water or puddles.

(6) Contractor shall segregate and replace the upper approximately six (6) inches of topsoil where directed, restore preconstruction grades and contours, remove temporary materials and debris, replace natural materials or refugia where feasible, and reseed disturbed areas when required by the approved Restoration and Revegetation Plan.

(7) Contractor shall provide photographs, dates, quantities, and other construction information reasonably requested by Owner/Engineer for permit compliance and final reporting.

3. Western Joshua Tree Incidental Take Permit Conditions

Western Joshua Tree Conservation Act Incidental Take Permit No. 1927-ITP-2026-009-06, including its attachments, census information, Conditions of Approval, and subsequent amendments, is incorporated herein by reference. Contractor shall comply with all provisions applicable to Contractor's Work.

A. Designated Biologist(s).

The Agency shall submit to CDFW in writing the name, qualifications, business address, and contact information of the Designated Biologist(s) using the Biologist Resume Form (~~Attachment 7~~) (Attachment 3) or in another format containing the same information ~~at least 5 days~~ at least 30 days before starting Project Activities. The Agency shall ensure that the Designated Biologist(s) is/are knowledgeable and experienced in the biology, natural history, collecting, and handling of ~~Wester Joshua Trees~~ Western Joshua Trees (WJT). The Designated Biologist(s) shall be responsible for monitoring Project Activities to help avoid and minimize impacts to, and the taking of, ~~WJT a Western Joshua Tree~~ (WJT), including any new stems or trunks arising from the ground that were not identified in the census, as well as to minimize disturbance of WJT habitat, to the maximum extent possible. The Agency shall obtain CDFW approval of the Designated Biologist(s) in writing before starting Project Activities and shall also obtain approval in advance, in writing, if the Designated Biologist(s) must be substituted.

B. Designated Biologist Authority.

To ensure compliance with all applicable permit Conditions of Approval, the Designated Biologist(s) shall immediately stop any activity that does not comply with the Permit and/or order any reasonable measure to avoid the unauthorized take of WJT. The Agency shall provide unfettered access to the Project Site and otherwise facilitate the Designated Biologist(s) in the performance of his/her/their duties. If the Designated Biologist(s) is/are unable to comply with the Permit, then the Designated Biologist shall notify the Designated Representative who shall notify CDFW immediately. The Agency shall not enter into any agreement or contract of any kind, including but not limited to a non-disclosure agreement or confidentiality agreement, with its contractors and/or the Designated Biologist(s) that prohibit or impede open communication with CDFW, including regarding the results of any surveys, reports, studies, take of WJT, or violation(s) of this Permit or the Fish and Game Code.

C. Compliance Monitoring.

- (1) The Designated Biologist(s) shall be on-site weekly when ~~trenching and paving~~ ~~Project Activities occur~~ trenching, grading, and ground disturbance activities occur. The Designated Biologist shall conduct compliance inspections at least ~~bi-weekly~~ ~~during periods of inactivity until trenching and paving activities are completed~~ bi-monthly during periods of inactivity and after trenching, grading, and ground disturbing activities are completed until completion of the Project. The Designated Biologist(s) shall conduct compliance inspections to:
 - (2) Minimize take of WJT;
 - (3) Identify new WJT stems or trunks arising from the ground within the Project Site;
 - (4) Prevent unlawful take of WJT;
 - (5) Check for compliance with all measures of this Permit;
 - (6) Check all buffers; and ensure that signs, stakes, and fencing are intact, and that Project Activities are only occurring in the Project Site. The Designated Biologist(s)

shall prepare ~~weekly written observation and inspection records~~ daily written observation and inspection records summarizing oversight activities and compliance inspections for days onsite.

D. Education Program.

The Agency shall conduct an education program for all persons employed or otherwise working on the Project Site before performing any Project Activities. The program shall consist of a presentation from the Designated Biologist(s) that includes a discussion of the biology of WJT, information about the distribution and habitat needs of WJT, sensitivity of WJT to human activities, and WJT's status pursuant to the WJTCA, including legal protection, recovery efforts, penalties for violations, and Project-specific protective measures described in this Permit. The Agency shall prepare and distribute wallet-sized cards, fact sheet handout, or digital document containing this information that workers shall carry on the Project Site. The Agency shall provide interpretation for non-English speaking workers. The same Education Program shall be provided to any new workers before they are authorized to perform work in the Project Site. Upon completion of the program, employees shall sign a form stating they attended the presentation and understand all protection measures. This training shall be repeated at least once annually while Project Activities are occurring for long-term and/or permanent employees that will be conducting work on the Project Site. This education program can be combined with and/or incorporated into other processes, such as the Worker Environmental Awareness Program for the Project.

E. Construction Monitoring Documentation.

The Designated Representative shall maintain construction-monitoring documentation on-site in either hard copy or digital format throughout the construction period, which shall include any Permit compliance inspection records or notes, a copy of ~~this any~~ Permit with attachments, including the census, and a list of signatures of all personnel who have successfully completed the education program as specified in ~~Condition of Approval 4.4~~ Condition of Approval 5.4. ~~Permittee~~ The Agency shall ensure a copy of the construction monitoring documentation is available for review at the Project Site or as otherwise requested by CDFW.

F. Additional Contractor's Environmental Management Practices

- (1) Clearing of the Project area, including blading of new access or work areas, shall be minimized to the extent possible. Disturbance to shrubs shall be avoided where feasible. If shrubs cannot be avoided during equipment operation or vehicle use, they shall be crushed rather than excavated or removed, where feasible.
- (2) All construction workers shall participate in a pre-construction desert tortoise awareness training.
- (3) Project features that may trap or entangle desert tortoises (e.g., open trenches, pits, open pipes) shall be covered at the end of each work day or modified to prevent entrapment through installation of escape ramps or by sloping ends at a 3:1 ratio.
- (4) Upon completion of the Project, trenches, pits, and other features that could entrap or entangle tortoises shall be filled, covered, or otherwise modified to eliminate hazards.
- (5) Unleashed dogs shall be prohibited within Project areas.

- (6) Temporary fencing (e.g., chicken wire, snow fencing, chain link, or similar materials) shall be installed in designated areas, as directed by the Project Biologist, to reduce encounters with tortoises.
- (7) All vehicles within the construction zone shall not exceed 15 miles per hour on unpaved roads.
- (8) Project personnel shall access the site using existing routes. Contractor shall restrict vehicle traffic to established roads, staging areas, and parking areas. If new access routes are required outside the Project Site, Contractor shall obtain written approval from the Designated Representative and coordinate with CDFW prior to construction.
- (9) Contractor shall confine all parking, storage, laydown, and equipment areas to previously disturbed areas to the maximum extent practicable. Fill materials shall only be placed in designated staging areas. Contractor shall not use or cross habitat outside the Project Site limits.
- (10) If dead and/or removed WJTs are stockpiled on-site, Contractor shall not place such stockpiles within 25 feet of any WJT designated for avoidance or protection in place.
- (11) If Contractor encounters any WJT stem, trunk, sprout, or resprout not identified in the approved census, Contractor shall immediately stop work in the affected area and notify Owner/Engineer and the Designated Biologist(s). Contractor shall not remove, trim, relocate, disturb, or conduct Project Activities within 25 feet of such WJT until Owner/Engineer provides authorization to resume work following any required CDFW authorization.
- (12) Contractor shall prevent raw cement/concrete, wash water, asphalt, paint, petroleum products, hazardous waste, or other hazardous substances from contaminating soils within 25 feet of WJT. Any such materials placed within this area shall be immediately removed and properly disposed of off-site.
- (13) In the event of a spill or leak of hazardous substances within 25 feet of WJT, Contractor shall immediately stop work and arrange for cleanup in accordance with applicable regulations. ~~CDFW shall be notified immediately.~~ Contractor shall immediately notify Owner/Engineer and the Designated Biologist(s). The Agency shall provide required notification to CDFW. Spill response equipment shall be maintained on-site at all times.
- (14) Contractor shall immediately notify Owner/Engineer and the Designated Biologist(s) of any actual or suspected unauthorized death, damage, injury, removal, trimming, or other take of a WJT. Contractor shall provide photographs, location, date and time, and other information reasonably requested for permit reporting, and shall not further disturb the affected WJT unless directed by Owner/Engineer or the Designated Biologist(s).
- (15) Construction equipment and vehicles shall be inspected and maintained daily to prevent leaks of fuel, lubricants, solvents, or other fluids.
- (16) Upon completion of Project activities, Contractor shall remove and properly dispose of all hazardous waste, temporary materials, and construction debris, including but not limited to equipment parts, packaging, cables, fencing, containers, and similar materials.
- (17) Prior to commencing work in each area, Contractor shall clearly delineate Project boundaries using fencing, stakes, flags, or traffic control devices. Fencing shall be

installed with a minimum 6-inch clearance above grade to allow wildlife passage. Rodent barrier fencing is prohibited. All activities shall be confined within delineated limits.

- (18) During storm events, trenching activities shall not occur within 10 feet of avoided WJT. Trenching shall only occur during dry weather conditions (less than 40 percent chance of rain).
- (19) Within 12 hours prior to forecasted rain (40 percent or greater probability), or immediately upon onset of unpredicted rain:
 - a. Cease all trenching activities.
 - b. Install all required erosion control measures.
 - c. Remove or relocate equipment and fueling materials to prevent contact with runoff.
- (20) Contractor shall monitor the National Weather Service 72-hour forecast for the Project Site. Weather forecasts shall be documented and provided upon request.
- (21) Personnel performing activities with potential to ignite fires (e.g., welding, grinding, equipment operation) shall have appropriate fire prevention and suppression equipment readily available, including fire extinguishers, water backpacks, shovels, welding shields, and fire-resistant mats.
- (22) Contractor shall provide reasonable Project Site access to CDFW personnel and shall cooperate with CDFW inspections and compliance verification activities conducted pursuant to the ITP.

4. Environmental Best Management Practices

A. BMP-1 - Best Management Practices for Construction Air Quality

- (1) The contractor will use construction equipment that minimizes air emissions to the extent feasible such that overall fleet emissions are equal to or less than emissions compared to the most recent CARB fleet average. Acceptable options for reducing emissions include the use of late-model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available.

B. BMP-2 - Best Management Practices for Construction Emissions, Including Fugitive Dust Emissions

- (1) The implementation of construction BMPs to limit construction emissions, particularly fugitive dust emissions, includes the following actions:
 - a. All exposed areas of bare soil (e.g., parking areas, staging areas, soil piles) shall be watered twice per day to minimize fugitive dust emissions.
 - b. All haul trucks transporting soil, sand, or other loose material off-site shall be covered or maintain at least two feet of free board space. Any haul trucks traveling along freeways or major roadways shall be covered.
 - c. All visible mud or dirt track-out onto adjacent paved public roads shall be removed using wet power-vacuum street sweepers at least once per day. The use of dry power sweeping shall be prohibited.
 - d. All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).

- e. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13 CCR § 2485). Clear signage regarding this requirement shall be provided for construction workers at all access points.
- f. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator and determined to be running in proper condition before it is operated.

C. BMP-3 - Best Management Practices for Sediment Control

- (1) As applicable to the Work, Contractor will implement site specific BMPs to control sediments during construction activities, which may include but not be limited to:
 - a. Install, implement, and maintain BMPs consistent with the California Storm Water Quality Association Best Management Practice Handbook (California Storm Water Quality Association (CASQA) 2015) or equivalent to minimize the discharge of pollutants, consistent with the requirements of the National Pollutant Discharge Elimination System (NPDES) General Construction Storm Water Permit 2009-0009-DWQ, as amended by 2010-0014-DWQ & 2012-0006-DWQ applicable to the State of California.
 - b. Implement practices to reduce erosion of exposed soil, including stabilization of soil stockpiles, watering for dust control, establishment of perimeter silt fences, and/or placement of fiber rolls.
 - c. Minimize soil disturbance area.
 - d. Implement other practices to maintain water quality, including use of silt fences, stabilized construction entrances, and storm-drain inlet protection. Where feasible, limit construction to dry periods. Revegetate or repave disturbed areas.
 - e. BMPs will be regularly monitored for effectiveness using appropriate methods (visual observation, sampling) at appropriate intervals (e.g., daily or weekly) and corrected immediately if determined to not be effective.

D. BMP-4 - Best Management Practices for Hazardous Materials

- (1) As applicable to the Work, Contractor will implement site-specific hazardous materials BMPs during construction activities, which may include but not be limited to:
 - a. Develop (before initiation of construction activities) and implement (during construction and operational activities) a spill prevention and emergency response plan to handle potential spills of fuel or other pollutants.
 - b. Install, implement, and maintain BMPs consistent with the California Storm Water Quality Association Best Management Practice Handbook

(California Storm Water Quality Association (CASQA) 2015) or equivalent to minimize the discharge of pollutants, consistent with the requirements of the National Pollutant Discharge Elimination System (NPDES) General Construction Storm Water Permit 2009-0009-DWQ, as amended by 2010-0014-DWQ & 2012-0006-DWQ applicable to the State of California.

- c. Implement practices to minimize the contact of construction materials, equipment, and maintenance supplies with stormwater.
- d. Limit fueling and other activities involving hazardous materials to designated areas only; provide drip pans under equipment and conduct daily checks of vehicle condition.
- e. Require the proper disposal of trash and any other construction-related waste.
- f. Ensure that any dewatered groundwater is not polluted prior to discharging into the local stormwater infrastructure or use; if dewatered groundwater becomes polluted, dispose of it off-site at an appropriate facility.

SECTION III MEASUREMENT AND PAYMENT

1. General

Unless otherwise specified, quantities of work shall be determined from measurements or dimensions in horizontal planes. Unless otherwise provided herein, or in the Special Provisions, volumetric quantities shall be the product of the mean area of vertical or horizontal sections and the intervening horizontal or vertical dimension. All measurements for quantities of work performed will be made by the Owner's Representative.

The quantities listed in the bid schedule will not govern final payment. Payment to the Contractor shall be made only for the actual quantities of contract items constructed to the approval of the Owner's Representative and in accordance with the Plans and Specifications.

Payment will not be made for any wasted or disposed material. This shall include any and all items rejected by the Owner's Representative, loaded or unloaded from vehicles, and material rejected either before or after placement. No compensation will be made for all work outside the stated job site limits or for disposing of rejected or unused material. Whenever any portion of the work is performed by the Owner, or any materials furnished by the Owner, at the Contractor's request, the cost thereof shall be charged against the Contractor, and may be deducted from any amount due to becoming due from the Owner. Shall an emergency arise whereas, after attempting to contact the Contractor, the Owner must take steps to avoid impending injury, death, or property damage, the cost of said steps may be deducted from any amount due or becoming due from the Owner. No such Owner

action shall relieve the Contractor of any liability.

Payment shall not relieve the Contractor from his obligation under the contract; nor shall such payment be construed to be acceptance of any of the Work. Responsibility of ownership shall remain with the Contractor who shall be obligated to store, protect, repair, replace, rebuild or otherwise restore any of his work damaged in whole or in part, whether or not payment has been made, subject to the guarantee period in effect upon final acceptance by the Owner.

- A. Progress Payments. The Owner's Representative will, after award of contract, establish a closure date for the purpose of making progress payment. The Contractor may request, in writing that such monthly closure date be changed, at which time the Owner's Representative may approve such request provided that it is compatible with the Owner's payment procedure. The Owner's Representative will make an approximate measurement of the work performed to the closure date of each month, and as a basis for making monthly payments, estimate the amount due the Contractor for work performed during said period of time. This monthly payment due the Contractor will be based on the contract unit prices or as provided in the Contract Documents. The amount of each monthly progress payment will equal ninety-five (95) percent of the following summation: One hundred (100) percent of the work performed plus fifty (50) percent of the costs of the accepted materials delivered, and unloaded from their transport vehicles, to the job site, during the monthly closure period. Said value will be based on certified copies of paid invoices delivered by the Contractor to the Owner's Representative.
- B. Breakdown of Contract Price. Prior to commencement of the work, if requested by the Owner's Representative, the Contractor shall submit a detailed price breakdown of any or all of his bid items for this work. Such price breakdown shall include quantities, unit prices, and other information requested in sufficient detail to enable the Owner's Representative to make accurate monthly progress estimates.
- C. Overtime Work. The Contractor shall receive no additional compensation for overtime work even though such overtime work may be required under emergency conditions and may be ordered by the Owner's Representative in writing. Extra payment for overtime work may be paid if it falls under the extra work section and is specifically called for as overtime work, and then payment shall be to the extent as overtime work of a similar nature in the same locality.
- D. Progress Schedule. Within 30 days after award of the Contract, the Contractor shall submit a progress schedule showing the order in which he proposes to carry on the Work and the dates when the various parts are to be begun and completed. The progress schedules shall be subject to the approval of the Owner's Representative.
- E. Final Acceptance and Payment.

When the Owner's Representative is of the opinion that the Contractor has

completely performed all work required Under the Contract, he will submit to the Contractor a draft of the final estimate. The Contractor will be expected to submit his written approval of said final estimate within five calendar days, or in the event of a disagreement, he shall file a written statement for all claims which he intends to present, also within said period. Upon receipt of the Contractor's written approval of the final estimate, the Owner's Representative will certify physical completion of the Contractor work to the Owner and will recommend acceptance of the work. Within sixty (60) days after completion of the Work, as defined by Public Contract Code Section 7107, the Owner will pay to the Contractor the amount remaining after all deductions permitted by the Contract Documents and applicable law are made.

As required by the California Code of Civil Procedure, and within 10 calendar days after date of acceptance of the work by the Owner, the Owner will file, in the County Recorder's Office, a Notice of Completion of the work.

- F. Final Payment Terminates Liability of Owner. The acceptance by the Contractor of the final payment made under the terms of the Contract shall operate as, and shall be, a release to the Owner and its agents from all Claims of and/or liability to the Contractor for anything done or furnished for, or in relation to, the Work or for any act or neglect of the Owner or any person related to or affecting the Work, except for claims previously made in writing and identified as disputed by the Contractor at the time of the Contractor's request for final payment.
- H. Contractor shall submit each Application for Payment on EJCDC C-620 (Contractor's Application for Payment), as modified for this Project, together with and updated schedule of values. Applications not submitted on the required form may be returned without processing. An EJCDC C-620 template is provided in Exhibit A.

EXHIBIT A – EJCDC C-620 Pay Request Form

Contractor's Application for Payment No.

	Application Period:	Application Date:
To (Owner): BDVWA	From (Contractor):	Via (Construction Manager):
Project: Water Systems Improvements and Consolidation Projects	Contract:	
Owner's Contract No.:	Contractor's Project No.:	Engineer's Project No.:

Application For Payment Change Order Summary

Approved Change Orders				
Number	Additions	Deductions		
			1. ORIGINAL CONTRACT PRICE.....	
			2. Net change by Change Orders.....	\$ -
			3. Current Contract Price (Line 1 ± 2).....	\$ -
			4. TOTAL COMPLETED AND STORED TO DATE	
			5. RETAINAGE:	
			a. 5% X Work Completed.....	\$ -
			b. 5% X Stored Material.....	\$ -
			c. Total Retainage (Line 5a + Line 5b).....	\$ -
			6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5c).....	\$ -
			7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application).....	\$ -
			8. AMOUNT DUE THIS APPLICATION.....	\$ -
			9. BALANCE TO FINISH, PLUS RETAINAGE	
			(Column G on Progress Estimate + Line 5 above).....	\$ -
TOTALS	\$0.00	\$0.00		
NET CHANGE BY CHANGE ORDERS	\$0.00			

Contractor's Certification

The undersigned Contractor certifies that to the best of its knowledge: (1) all previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to Owner indemnifying Owner against any such Liens, security interest or encumbrances); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

By:	Date:
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Payment of:	\$	
		(Line 8 or other - attach explanation of the other amount)
is recommended by:		
	Inspector	(Date)
Payment of:	\$	
		(Line 8 or other - attach explanation of the other amount)
is recommended by:		
	Engineer	(Date)
is approved by:		
	Owner	(Date)
Approved by:		
	Funding Agency (if applicable)	(Date)