

GENERAL CONDITIONS

**Section F - Labor &
Construction**

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GENERAL CONDITIONS

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GENERAL CONDITIONS
SECTION F - LABOR & CONSTRUCTION

GENERAL CONDITIONS

F-01. DEFINITIONS

- A. 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 they shall have the meanings here given:
- B. The word DISTRICT and OWNER shall mean the Eastern Municipal Water District represented by the General Manager or his designee. All references to District and OWNER shall include Eastern Municipal Water District, the Board of Directors and each member of the Board, the officers and agents of the District, and the District's consultants.
- C. The words BOARD OF DIRECTORS or BOARD shall mean the Board of Directors of the Eastern Municipal Water District.
- D. The word AGENT or ENGINEER shall mean one who represents the District in dealings with third persons and acts on behalf and subject to the control of the District.
- E. The word CONSULTANT shall mean a consulting firm rendering services to the District under contract.
- F. The word CONTRACTOR or PRIME CONTRACTOR shall mean a firm, duly licensed as a contractor by the State of California, entering into contract with the District for the performance of work required by these specifications, and the legal representatives of said firm, or the agent appointed to act for said firm in the performance of the work. Said firm is referred to throughout the contract documents as if of the singular number and masculine gender.
- G. The word SUBCONTRACTOR shall mean a contractor who will perform work or labor or render service to the prime contractor or a contractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications.
- H. The word INSPECTOR shall mean a person who observes the work assigned for conformance with the approved design plans and specifications.

- I. The word CONSTRUCTION ADMINISTRATOR shall mean a person who administers construction project contracts, researches and plans for a variety of capital construction, and maintenance/improvement programs, and performs related duties.
- J. The word WORK shall mean that which is proposed to be constructed or done under the contract, including the furnishing of all labor, materials, equipment, and services.
- K. Whenever in the specifications or upon the PLANS the words DIRECTED, REQUIRED, PERMITTED, ORDERED, DESIGNATED, PRESCRIBED, or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation, or prescription of the District is intended, and similarly the words APPROVED, ACCEPTABLE, SATISFACTORY, or words of like import shall mean approved or acceptable to, or satisfactory to the District, unless otherwise expressly stated.
- L. EXTRA WORK shall mean additions in the work being performed when the District determines, in writing, that it is not covered by contract unit prices or stipulated unit prices.
- M. FORCE ACCOUNT shall mean work conducted by the District, as opposed to a third party. Said work is performed by employees or other agents of the District.
- N. The word PLAN(s) shall mean DRAWING(s) and STANDARD DETAIL(s).
- O. The word SPECIFICATION(s) shall mean TECHNICAL SPECIFICATION(s), PRE-NEGOTIATED SCOPES OF WORK, SPECIAL PROVISIONS, DETAILED PROVISIONS and/or GENERAL CONDITIONS and related Contract Documents.

F-02. CONTRACT DOCUMENTS ; GOVERNING LAW ; JURISDICTION ; VENUE

- A. Contract Documents. The Notice Inviting Bids, the Instructions to Bidders, the Proposal, the Notice-of-Acceptance-of-Proposal, Addenda, the Specifications, and the Plans, together with the Agreement, constitute THE CONTRACT, and what is called for in any one shall be as binding as if called for in all. The intention of the documents is to require a complete and finished piece of work including all labor, materials, equipment, and transportation necessary for the proper execution of the work. Anything shown in the plans and not in the specifications, or in the specifications and not in the plans, shall be performed by the Contractor as though shown in both the plans and the specifications.

B. Specification Precedence. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be as follows:

1. Special Conditions Revised by Addenda
2. Special Conditions
3. Permit Requirements
4. Addenda
5. Plans
6. Specifications
7. General Conditions

With reference to the drawings, the order of precedence shall be as follows:

1. Figures, such as coordinates or dimensions, govern over scaled dimensions
2. Detail drawings govern over general drawings
3. Addenda/Change Order drawings govern over Drawings
4. Drawings govern over standard drawings

C. Governing Law. The Contract, all Contract Documents, and all Work performed hereunder shall be governed by and interpreted in accordance with the laws of the State of California, excluding any choice of law provisions. Notwithstanding any other provisions contained in any other documents, this paragraph shall take precedence over any such documents and may not be modified, altered, or changed in any manner whatsoever except by a written instrument duly executed by the District which refers specifically to this paragraph.

D. Jurisdiction; Venue. Any action taken to enforce this Contract shall be maintained in the Superior Court of Riverside County, California. The parties expressly consent to the jurisdiction of said court and agree that said court shall be the proper venue for any such action. Notwithstanding any other provisions contained in any other documents, this paragraph shall take precedence over any such documents and may not be modified, altered, or changed in any manner whatsoever except by a written instrument duly executed by the District which refers specifically to this paragraph.

INSURANCE & BONDS

F-03. CONTRACT SECURITY

The Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract price as security for the faithful performance of this contract. A payment bond shall be furnished in an amount not less than one hundred percent (100%) of the contract price as security for the payment of all persons performing labor and/or furnishing materials or other supplies under this contract. **All bonds shall be executed by admitted surety insurers, as defined in Code of Civil Procedure section 995.120.**

Pursuant to Section 995.660(a) of the Code of Civil Procedure, the Contractor shall submit the following documents with the performance and payment bonds:

- A. The original, or a certified copy of the unrevoked appointment, power of attorney, bylaws, or other instrument entitling or authorizing the person who executed the bond to do so;
- B. A certified copy of the certificate of authority of the insurer issued by the State of California's Insurance Commissioner; and
- C. Copies of the insurer's most recent annual and quarterly statements filed with the Department of Insurance.

The Contractor shall take out and maintain performance and payment bonds at his sole cost and expense at all times during the life of this contract, including the entire time of the Contractor's guarantee, with surety carriers admitted to transact business in the State of California.

The following provision shall be added to and made a part of the bond agreement:

"Surety agrees to the acceptance of arbitration as to any controversy or claim affecting its obligation where agreed to by the contracting parties pursuant to Arbitration of the Contract Conditions."

F-04. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE

The Contractor shall not commence work under this Contract until he has obtained and submitted all policies of insurance (including all endorsements) acceptable to the District, nor shall he allow any subcontractor to commence work until all policies of insurance of the subcontractor have been obtained (by the Contractor), as required hereunder.

The Contractor and his subcontractors shall take out and maintain insurance, with coverage acceptable to the District, at his sole cost and expense **at all times during the life of this Contract, including the entire time of the Contractor's guarantee.**

Each such policy of insurance shall:

- A. Be issued by insurance carriers that are:
 - 1. Rated no less than A-, Class VIII or better by the A. M. Best Company
 - 2. Licensed to transact insurance business in the State of California
 - 3. Captive and Risk Retention groups are not acceptable unless rated no less than A-, VIII or better by the A. M. Best Company

4. Self Insured Retention (SIR) greater than \$10,000 is not acceptable on any policy.

Any insurance carrier, which is strategically affiliated with a parent insurance company or insurance group, must disclose the name of the parent company or group in any certificate of insurance documentation provided to the District.

Non-admitted/Surplus Lines insurance carriers (carriers not licensed in the State of California) may be acceptable to the District under certain conditions. The District reserves the right to disqualify a non-admitted insurer without cause.

Non-admitted insurance carriers providing any form of insurance coverage must be:

1. Domiciled in the United States
 2. Listed as an approved insurance carrier on the California Department of Insurance L.E.S.L.I. list
 3. Rated no less than "A-, Class VIII" or better by the A.M. Best Company
 4. Captive and Risk Retention groups are not acceptable unless rated no less than A, VIII or better by the A. M. Best Company
- B. Name and list the District, Agent(s), and other personals and entities as required and specified in the special conditions, and/or all permitters listed in Section H – Permits, as additional insured, by utilizing "CG 2010 11/85" endorsement form or similar, to include completed-operations **up to 5 years beyond the completion date**. If CG 20 10 11/85 is not available, then additional insured endorsement CG 20 10 10/01 along with CG 20 37 10/01 (Additional Insured-Completed Operations) endorsements executed by the Insurance Company naming the District and others listed above shall be utilized.
- C. The insurance contract should state that it is intended for the transferee's policy to apply on a primary basis, as would standard ISO form CG 00 01 10 01, on behalf of the additional insured and that it will be modified, if necessary, to provide coverage in this manner.
- D. Require all deductibles be the sole responsibility of the Contractor, including the deductible for any builders risk insurance policy procured by the District.
- E. Not be canceled, reduced in coverage or limits until thirty (30) days after receipt by the District of a written notice of such cancellation including a ten (10) day notice for non-payment of premium, as evidenced by receipt of a registered letter
- F. Otherwise be in form satisfactory to District.

- G. Any and all losses connected with the insurance policies in force for the District shall require cooperation of the Contractor in determining the cause of loss, the repair process, and the securing of information to determine settlement of said claim. Failure to comply with the adjuster's request or insurance carriers requests to settlement in a timely manner, will result in breach of contract.

The Contractor and his subcontractors shall take out and maintain the following policies of "occurrence form"-type insurance with coverage acceptable to the District:

- H. **Workers' Compensation Insurance.** In accordance with the provisions of Section 3700 of the Labor Code of the State of California, Contractor shall secure, at all times during the life of this contract, the payment of compensation to his employees; and the Contractor shall require all subcontractors similarly to provide such compensation insurance for all of the latter's employees. Such policy shall contain an endorsement which waives all right of subrogation against those persons and entities designated in the policy.
- I. **Commercial Liability Insurance.** The Contractor shall procure and maintain at all times during the life of this contract, Commercial Liability Insurance in amounts not less than the following amounts **unless otherwise specified in the Special Conditions:**

\$2,000,000 per each occurrence
\$5,000,000 General Aggregate Limit
\$5,000,000 Products-Completed Operations Aggregate Limit
\$2,000,000 Personal & Advertising injury limit

THE POLICY IS TO BE ENDORSED FOR THE AGGREGATE LIMIT TO APPLY TO THIS PROJECT by utilizing endorsement form "CG 25 03 03 97" (or similar), executed by the insurance carrier. **An aggregate limit (cap) is not allowed.**

Where excess liability insurance is used in connection with primary liability insurance, the combination of such must allow total limits of liability to be in amounts not less than the above-specified amount.

- J. **Automobile Liability Insurance.** The Contractor shall procure and maintain at all times during the life of this contract, Automobile Liability insurance in amount not less than the following amount **unless otherwise specified in the Special Conditions:**

\$2,000,000 combined single
limit

- K. **Installation Floater.** The Contractor shall maintain or cause to be maintained at all times during the life of this contract, an Installation Floater in the amount of the total contract value.

The installation floater policy shall not contain a deductible higher than **\$1,000.00** per claim unless first approved by the District.

- L. **Contractors Equipment Floater (aka Commercial Inland Marine).** The Contractor shall maintain or cause to be maintained at all times during the life of this contract, an equipment floater to cover all tools, equipment, supplies and materials on the jobsite.

If specified in the Special Conditions, the Contractor shall provide the following coverage(s):

- M. **Builders Risk, Flood and Earthquake Insurance.** The Contractor and his subcontractors shall maintain or cause to be maintained at all times during the life of this contract, builders' risk "All Risk" completed value insurance, to include, at the option of the District, loss or damage caused by fire, **earthquake and/or flood**, insuring completed work, work in progress, material, supplies and equipment of the work site, in storage or in transit, in an amount equal to the full replacement cost thereof. Such insurance shall include the interests of the District, Contractor, all tiers of subcontractors, suppliers and materialmen, with deductible amounts, if any, for the sole account of and payable by Contractor. Loss under such insurance shall be adjusted with and payable to the District for the interest of all parties. The amount of property insurance shall be sufficient to protect against such loss or damage in full until the work is accepted by the District. EMWD must be named as "loss payee" on the certificate for Builder's Risk policy.

Builder's "All Risk" insurance policy, if obtained by the Contractor, shall contain a deductible not higher than **\$1,000** unless otherwise approved by the District.

Flood Insurance policy, if obtained by the Contractor, shall contain a deductible not higher than **\$100,000.00** unless otherwise approved by the District.

Earthquake insurance policy, if obtained by the Contractor, shall contain a deductible not higher than **10%** of the total insurable value unless otherwise approved by the District.

Builder's Risk, Flood and Earthquake Insurance by District. If specified in the Special Conditions, Builder's "All Risk" Insurance may be provided by the District. The Contractor is responsible for any and all deductibles per Section F-04 subsection D. Financial considerations to determine viability of such deductible remains at the District's discretion. Deductibles will be fully disclosed at the time of issuance of the Builder's Risk contract.

F-05. ADDITIONAL SURETY

If during the continuance of the contract any of the sureties upon the faithful performance bond is no longer sufficient under Code of Civil Procedure section 995.660(b), District may require additional sureties which the Contractor shall furnish to the satisfaction of the District within fifteen (15) days after notice, and in default thereof the contract may be suspended and the work completed as provided in section titled Right of the District to Terminate Contract.

GENERAL REQUIREMENTS

F-06. AUTHORITY OF THE DISTRICT

The District shall give all orders, lines, grades, and directions contemplated under the contract; shall determine the adequacy of the Contractor's methods, plant, and appurtenances; shall determine in all cases the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be incorporated in the work; and shall decide in all cases every question which may arise relative to the fulfillment of this contract on the part of the Contractor.

Should any discrepancy appear or any misunderstanding arise as to the import of anything contained in the specifications or plans, the matter shall be referred to the District, which shall decide the same in accordance with the true intent and meaning as construed by the District, and the District's decision shall be binding on the Contractor. Any difference or conflict which may arise between the Contractor and any other contractors of the District in regard to their work shall be adjusted and determined by the District. The District's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided.

F-07. PROTESTS

If the Contractor considers any work demanded of him to be outside the requirements of the contract, or if he considers any record or ruling of the District to be unfair, he shall immediately upon such work being demanded or such record or ruling being made, ask for written instructions or decisions, upon the receipt of which he shall proceed without delay to perform the work or conform to the record or ruling. In the event the Contractor finds such instructions or decisions unsatisfactory, he shall, within ten (10) days after receipt of same, file a written protest with the District, stating clearly and in detail his objections and the reasons therefore. Except for such grounds of protest or objections as made of record in the manner specified and within the time stated herein, the Contractor hereby waives all grounds of protest or objections to the records, rulings, instructions, or decisions of the District, and hereby agrees that as to all matters not included in such protests the records, instructions, and decisions of the District shall be final and conclusive.

F-08. REPORTS, RECORDS AND DATA

- A. General. The Contractor shall submit to the District such of his schedules and schedules of each of his subcontractors as the District may request concerning work performed or to be performed under this contract, including schedules of quantities and costs, progress schedules, payrolls, reports, estimates, records, and other data.

Before proceeding with construction, the Contractor shall furnish the District with information, plans and prints for all structures, articles, machinery or fabricated materials to be entered into permanent construction which are by these specifications and/or plans to be furnished by the Contractor and of which detailed plans are not furnished by the District. Such information, plans and prints shall be submitted to the District for approval and shall become the property of the District.

- B. Asbuilt Project Record Documents. The Contractor shall maintain, at the job site, one complete set of Contract Specifications, Addenda, Change Orders and other directions, approved submittals, including one set of full size plans marked to show any deviations which have been made from the plans or approved shop drawings, including buried or concealed construction and utility features which are revealed during the course of construction. Special attention shall be given to recording the horizontal and vertical location of all buried utilities that differ from the locations indicated or which were not indicated on the plans. Said record drawings shall be supplemented by any detailed sketches as necessary or directed, to indicate fully the work as actually constructed.

Current Asbuilt record drawings shall be accessible to the District at all times during the construction period. They shall be reviewed with the District at regular intervals.

Asbuilt Record Plans and Specifications shall be clearly and correctly annotated by the Contractor to show all changes made during the construction process at the time the changed Work is installed.

Upon completion and prior to final inspection of the Work, the Contractor shall submit the Record Plans and Specifications to the District for review, and shall make such revisions or corrections as may be necessary for them to be a true, complete, and accurate record of the Work in the opinion of the District. When approved, the Contractor shall deliver the Asbuilt Record Drawings and Specifications to the District. If requested by the District, transparencies shall be furnished for record drawings of piping, electrical, and instrumentation information.

F-09. TIME AND ORDER OF WORK

Immediately upon receipt of Notice of Acceptance of his Proposal, the Contractor shall schedule material orders for all material required under the contract, and notify the District of the anticipated dates of the availability of that material.

The contract time and construction period shall be as indicated in the Notice Inviting Bids except as otherwise superseded by Addendum or Change Order, or as otherwise defined in the Special Conditions.

No extension of time shall be made for ordinary delays and accidents and the occurrence of such shall not relieve the Contractor from the necessity of maintaining the required progress. In case of an extension by the District of the time for the completion of the contract, as hereinafter provided, a revised Construction Progress Schedule and/or Project Control Schedule may be required in accordance with such extension of time.

The time in which the various portions and the whole of the contract are to be performed, and the work is to be completed, is of the essence of this contract.

F-10. CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES

- A. Required Forms. The Contractor shall deliver to the District at the Pre-Construction Conference or within such additional time as may be allowed by the District, the following: (Additional forms may be required as called out in Standard form EN-48)

Forms supplied by the District

1. Insurance Certificate(s);
2. Schedule of Values: Breakdown of the Contract Price showing sizes and quantities of equipment items;
3. EN-61: Satisfactory evidence of placement of orders for all materials;
4. EN-57: Shoring Plan, including Cal OSHA form 421-2 Activity Notification;
5. Contractor's Financial Qualification form;
6. Authorized Signatures;
7. C-11: Workers' Compensation Certificate;
8. EN-183: Verification of pre-approved materials list;
9. EN-84: Specific Operating Safety Procedure - Exhibit "B" of Section 01000-General Safety Requirements;

10. EN-2: 24-hour emergency telephone numbers;
11. EN-146: Certified Payroll Form;
12. Prevailing Wage Rate;
13. C-13: Certificate by Single Instrument Supplier (if applicable)
14. Employee Safety & Health Training Records
15. Subcontractors List/Worker Classification of all subcontractors, including tiered subcontractors, performing work on the project.
16. Contractor's Financial Qualification Form
17. Maintenance Bond for Pumping Equipment (if applicable)

Contractor's Forms

1. Project Control Schedule
2. DOSH Permit; (Dept. of Occupational Safety & Health)
3. Injury & Illness Prevention Program;
4. Other documentation, as required

The Schedule of Values (refer to Section 01026) shall be the basis for payment of contract work and will be used to establish payment for any "extra work" i.e., work requested which is beyond the scope of the original contract.

The Contractor shall, prior to mobilizing or commencing any contract work, submit and receive District approval of Proof of Insurance, Injury and Illness Prevention Program, and EN-84, Specific Operating Safety Procedure.

The Contractor shall be responsible to submit and receive District approval of the Schedule of Values (see Section 01026, if applicable) by the 10th of the month for processing of the monthly progress payment. Submittal and approval of the Schedule of Values beyond the 10th of the month will result in the progress payment to be processed the following month.

The Contractor shall revise and update the Project Control Schedule as scheduling changes occur, and shall supply the District and his subcontractors with copies of the Project Control Schedule and its updates. District acceptance of revised Project Control Schedules shall be subject to the conditions of paragraph below.

B. Contractor's Project Control Schedule. The Contractor's Project Schedule shall consist of a simple Critical Path Method analysis in chart form reflecting workable logic, and showing proper duration, expected methods, and mile posts, and shall conform to the work and time set forth in the contract. It shall clearly indicate all construction activities, sub-activities, and mile posts on a time-oriented basis, with the critical path fully identified. The following minimum information shall be included for each activity and critical path item:

1. Date of initial submittal, as applicable.
2. Ordering dates for long lead-time items.
3. Dates for materials on the site.
4. Start-work dates.
5. Complete-work dates.
6. Testing and clean-up dates.
7. Final contract completion date.

The schedule shall show a maximum of three critical paths, with only enough points or items to present the above information. Partial schedules will not be accepted without the approval of the District. The Contractor shall submit each schedule, using Primavera P6 (or later version) or Suretrak Project Manager.

Treatment plant, lift station and pump station charts shall be updated and resubmitted monthly; pipeline and other projects shall be updated and resubmitted monthly or as necessary to reflect changes in scheduling. All slippages and missed mile posts shall be flagged, with a narrative attached describing proposed corrective actions.

Payment Withheld. Payments due the Contractor shall be withheld until the Project Control Schedule is submitted by the Contractor and accepted by the District. Acceptance by the District of the baseline schedule submission shall be recognition of the Contractor's good faith submission, and is solely for the purpose of releasing these monies. The District shall not unreasonably withhold its' acceptance, however, acceptance shall not constitute approval. The District shall accept the Project Control Schedule only after all corrections and other issues have been fully resolved.

The applicable monies listed in the following table shall be withheld from that owed the Contractor each and every month an updated progress control schedule submission is not timely received in a condition acceptable to the District and conforming to the contract documents.

CONTRACT VALUE			AMOUNT WITHHELD PER MONTH
\$0	to	\$50,000	\$1,000
\$50,000	to	\$100,000	\$1,500
\$100,000	to	\$500,000	\$2,500
\$500,000	to	\$1,000,000	\$5,000
\$1,000,000	to	\$5,000,000	\$7,500
\$5,000,000	to	\$10,000,000	\$10,000

F-11. LEGAL ADDRESS OF CONTRACTOR

The address given in the Contractor's proposal on which the contract is founded is hereby designated as the place to which all notices, letters, and other communications to the Contractor shall be mailed or delivered.

Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or other communication upon the Contractor personally.

F-12. MUTUAL RESPONSIBILITY OF CONTRACTORS

If, through acts of neglect on the part of the Contractor, any other contractor or any subcontractor shall suffer loss or damage on the work, the Contractor agrees to settle with such other contractor or subcontractor by agreement or arbitration if such other contractor or subcontractor will so settle. If such other contractor or subcontractor shall assert any claim against the District on account of any damage alleged to have been sustained, the District shall notify the Contractor, who shall indemnify and save harmless the District against any such claim, and he shall assume the defense of, and indemnify and save harmless the District from all liability and claims of any kind.

F-13. GENERAL GUARANTEE

- A. Acceptance and Repair. Neither the final certificate of payment nor and provision in the contract documents nor partial or entire occupancy by the District shall constitute an acceptance of work not done in strict compliance with the contract documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom.

The Contractor's warranty and guarantee shall include the entire Work and all parts thereof, including that performed and constructed by Subcontractors, Sub-subcontractors, and others employed directly or indirectly on and for the Work, against faulty or defective materials, equipment, or workmanship for a period of one (1) year from the date of the District's written final acceptance of the Work or such longer period of time as may be prescribed by the terms of any special guarantee or warranty required by the Contract Documents, or by law. The only exception to this guarantee shall be the equipment, which shall be guaranteed for one (1) year from the date each item of equipment, itself, is placed in service. The District will give notice of observed defects with reasonable promptness.

F-14. OBLIGATIONS OF CONTRACTOR

- A. Percentage of Work by Contractor. The Contractor shall perform, with his own organization, contract work amounting to at least 50 percent of the contract. When an entire item is subcontracted, the value of work subcontracted will be based on the contract unit price. When a portion of an item is subcontracted, the value of work subcontracted will be based on the estimated percentage of the contract unit price. This will be determined from information submitted by the Contractor and subject to approval by the District.
- B. General. The Contractor at his sole cost and expense shall perform all labor and services and furnish all the materials, tools and appliances, except as hereinafter otherwise specifically provided, necessary or proper for performing and completing the work required by these specifications, in the manner and within the time stipulated in the Special Conditions and Detailed Provisions. He shall furnish, erect, maintain, and remove the construction plant and such temporary works as may be required. If at any time before the commencement or during the progress of the work or any part of it, the Contractor's methods or appliances appear to the District to be unsafe, or inadequate for securing the safety of the workers, or the quality of work required, the District may notify the Contractor to correct any deficiencies. The Contractor shall respond to such notifications at his own expense, but the making of such notifications shall not relieve the Contractor of his obligations to secure the safe conduct of the work, the quality of work required and the rate of progress stipulated in the contract.

The Contractor alone shall be responsible for the safety, efficiency, and adequacy of his plant, appliances, and methods, and for any damage, which may result from their failure or their improper construction, maintenance, or operation. All the labor, services, and materials shall be performed and furnished strictly pursuant to, and in conformity with the contract documents. The Contractor shall complete the entire work to the satisfaction of the District, and in accordance with the contract documents herein mentioned and with approved changes in the work.

1. Contractor's Responsibility for the Work and Materials. Until the acceptance of the contract, the Contractor shall have the charge and care of the work and of the materials to be used therein (including materials for which the Contractor has received partial payment or materials which have been furnished by the District) and shall bear the risk of injury, loss or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries; losses or damages to any portion of the work or the materials occasioned by any cause before its completion and acceptance and shall bear the expense thereof. Where necessary to protect the work or materials from damage, the Contractor shall, at the Contractor's expense, provide suitable drainage of the roadway and erect those temporary structures that are necessary to protect the work or materials from damage. The suspension of the work from any cause whatever shall not relieve the Contractor of the responsibility for the work and materials as herein specified.

If ordered by the Engineer, the Contractor shall, at the Contractor's expense, properly store materials, which have been partially paid for by the District or which have been furnished by the District. Storage by the Contractor shall be on behalf of the District and the District shall at all times be entitled to the possession of the materials, and the Contractor shall promptly return the materials to the site of the work when requested. The Contractor shall not dispose of any of the materials so stored except on written authorization from the Engineer.

2. Disposal of Excavated Materials. All materials removed from the excavations in excess of that stored temporarily as above specified shall be immediately hauled away and used in backfilling elsewhere, or, if not used, shall be disposed of by the Contractor. The disposal area shall be acquired by the Contractor. No materials shall be disposed of either temporarily or permanently on privately or publicly owned property unless the Contractor shall first obtain permission therefore from the owner or agency concerned. The Contractor shall be responsible for all damages and claims that may arise in connection therewith. The Contractor shall provide a release form obtained from the property owner(s) releasing the District from any liability. Said written release shall be submitted and approved by the District prior to Contractor moving materials onto said property.
- C. Temporary Facilities. The Contractor shall provide all temporary facilities and utilities required for prosecution of the work, protection of employees and the public, protection of the work from damage by fire, weather or vandalism and such other facilities as may be specified or required by any legally applicable law, ordinance, rule or regulation.

1. Electricity. The Contractor shall arrange with the local utility to provide adequate temporary electrical service at a mutually agreeable location. The Contractor shall then provide adequate job site distribution facilities conforming to applicable codes and safety regulations. The Contractor shall provide at his own cost all electric power required for construction, testing, general and security lighting, and all other purposes whether supplied through temporary or permanent facilities, until the substantial completion of the project.
 2. Lighting. The Contractor shall provide temporary lighting in all work areas sufficient to maintain a lighting level during working hour's not less than lighting level required by California OSHA standards. As permanent lighting facilities are completed they may be used in lieu of temporary facilities, provided however, that any facilities so used shall be re-lamped prior to substantial completion. The temporary lighting surrounding the facility shall be designed, arranged and installed so as to confine direct rays onto the premises.
- D. Equipment Testing. All items of mechanical equipment, including equipment furnished by the District, shall be tested by the Contractor after installation for proper operation, efficiency and capacity. The Contractor shall furnish all personnel, power, water, chemicals, fuel, oil, grease, and all other necessary facilities for conducting the Contractor's test operations.
- E. Preconstruction Safety Meeting. Safety of all activities in connection with the work is of paramount and overriding importance to the District. A safety conference shall be scheduled prior to the preconstruction conference to review the respective safety requirements and to discuss implementation of all health and safety provisions to the project.
- F. Preconstruction Conference and Progress Meetings. The District shall arrange for a preconstruction conference to be attended by the Contractor's Superintendent and representatives of utilities, permit agencies, major subcontractors, and others whose input may be desired.

The purpose of this conference shall be to establish a working understanding between the parties and to discuss the construction schedule, shop drawing submittals and approvals, cost breakdown of major lump sum items, applications for payment and their processing, and such other subjects and submittals as may be pertinent to the project.

The District shall arrange and conduct periodic progress meetings as required. These meetings shall be attended by the Contractor's Superintendent, the District, and representatives of all subcontractors, utilities, etc., that are active on the project site. The purpose of these meetings shall be to resolve conflicts, ensure that the Contractor is monitoring the work progress, and coordinating and expediting the operation of all organizations active at the project site.

- G. Project Site Maintenance. Daily throughout all phases of construction until final acceptance of project work, the contractor shall keep the work-site clean and free of graffiti, rubbish, and debris. The Contractor shall abate dust nuisance by spraying water, sweeping, or other means as necessary to the satisfaction of the District.
- H. Defense and Indemnity. Contractor will defend, indemnify, and hold and save District harmless from any and all actions, claims, damages to persons or property, penalties, obligations, or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or other organization arising out of or in connection with the work, operation, or activities of Contractor, its agents, employees, subcontractors, or invitees provided for herein, whether or not caused in part by any act or omission (passive or comparative negligence included) of the District, excepting the active negligence of the District.
1. Contractor will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations or liabilities and will pay all costs and expenses, including attorneys' fees incurred in connection therewith.
 2. Contractor will promptly pay any judgment rendered against Contractor or District covering such claims, damages, penalties, obligations and liabilities arising out of or in connection with such work, operations, or activities of Contractor hereunder and Contractor agrees to save and hold District harmless therefrom.
 3. In the event District, without the fault of District, is made a party to any action or proceeding filed or prosecuted against Contractor for damages or other claims arising out of or in connection with the work, operation or activities of Contractor hereunder, Contractor agrees to pay to District any and all costs and expenses incurred by District in such action or proceeding together with the reasonable attorneys' fees.

So much of the money due to the Contractor under and by virtue of the Contract as shall be considered necessary by the District may be retained by the District until disposition has been made of such actions or claims for damages as aforesaid.

The Contractor shall not be responsible for actions, claims, damages to persons or property, penalties, obligations or liabilities arising from the sole negligence or willful misconduct of District.

F-15. PERSONAL ATTENTION

The Contractor shall give his personal attention constantly to the faithful prosecution of the work, and shall be present continually, either in person or by a duly authorized and competent representative, on the site of the work, during its progress, to give directions or receive instructions from the District Inspector. This duly authorized representative shall not be replaced without ten days written notice to the District except under extraordinary circumstances. The Contractor's representative at the site shall have the authority to act on behalf of the Contractor. All communications, instructions, and directions given to the representative shall be as binding as if given to the Contractor. Whenever the Contractor or the representative is not present on a part of the Work where the District wishes to give orders or directions, the orders or directions shall be received and obeyed by the foreman in charge of that part of the Work the same as if the order or direction had been given to the Contractor or to his representative. Any order or direction given by the District not otherwise required to be in writing will be given or confirmed in writing upon request of the Contractor.

F-16. ASSIGNMENT OF RIGHTS. PURSUANT TO THE REQUIREMENTS OF CALIFORNIA GOVERNMENT CODE SECTION 4552:

In submitting a bid to the District, the Contractor offers and agrees that if the bid is accepted, he will assign to the District all rights, title, and interest in and to all causes of action he 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 bid. Such assignment shall be made and become effective at the time the District tenders final payment to the Contractor.

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this contract, or of his right, title or interest in or to the same or any part thereof, to other than the District without previous consent in writing. He shall not assign, by power of attorney or otherwise, any of the monies to become due and payable under the contract, unless by and with the like consent signified in like manner. If the Contractor shall without some previous written consent, assign, transfer, convey, sublet, or otherwise dispose of the contract, or of his right, title or interest therein, or of any of the monies to become due under the contract, to any other person, company, or other corporation, the contract may at the option of the District, be terminated, revoked and annulled. In such case, the District shall thereupon be relieved and discharged from any and all liability and obligations growing out of the contract, and no right to any money to become due hereunder, shall be asserted against the District in law or equity by reason of any so-called assignment of any monies to become due hereunder, unless authorized as aforesaid by the written consent of the District.

In case the Contractor assigns all or any part of any monies due or to become due under this contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the work called for in this contract.

F-17. SUBCONTRACTS

A. Extent. At the discretion of the District, and subject to the provisions of subsection c. hereof, subcontracts may be permitted to such extent, and only to such extent, as shall be shown to be necessary or definitely advantageous to the principal contractor in the prosecution of the work, and without injury to the interests of the District. The re-subletting of work by a subcontractor shall be subject to the same limitations as an original subletting. In general, the brokering of work will not be favored, and the subletting of the entire contract, or of substantial complete units of it, will be permitted only upon adequate showing of necessity, involving some new condition not reasonably foreseeable at the time of proposal. No subcontract will be permitted which has the effect of avoiding the residence or wage requirements or any other provisions of the main contract. Individual subcontractors, or members of contracting or subcontracting organizations, personally engaged upon the work, shall be subject to all the requirements of the paragraphs of the General Provisions of this specification, and to all other conditions of these specifications applicable to employees working for wages.

B. Subcontractors Listing; Subletting and Subcontracting Fair Practices Act. Reference is hereby made to the provisions of Public Contract 4100, et. seq. As required by these provisions, each bidder shall set forth in his proposal the name, the location of the place of business, and the California contractor license number of each subcontractor who will perform work or labor or render service to the general contractor in or about the construction of the work or improvement in an amount in excess of one-half of one per cent (1/2 of 1%) of the general contractor's total bid, as well as the portion of the work which will be done by each subcontractor.

Each subcontractor shall possess, both at the time the bid is submitted and at all times when work is performed, a valid contractor's license for the appropriate classification necessary to perform the work for which that subcontractor is listed.

Each subcontractor shall be registered with the Department of Industrial Relations at time of bid and during the performance of the Contract.

Any information requested by the District concerning any subcontractor who the prime contractor is required to list, other than the subcontractor's name and location of business, may be submitted by the general contractor up to 24 hours after the deadline established by the District for receipt of bids.

- C. Contract Provisions. Before the work of any subcontractor is started, the Contractor shall submit, at the preconstruction conference, a Subcontractors List and Worker Classification form giving the name, business, license number, email address, and worker classification for each subcontractor who will perform work on the project. Contractor shall update and resubmit the Subcontractors List and Worker Classification as required.

Each subcontract shall provide for its annulment by the Contractor at the order of the District if in the District's opinion the subcontractor fails to comply with the requirements of the principal contract insofar as the same may be applicable to his work.

Nothing herein contained shall create any contractual relation between any subcontractor and the District, or relieve the Contractor of any liability or obligation hereunder.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the Specifications and other Contract Documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards to terminating any subcontract that the District may exercise over the Contractor under any provisions of the Contract Documents. The Contractor shall be as fully responsible to the District for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

F-18. PATENTS

The Contractor shall hold and save harmless the District from liability of any nature or kinds, including costs and expenses, for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the District, unless otherwise specifically stipulated in the Contract Documents.

If the Contractor uses any design, device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the Owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work.

The Contractor and/or his sureties shall indemnify and save harmless the District from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under this contract, and shall indemnify the District for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

F-19. PERMITS

All required permits, easements, land and rights-of-way necessary for the work under this specification will be acquired by the District insofar as the District may acquire these permits.

All provisions of any permit included as a part of these specifications by incorporation in the Contract Documents shall be assumed by the Contractor as if written in these specifications. In the event the Contractor, subsequent to issuance of such permit, to perform work in a manner approved by the District but different than anticipated by the permit, he shall assume any and all costs or permit fees that result from that departure from the permit provisions. (For example, if the Contractor elects to slope his trench walls when the encroachment permit has been issued for a vertical wall trench, the permit fee for pavement replacement could increase.) In the event a performance bond is required by the provisions of a permit, a Dual Obligee Rider to the District Performance Bond, naming also the Permitting Agency, will be acceptable to the District.

F-20. ENVIRONMENTAL COMPLIANCE

The contractor shall comply with all requirements of applicable Federal, State and local environmental rules and regulations. Any infractions of said rules and regulations by the Contractor during the term of the contract, which result in penalties, will be the responsibility of the Contractor.

The District operates under a number of environmental permits issued by various agencies. If due to an action, inaction or negligence by the Contractor the District becomes subject to non-compliance penalties, the cost of such penalties shall be borne by the Contractor.

F-21. ADDITIONAL RIGHTS-OF-WAY

Should the Contractor find it advantageous to use any land in addition to that provided by the District for his construction yard or for other purposes during the construction of the work, he shall provide the use of such lands at his own expense and shall be solely responsible for acquisition of the appropriate title or other interest for said land.

F-22. PROTECTION AND PRESERVATION OF CULTURAL RESOURCES

In accordance with the National Historic Preservation Act of 1966, as amended through 2000 (16 U.S.C. 470) and PPM 75-27, the following procedures are implemented to insure historic preservation and fair compensation to the Contractor for delays attendant to cultural resources investigations.

In the event potential historical, architectural, archaeological, or cultural resources (hereinafter cultural resources) are discovered during subsurface excavation at the site of construction, the following procedures shall be instituted:

- A. The District shall issue a "Stop Work Order" directing the Contractor to cease all construction operations at the location of such potential cultural resources find.
- B. Such "Stop Work Order" shall be effective until such time as a qualified archaeologist designated by the District has been able to assess the value of these potential cultural resources and make recommendations. Any "Stop Work Order" shall contain the following:
 - 1. A clear description of the work to be suspended;
 - 2. Any instructions regarding issuance of further orders by the Contractor for material services;
 - 3. Guidance as to action to be taken on subcontracts;
 - 4. Any suggestions to the Contractor as to minimization of this cost;
 - 5. Estimated duration of the temporary suspension.

If the archaeologist determines that the potential find is a bona fide cultural resource, the District shall extend the duration of the "Stop Work Order" in writing, and the Contractor shall suspend work at all locations of the find.

Equitable adjustments of the construction contract shall be made in the following manner:

- A. Time Extension. If the work temporarily suspended is on the "critical path", the total number of days for which the suspension is in effect shall be added to the number of allowable contract days.
- B. Additional Compensation. If, as a result of a suspension of the work, the Contractor sustains a loss which could not have been avoided by his judicious handling of forces, equipment, or redirection of forces or equipment to perform other work on the contract, the District shall provide for a fair and reasonable compensation for the Contractor's actual loss in accordance with Section pertaining to Changes in Work and Extras.

F-23. RIGHT OF THE DISTRICT TO TERMINATE CONTRACT

- A. Contract Termination for Breach/Default. In the event that any of the provisions of this contract are violated by the Contractor or by any of his subcontractors, the District may serve written notice upon the Contractor and the Surety of its intention to terminate the contract.

Such notice to contain the reasons for such intention to terminate the contract, and unless within ten (10) days after the serving of such notice upon the Contractor, such violation or delay shall cease and satisfactory arrangement of correction is made, the contract shall, upon the expiration of said ten (10) days, cease and terminate.

In the event of any such termination, the District shall immediately serve notice thereof upon the Surety and the Contractor, and the Surety shall have the right to take over and perform the contract.

If the Surety does not commence performance thereof within five (5) days from the date of mailing to such Surety of notice of termination, the District may take over the work and prosecute the same to completion by contract or by force account for the account and at the expense of the Contractor. The Contractor and his surety shall be liable to the District for any excess cost occasioned the District thereby, and in such event the District may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore.

B. Contract Termination Based on the Best Interests of the District. The District reserves the right to terminate this contract at any time upon a determination by the District, in its sole and absolute discretion, that termination of this contract is in the best interests of the District. If the District elects to terminate this contract, the termination of the contract and the total compensation to be paid to the Contractor shall be determined by the Following procedure:

1. The District shall deliver to the Contractor a written notice stating that the contract is to be terminated, the terms and conditions for said termination, and the date to be deemed the termination date. Said notice shall also include an explanation or other reference to the determination that has been made by the District that the best interests of the District will require termination under this section.

2. On or before the termination date, the Contractor shall complete or perform, to the satisfaction of the District in its discretion, the actions required of the Contractor as set forth in the notice.

3. Acceptance of the termination of this contract as herein specified shall not relieve the Contractor of responsibility for damage, usefulness, or other warranties in regard to materials. The Contractor shall continue to be responsible for damage/warranty of materials after issuance of the notice of termination.

4. When the District determines that the Contractor has completed the work under this contract directed to be completed prior to termination, the District will accept the work.

5. The total compensation to be paid to the Contractor shall be as follows: The Contractor shall be paid his actual costs for that portion of the work performed prior to the termination date and for costs of termination, including demobilization and any termination charges by vendors and subcontractors, plus four percent (4%) of all such costs for overhead and profit.

F-24. NOTICE AND SERVICE THEREOF

Any notice to the Contractor from the District relative to any part of this contract shall be in writing and considered delivered and the service thereof completed, when said notice is posted by registered mail, to the Contractor at his last given address, or delivered in person to the Contractor or his authorized representative on the work.

F-25. UTILITIES AND SUBSTRUCTURES

- A. Locating. The indication of the type and approximate location of existing utilities and substructures in the Contract Documents represents a diligent search of known records, but the accuracy and completeness of such indications are not warranted by the District and utility structures and services not so indicated may exist.

Before commencing any excavations, the Contractor shall notify Underground Service Alert (USA) at (800) 227-2600, and all permit agencies. The Contractor shall verify in the field all utilities and substructures indicated on the plans. The cost for this verification shall be included in the bid items and no additional compensation will be due. If the Contractor encounters utilities and/or underground structures which are not shown on the plans or which are in substantially different locations and these utilities and/or substructures materially affect the Work and/or the Contractor's operation, the Contractor shall be compensated for the extra work, unless the Contractor has failed to exercise reasonable care. If the unmarked or mismarked utilities or underground structures cause a change in the critical path as shown on the schedule submitted by the Contractor, the Contractor shall be entitled to additional time as verified by the Contractor and the District.

- B. Unforeseen Conditions Related to Hazardous Waste. In the event the Contractor encounters on the site materials he reasonably believes to be hazardous material or hazardous waste, the Contractor shall immediately cease work in the area affected, cordon off the area, and report the condition to the District in writing.

The definition of hazardous material and hazardous waste shall include, but not be limited to, heavy metals, asbestos, or any other material or waste where liability and removal is governed by the applicable Federal or State law.

The District will promptly investigate the reported condition, and if applicable will notify the appropriate Federal, State or local agency.

If the District finds that the reported condition will have a material effect on the cost and/or the duration of the contract, the District shall issue a change order.

The change order may instruct the Contractor to remediate the problem, setting price and time therefore. Alternatively, if the District determines that the reported condition will have a substantial effect on the contract, the change order may remove the problem area from the contract, to be dealt with as a separate issue under a different contract.

The District shall be responsible for any hazardous material or waste uncovered or revealed at the work site which was not shown or indicated in the contract documents to be within the scope of the work. The District shall not be responsible for any such material or waste brought to the work site by the Contractor, subcontractors, or anyone else for whom the Contractor is responsible.

- C. Maintenance of Facilities. Insofar as practical during the progress of the work the property of any owner of a public utility pipeline or conduit, sewer, culvert, storm drain, drainage ditch, flood control channel, overhead wires or cables, or underground wires or cables, or any other structure or facility shall not be disturbed but shall be supported and protected against injury and maintained in good operating condition at the expense of the Contractor. In no case shall any such property be disturbed or removed without the consent of the owner and approval of the District.

The Contractor shall install temporary pipes of adequate size to carry off sewage from any sewer facilities cut off by construction operations.

Installation of temporary pipes shall be made immediately upon cutting of an existing sewer facility, and no sewage shall be allowed to flow from any severed facility upon the ground surface or in the trench excavation. Pipe used in temporary sewers may be clay, metal, concrete, or plastic. Before completion of Work, the Contractor shall replace all severed connections and restore to operating order the existing sanitary facilities with matching materials and construction.

- C. Rights-of-Way and Private Properties. Coordination with other companies and private parties is generally provided elsewhere in the Special Conditions and/or the technical provisions. The Contractor shall be responsible for making good all damage due to his operations.

F-26. USE OF MATERIALS FOUND ON WORK SITE

The Contractor may be permitted to use soil, stone, or other natural materials discovered on the work site upon prior written consent of the District if said materials meet the requirements of these specifications. Ownership of all such materials shall remain with the District throughout any use or installation thereof.

WORK

F-27. LINES, GRADES AND MEASUREMENTS

All lines and grades will be given by the District, and the Contractor shall provide such materials and give such assistance as may be required. The Contractor shall carefully preserve all bench marks, monuments, survey markers, and stakes, so far as possible. SHOULD ANY STAKES OR POINTS BE REMOVED OR DESTROYED UNNECESSARILY BY ANY ACT OF THE CONTRACTOR OR HIS EMPLOYEES THEY SHALL BE RESET AT THE CONTRACTOR'S EXPENSE. The Contractor shall inform the District within 48 hours in advance of the times and places at which he intends to work in order that lines and grades may be furnished, that inspection may be provided, and that necessary measurements for records and payments may be made with minimum inconvenience.

All work shall conform to lines, elevations and grades shown on the construction plans. Three consecutive points set on the same slope shall be used together so that any variation from a straight grade can be detected. Any such variations shall be reported to the District Engineer or Inspector. In the absence of such report, the contractor shall be responsible for any error in the grade of the finished work.

No direct payment shall be made for the cost to the Contractor of any of the work for delay occasioned by giving lines and grades, or making other necessary measurements, or by inspection.

F-28. PLANS AND SPECIFICATIONS

The Contractor shall keep on the work site a copy of the plans and specifications and shall at all times give the District access thereto. The Contractor shall check all dimensions and quantities on the drawings or schedules herein contained or given to him by the District, and shall notify the District of all errors therein which may be discovered. He shall not take advantage of any error or omission in these specifications or in the plans or schedules, because full instructions will be furnished by the District should such error or omission be discovered, and the Contractor shall carry out such instructions as if originally specified.

Where bore holes are shown pictorially on the plans, they are for the convenience of the Contractor, reflecting the information contained in the soils report of borings obtained and on file in the District office. The District assumes no responsibility for the accuracy of the information presented as it may affect the project at other than those specific locations, and directs the Contractor to investigate the soils conditions independently, as required for his use.

F-29. EQUIPMENT AND MATERIAL ITEMS

- A. National Sanitation Foundation (NSF) Requirements. Per Title 22 Chapter 16 of the California Code of Regulations, any and all materials (pipe, valves, tanks, etc.) that come into contact with potable drinking water, either directly or indirectly, shall be certified by NSF in accordance with NSF/ANSI Standard 61 for potable water contact. Contractor shall include documentation with material submittals demonstrating conformance with NSF 61 certification as required.

- B. Listed on Proposal. Equipment and material items to be furnished which are required to be listed on the Proposal, with the name of the manufacturer, shall be new items of new manufacture unless specified otherwise. Award of a contract under this proposal (bid) will not imply approval by the District of a manufacturer listed by the bidder. However, if a manufacturer is acceptable to the District, the successful bidder shall furnish the items from the manufacturer indicated. Any manufacturer listed in the contract may be substituted, changed, or omitted by the successful bidder, subject to the approval of the District, without subjecting the District to any liability for the substitution, change or omission.

The listing of any manufacturer in the contract does not, and is not intended to, grant any right, title or interest in the contract for the benefit of the named manufacturer. Each contracting bidder shall inform in writing each named manufacturer that the so named is listed for information purposes only and may be substituted, changed, or omitted by the successful bidder, subject to the approval of the District, without subjecting the District to any liability for the substitution, change or omission.

The successful bidder shall reimburse the District for any expenses incurred by the District as a result of the successful bidder's failure to so notify each named manufacturer or supplier.

- C. Requests for Substitutions or Equals. References in the Contract Documents to any material, item of equipment, or type of construction by manufacturer's name, make, catalog number, or other proprietary identification shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition in those instances where "or approved equal" is specified. Bids shall be based on the products or types of construction so referred to and identified in the Contract Documents, or, in those instances allowing "approved equal", on substitute or equal items approved by the District prior to the receipt of bids. Bidders wishing to propose substitute or equal materials, equipment items, or types of construction shall, not later than the tenth day preceding the date set for receipt of bids, submit a written request fully and technically describing each proposed item and its intended use, and setting forth all variations in costs pertaining to the application. Manufacturers may use the same procedure. Bidders will be notified of approved substitute or equal items by Addendum only.

After receipt of bids, if the Contractor wishes to propose a substitute or equal item for any specified use by brand or trade name, he shall, as soon as this intent is known, furnish his written request and all required data to substantiate the proposed substitution or equal, and setting forth all variations in costs pertaining to the application. If, in the opinion of the District, there is sufficient time to review the submitted data, it will decide if the item is in fact equal in quality and utility to the specified item. No proposed substitute or equal shall be ordered or installed without the written approval of the District, and it shall be understood and agreed that the decision of the District in this matter shall be final and binding.

D. Submittals

1. General. Unless otherwise specified or directed by the District, the Contractor shall submit to the District for its review and approval all shop drawings, samples, materials lists, equipment data, instructions manuals, record documents, manufacturers' equipment manuals, and other submittals required by the Contract Documents. Submittals and their contents shall be properly prepared, identified, and transmitted as provided herein. Except for record documents and instructional manuals for operation and maintenance, submittals shall be reviewed and accepted before the material or equipment covered by the submittal is delivered to the site.

The Project Control Schedule required under section titled Construction Schedule and Progress Payments shall be coordinated to this requirement.

2. Method of Submittal. The Contractor shall input Submittals into CIP0 identifying as to initial or resubmittal status, and fully describing the submittal contents. Submittals are not acceptable directly from subcontractors, suppliers or manufacturers. Submittals shall be numbered as prescribed by the District at the preconstruction conference. Contractor shall state the Drawing Numbers and Specification Sections, Articles, and paragraphs to which the submittal pertains. Accompanying data sheets, catalogs, and brochures shall be identified in the same manner. Where several types or models are included the Contractor shall delete non-applicable portions or specifically indicate which portions are intended and applicable.

Each submittal shall be consolidated to one portable document file (PDF) format, searchable from Table of Contents and Bookmarks.

3. Deviations. The Contractor shall verify either that the submittal meets all the requirements specified, or that the submittal deviates from the requirements specified. The deviation shall be clearly indicated or described including all other changes required to correlate the Work. The Contractor shall state in writing all variation in costs. The Contractor shall be liable for any such deviation not so submitted, and for any deviation not approved by the District in writing.
4. Schedule of Submittals. The Project Control Schedule required under section titled Construction Schedule and Periodic Estimates shall allow not less than fifteen (15) working days for the review of submittals and shall cause no delay in the Work or the work of any other contractor. Extension of the Contract Time will not be granted because of the Contractor's failure to make timely and correctly prepared and presented submittals with allowance for the checking and review periods.

The Contractor shall include the submittal process in the Project Control Schedule.

5. Contractor's Review and Approval. Every submittal of shop drawings, samples, materials lists, equipment data, instruction manuals and other submittals upon which the proper execution of the Work is dependent shall bear the Contractor's review and approval stamp meaning that the Contractor:
 - a) has reviewed, checked and approved the submittal and has coordinated the contents with requirements of the Work and the Contract Documents including related work;

- b) has determined and verified all quantities, field measurements, field construction criteria, materials, equipment catalog numbers, and similar data;
 - c) has verified the Work covered by the submittal and guarantees that the intent of the contract documents will fully apply thereto. The Contractor's stamp shall be dated and signed by the Contractor in every case.
6. Incomplete Submittals. Incomplete submittals, including those not correctly transmitted, not correctly titled and identified, or not bearing the Contractor's review and approval stamp, may be returned to the Contractor without review.
7. Corrections and Resubmittals. The Contractor shall make all required corrections and shall resubmit in the latest version of Adobe Acrobat, consolidated to one portable document file (Smart PDF) format, searchable from Table of Contents and Bookmarks of each submittal until found in conformance with design concept of the project and in general compliance with the plans and specifications. The Contractor shall direct specific attention in writing to revisions other than corrections called for on previous submittals, and shall state in writing all variations in costs and his assumption of the cost of related changes the same as is required for in subsection titled Method of Transmittal.

Costs incurred by the District as a result of additional reviews of a particular submittal after the second time it has been reviewed shall be borne by the Contractor. Reimbursement to the District will be made by deducting such costs from the Contractor's subsequent partial payments. This reimbursement will be calculated based on a flat work rate of \$120/hour.

8. Check of Reviewed Comments. The Contractor shall check and review the EN-14 Shop Drawing Transmittal form for correction and ascertain if the corrections result in extra cost to him above that included under the Contract Documents and shall give written notice to the District within five days if, in his opinion, such extra costs result from corrections. By failing to so notify the District or by starting any Work covered by a submittal, the Contractor waives all claims for extra costs resulting from required corrections.

9. Review and Acceptance. Submittals will be reviewed only for conformance with the design concept of the Project and with the information given in the Contract Documents. Shop drawings and submittals shall be provided, at the Contractor's expense, when required by the plans or specification, or requested by the District.

Materials shall not be furnished or fabricated, nor any work done for which shop drawings or submittals are required, before those shop drawings or submittals have been reviewed. Neither review nor approval of shop drawings or submittals by the District shall relieve the Contractor from the responsibility for errors, omissions, or deviations from the Contract Documents, unless such deviations were specifically called to the attention of the District in the letter of transmittal. The Contractor shall be responsible for the correctness of the submittals and shop drawings, including shop fits, field connections, and results obtained by use of such drawings.

10. Conformance. Work shall conform to the accepted submittals and all other requirements of the Contract Documents unless subsequently revised by an appropriate modification, in which case the Contractor shall prepare and submit revised submittals as may be required.

The Contractor shall not proceed with any related Work which may be affected by the Work covered under submittals until the applicable submittals have been submitted and reviewed, particularly where piping, machinery, and equipment and the required arrangements and clearances are involved.

11. Interrelated Submittals. Except where the preparation of a submittal is dependent upon the acceptance of a prior submittal, all submittals pertaining to the same class or portion of the Work shall be submitted simultaneously.

12. Shop Drawings

- a) Complete Data. Shop drawings shall contain details and information fully outlining the pertinent Contract Document requirements and such other information as may be specified or required for review. Each submittal shall be complete with respect to dimensions, design criteria, materials, connections, bases, foundations, anchors, and the like, and shall be accompanied by technical and performance data as necessary to fully illustrate the information in the shop drawings.

Unless the required data are included in instruction manuals or

equipment data submitted prior to or with the shop drawings, the Contractor shall submit with the shop drawings complete catalog and technical data for all manufactured products, materials, machinery, and equipment covered by the shop drawing submittal. The following information shall be included:

- (i) Manufacturer's specifications and details.
 - (ii) Applicable technical data and performance curves.
 - (iii) Preparation, assembly, and installation instructions with allowable tolerances.
 - (iv) Connection requirements.
 - (v) Pre-startup servicing and operating methods.
 - (vi) Other data and information necessary to demonstrate that the proposed items conform to the Contract Documents.
- b) Title Block and Identification. On each shop drawing submittal, the Contractor shall provide a title block showing:
- (i) Name and address of the Work.
 - (ii) Name and address of Contractor.
 - (iii) Name and address of subcontractor manufacturer, supplier, or distributor, as applicable.
 - (iv) Name and address of District.
 - (v) Date, scale of drawings, and identification number.
 - (vi) Contractor's review and approval stamp.

13. Samples.

- a) Paints and Coatings. Submit samples of field-applied paint and coating finishes, colors, and covering at least 60 days prior to start of such finishing operations.

14. Materials Furnished Under Approved Materials List. The Contractor may provide materials listed on EMWD's Approved Materials List by listing the materials by description, manufacturer and model number.

The description must be the same as listed in the Approved Materials List included in the appendix section of the Specifications and must include paragraph number and page number on which the item appears on the List.

The Contractor would not be required to make a formal submittal on any material listed in this manner with the exception of pipe. The District requires a formal submittal on pipe whether or not it is on EMWD's Approved Materials List.

15. Operations and Maintenance.

- a) General. The Contractor shall obtain data from the various manufacturers and submit in Smart PDF format in the form of instruction and mechanical systems manuals covering all mechanical equipment and machinery installed in the Work. These submittals will be reviewed by the District and revised and resubmitted as deemed necessary.
- b) Contents. Each manual shall have an index listing the contents. Information in the manuals shall include but not be limited to:
 - (i) general, introduction and overall equipment description, purpose, functions, and simplified theory of system operation; specifications;
 - (ii) installation instructions, procedures, sequences, and precautions including tolerances for level, horizontal, and vertical alignment;
 - (iii) grouting requirement including grout spaces and materials;
 - (iv) list showing lubricants for each item of mechanical equipment, approximate quantities needed per year, and recommended lubrication intervals; where possible, types of lubricants shall be consolidated with equipment manufacturers' approval to minimize the number of different lubricants required for plant maintenance;
 - (v) startup and beginning operation procedures;
 - (vi) operational procedures;

- (vii) shut down procedures;
 - (viii) short and long term inactivation procedures;
 - (ix) maintenance, calibration, and repair instruction;
 - (x) parts lists and spare parts recommendations;
 - (xi) lists of all special tools, instruments, accessories, and special lifting and handling devices required for periodic maintenance, repair, adjustment, and calibration;
 - (xii) MSDS for each item as appropriate; and
 - (xiii) other information as may be specified or required for approval.
- c) Format and Organization
- (i) Use drawings and pictorials to illustrate the printed text as necessary to fully present the information.
 - (ii) Where information covers a family of similar items of equipment, identify the applicable portions by heavy weighted arrows, boxes or circles, or strike-out the inapplicable information.

Nonconforming data are not acceptable and will be returned for rework and resubmittal.
 - (iii) Contractor shall incorporate into books all Manufacturers' Equipment Manuals including those specified in pertinent Sections of the Specifications. The books shall be organized by Equipment Class in same manner and sequence as the Specifications, i.e., Mechanical, Electrical, Instrumentation, etc.
 - (iv) Within each book or manual, provide a Table of Content
- d) Manual Binding. Bind all books in sturdy hard covers fastened to provide full view of contents on each page, and ease of making content additions or replacements. No book shall be more than four inches thick.

Permanently label face of cover and bound edge of each book "MANUFACTURERS' INSTRUCTION MANUAL," and indicate Class of Equipment, i.e., Mechanical, Electrical, Instrumentation, etc., or name specific equipment unit, number books consecutively BOOK I, BOOK II, etc. If more than one Class of Equipment is contained in a book, separate each class with a tabbed stiff divider insert page.

- e) Manual Submittals. Contractor shall submit in Smart PDF format. The EN-14 Shop Drawing submittal transmittal shall provide the required corrections, or acceptance.

When accepted, the Contractor shall submit final manuals in Smart PDF format via CIPO, unless otherwise specified, to make a complete manual. Individual manuals shall be chronologically by Specification Section Number. Each Volume of the final manual shall have a complete table of contents.

F-30. CHANGES IN WORK AND EXTRAS

- A. Authority. No changes in the Work covered by the approved Contract Documents shall be made without having prior written approval of the District, unless otherwise directed through field orders. Without invalidating the Contract Agreement and without notice to sureties or insurers, the District may, at any time or from time to time, order additions, deletions, or revisions in the Work. The Contractor shall comply promptly with requirements of all executed Change Orders, Proceed Change Orders, or responses to Requests for Information. If any directive causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment will be made and included in a Change Order.

Additional or extra Work performed by the Contractor without authorization, will not entitle the Contractor to an increase in the Contract Price or an extension of the Contract Time.

Charges or credits for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:

1. Unit bid prices previously approved. The performance of any extra work or furnishing of any extra material which is of like character to and susceptible of classification under the items of the Contract as specified shall, if the order of the District so provides, be paid for at the unit price named for such work in the Bidding Sheet.

The District may change the plans and specifications, character of the work, or quantity of work provided the total arithmetic dollar value of all such changes, both additive and deductive, does not exceed 25 percent of the contract price. Should it become necessary to exceed this limitation, the change shall be by written supplemental agreement between the Contractor and District, unless both parties agree to proceed with the change by Change Order.

If a change is ordered in an item of work covered by a contract unit price, and such change does not involve a substantial change in character of the work from that shown on the plans or included in the specifications, then an adjustment in payment will be made. This adjustment will be based upon the increase or decrease in quantity and the contract unit price.

In case of such an increase or decrease in a major bid item, the use of this basis for the adjustment of payment will be limited to that portion of the change, which together with all previous changes to that item, is not in excess of 25 percent of the total cost of such item based on the original quantity and contract unit price. If a change is ordered in an item of work covered by a contract unit price, and such change does involve a substantial change in the character of the work from that shown on the plans or included in the specifications, an adjustment in payment will be made between the Contractor and District. If unable to reach agreement, the District may direct the Contractor to proceed on the basis of Extra Work.

Should any contract item be deleted in its entirety, payment will be made only for actual costs incurred prior to notification of such deletion.

2. An agreed lump sum. Extra work and material will ordinarily be paid for at a lump sum or unit price agreed on in writing by the Contractor and District before the extra work shall be authorized. If the estimated cost of such extra work shall be more than that previously authorized by the Board, such extra work shall be approved by the Board.
3. Time and Material. When extra work is to be paid for on a time and material basis, the labor, materials and equipment used in the performance of such work shall be subject to the approval of the District and compensation will be determined as specified in the State of California, Department of Transportation Standard Specifications Section 9-1.03, "Force Account Payment". The direct costs shall not include any labor or office costs pertaining to the Contractor, his superintendents, his office staff and office facilities, nor insurance nor the cost or rental of small tools as all such indirect costs form a part of the Contractor's overhead expense.

4. Daily Record of Extra Work. The Contractors Field Representative shall on a daily basis complete a District Form, EN-73 as to the hours for personnel, listed by craft, equipment listed by make and model per Cal Trans Labor Surcharge and Equipment Rental Rates, and any materials used. The Contractors Representative and the Districts Inspector shall both sign the EN-73 noting agreement or disagreement of the indicated information. The Contractor shall then extend the costs on the EN-73 per section titled Changes in Work and Extras, paragraph a., and provide any invoices for material or equipment and submit to the District for review.

5. Idle Time Resulting From Suspension in Work Ordered by District shall be compensated as follows.
 - a) Idle Time of Equipment. Compensation for equipment idle time will be determined on a force account (time and materials) basis, and shall include the cost of extra moving of equipment and rental loss. The right-of-way delay factor for each classification of equipment shown in the California Department of Transportation publication entitled Equipment Rental Rates and the California Department of Industrial Relations General Prevailing Wage Rates, will be applied to any equipment rental rates.

 - b) Idle Time of Labor. Compensation for idle time of workers will be determined by the District as "Labor" less an actual productivity factor of this portion of the work force.

 - c) Increased Costs of Labor and Materials. Increased costs of labor and materials will be compensated only to the extent such increase was in fact caused by the suspension, as determined by the District.

Compensation for actual loss due to idle time of either equipment or labor shall not include markup for profit.

The hours for which compensation will be paid will be the actual normal working time during which such delay condition exists, but will in no case exceed eight hours per day. The days for which compensation will be paid shall be full or partial calendar days excluding Saturdays, Sundays, and Legal Holidays.

- B. Extra Work. Any extra work performed hereunder shall be subject to all of the provisions of the contract and the Contractor's sureties shall be bound with reference thereto as under the original contract.

The Contractor shall notify his sureties and the carriers of the insurance furnished and maintained by him of any changes affecting the general scope of the Work or change in the Contract Price, and the amount of the applicable Bonds and the coverage of the insurance shall be adjusted accordingly. The Contractor shall furnish proof of such adjustments to the District.

C. Forms. District forms to be utilized in the contract administration which may or may not result in changes as aforesaid shall consist of the following:

1. Request for Information (RFI) - to be initiated by the Contractor as far in advance as possible to avoid delays in receiving answers and processing the required additional documents. RFI's may be initiated by the District to transmit clarifying information to the Contractor or Inspector. The District shall allow not more than 15 working days for responding to RFI's, not including the time necessary for delivery or mailing.
2. Change Order - a formal written order to the Contractor signed by the District ordering and authorizing an addition, deletion, or revision in the work, or an adjustment in the contract price or the contract time. Negotiated sums will be paid on a percentage basis for the work completed.
3. Proposed Change Order – may be initiated by the District or Contractor and may result in a Change Order, if the proposal is acceptable. A Proposed Change Order, in itself, authorizes no work, revisions or adjustment to the contract, nor does it imply that a formal Change Order will be written.

A Proposed Change Order may be initiated by the District to authorize work on a time and material basis and may be based on an estimated dollar value which will be reconciled through a formal Change Order if required. Work on time and material will require extra work tickets (see section titled Changes of Work and Extras, paragraph A., 4.) and invoices approved by District. Once all extra work tickets are signed by the Inspector and invoices are submitted and approved by District, a Change Order will be initiated.

4. Progress Payment – will be initiated by the Contractor after the Contractor's representative and the District inspector have met on the jobsite to determine the percent for payment purposes. After its execution by both the Contractor and the District, payment to the Contractor will be processed by the District.

F-31. MATERIALS, WORKMANSHIP AND TESTS

All work shall be done and completed in conformance with these plans and specifications.

- A. Contractor to Furnish. The Contractor shall furnish without cost to the District such quantities of concrete, concrete aggregates, and other construction materials as may be required for test purposes, and shall place at the District's disposal all available facilities for and cooperate in the sampling and testing of all materials and workmanship. A temporary concrete test cylinder curing cabinet conforming to ASTM C31 shall be furnished and located as directed by the District. Schedule of Values (from section 01026), shall be submitted and approved by the District prior to the tenth (10th) of the month for a monthly progress estimate to be processed.
- B. Overloading. No part of the Work on new and existing structures, scaffolding, shoring, sheeting, construction machinery and equipment, or other permanent and temporary facilities shall be loaded with weights or subjected to stresses or pressures that result in an overloading condition. The Contractor shall bear the cost of correcting damage caused by overloading or excessive stresses or pressures.
- C. Use of Explosives. The Contractor shall comply with all laws, ordinances, regulations, codes, and orders governing the transportation, storage and use of explosives. The Contractor shall exercise extreme care not to endanger life or property, and shall be responsible for all injury or damage resulting from the use of explosives for or on the Work.

No blasting shall be done in the vicinity of existing structures above or below the ground without prior written consent of the owner thereof and the District. This consent shall not relieve the Contractor of his responsibility for injury or damage resulting from the use of explosives for or on the Work.

- D. Verification of Installed Work. The Contractor shall correct all defects in installed Work of the Contract before subsequent related or connected Work is applied or installed. Where the Contract Documents require a material or item of equipment to be applied or installed under the supervision, inspection, or direction of the supplier or manufacturer, or his representative, the supplier, manufacturer, or his representative shall inspect the applicable installed Work and issue a letter to the District stating the corrections required to or approval of the installed Work.
- D. Manufacturers' Instructions. Unless otherwise provided in the Contract Documents, the Contractor shall apply, install, erect, connect, use, clean, condition, and operate manufactured articles, materials, and equipment in accordance with the various manufacturers' instructions including those in the instruction manuals.

The Contractor shall compare the requirements of the various manufacturers' instructions with the requirements of the Contract Documents, shall promptly notify the District in writing of any difference between such requirements, and shall not proceed with any of the Work affected by such differences until an interpretation or clarification is issued. The Contractor shall bear all costs for any error in the Work resulting from his failure to so compare the various requirements and notify the District of any such differences.

- F. Field Office for Use by District. If called for in the Special Conditions, Contractor shall furnish and maintain a field office of minimum 200 sq. ft. floor area, located as directed, and furnish and pay for utilities and services for the office. In addition to any requirements set forth in the Special Conditions, the office shall contain the following. The office shall be of finished weather-tight insulated construction and have at least 3 screened windows, lockable doors, resilient tile flooring, uniform lighting, grounded duplex convenience receptacles, heating, and an air conditioner. The office shall be equipped with not less than one standard office desk, one desk chair, three office chairs, one 6-slot vertical plan rack, one 36 in. by 72 in. reference table, one full height nominal 9 sq. ft. closet with six adjustable shelves and lockable door, and one 4-drawer legal size lockable metal file cabinet. A telephone shall be furnished with outside telephone bell. Bottled drinking water and adequate sanitary facilities shall be furnished and maintained. All foregoing facilities and equipment shall be installed and connected before work on site is started, at the sole cost and expense of the Contractor.
- G. Mechanical Equipment and Testing. After all equipment is installed and all facilities are ready to operate, all equipment shall be tested for a period not to exceed seven (7) days by operating either under actual or simulated operating conditions before final acceptance is given. All defects of material or workmanship which appear during this test period shall be corrected by the Contractor. After such corrections are made, the 7-day test may be run again before final acceptance, required by the District.

The Contractor will supply all power, oil, grease, and auxiliaries required for this final test operation. The District will supply water and operating personnel. On certain items of equipment, the final adjustments and inspections shall be made by factory-trained service personnel other than sales representatives, who shall also supervise the test operation.

This requirement will be stated under the Detailed Specifications for the particular piece or pieces of equipment in these Specifications. The District shall provide the service of factory-trained service personnel for equipment furnished by it; however, the Contractor shall be responsible for the coordination of all equipment testing and total system testing.

Each manufacturer who furnishes any piece of equipment calling for factory trained service personnel shall supply, and the Contractor shall include in his bid allowance for, factory-trained service personnel as described above to adjust all of the said equipment supplied by him until this equipment has been tested by the Contractor and the results of these tests have been approved by the District.

The Contractor shall not install any item of machinery or process equipment until he has submitted a copy of the manufacturer's installation instructions. This includes equipment furnished by the District. Prior to final acceptance, the Contractor shall submit Operating Instructions, Maintenance Instructions, and Parts Lists for all such equipment in Smart pdf format.

After all acceptance tests have been completed by the Contractor and District, including existing equipment and equipment furnished by the District, but prior to final acceptance, the Contractor shall recheck all equipment for proper alignment and adjustment, check oil levels, re-lubricate all bearings and wearing points, and in general, assure that all equipment is in proper condition for regular continuous operation.

F-32. DELAYS

- A. General. If delays are caused by unforeseen events beyond the control of the Contractor, such delays will entitle the Contractor to an extension of time as provided herein, but the contractor will not be entitled to damages or additional payment due to such delays, except as provided for in paragraph c. Such unforeseen events may include: war, government regulations, labor disputes, strikes, fires, floods, adverse weather or elements necessitating cessation of work, inability to obtain specific events as may be further described in the specifications.

No extension of time will be granted for a delay caused by the Contractor's inability to obtain materials unless the Contractor furnishes to the District documentary proof. The proof must be provided in a timely manner in accordance with the sequence of the contractor's operations and the approved construction schedule. Delays in obtaining materials due to priority of filling orders will not constitute a shortage of materials.

If delays beyond the Contractor's control are caused by events other than those mentioned above, the District may grant an extension of time. The contractor will not be entitled to damages or additional payment due to such delays, except as provided for in paragraph c.

- B. Time Extensions. Extensions of time, when granted, will be based upon the effect of delays to the Work. Time extensions will not be granted for delays

which do not affect the project's critical path; a delay that was concurrent with a contractor-caused delay or a delay that could have been absorbed by float. Permitting the Contractor to continue and finish the Work, or any part of it, after the date to which the time fixed for its completion may have been extended, shall under no circumstances operate as a waiver on the part of the District of any of its rights under this contract.

- C. Payment for Delays to Contractor. The Contractor will be compensated for damages incurred due to delays for which the District is responsible. Such actual costs will be determined by the District. The District will not be liable for damages which the Contractor could have avoided by any reasonable means, such as judicious handling of forces, equipment, or plant. The determination of what damages the Contractor could have avoided will be made by the District.

- D. Written Notice of Delay. In order to have the best opportunity to mitigate cost and time impacts of delays, it is necessary for the District to have knowledge of potential delays as early as possible. Therefore the Contractor shall provide written notice to the District as soon as the potential delay is identified, but in no case later than three work days after identification of the potential delay. Said written notice shall be labeled "Notice of Delay" in the reference line and shall describe the nature and cause of the delay. Any request for additional compensation and/or extension of contract time as a result of the delay shall be made within 30 calendar days of the date of the Notice of Delay and shall include a detailed calculation of claimed time and cost, and all supporting documentation. Failure to provide notice of any delay within the time and in the manner specified above shall constitute a waiver of any claim arising out of that delay.

- E. Liquidated Damages. Failure of the Contractor to complete the Work within the time allowed will result in damages being sustained by the District. Such damages are, and will continue to be, impracticable and extremely difficult to determine. For each consecutive calendar day in excess of the time specified for the completion of Work, the Contractor shall pay to the District, or have withheld from monies due him, a sum specified in the Specifications as liquidated damages, unless otherwise provided in the Special Conditions. The District shall maintain on file information to substantiate the calculation of the specified sum. Said substantiation may include, but is not limited to, data regarding extended staffing costs and the cost of potential regulatory fines and penalties.

Execution of the Contract shall constitute agreement by the District and the Contractor that the specified daily sum of liquidated damages is the minimum value of the costs and actual damage caused by the failure of the Contractor to complete the Work within the allotted time. Such sum is liquidated damages and shall not be construed as a penalty, and may be deducted from payment due the Contractor if such delay occurs.

Liquidated damages may also be applied to compensate the District for undue delays in the completion of punch list items, site clean-up, demobilization, and miscellaneous contract obligations after a notice of Substantial Completion has been filed. The cost to the District for administration, inspection, mileage, and other similar items would be extremely difficult to determine and, for that reason, additional liquidated damages, known as Administrative Delay Liquidated Damages, in the amount of \$100 per day shall be imposed, effective following 30 days, unless otherwise specified in the Special Conditions, after filing of the notice of Substantial Completion until notice of a Final Completion is issued.

F-33. INSPECTION AND TESTING OF MATERIALS

- A. Accepted Standards. All materials and equipment used in construction of the project shall be subject to inspection and testing in accordance with these contract documents. The laboratory or inspection agency shall be selected by the District. The District will pay for all laboratory inspection service direct and not as a part of the Contract.
- B. Inspection. All materials furnished and all work done under these specifications shall be subject to inspection. Work done in the absence of prescribed inspection may be required to be torn out and replaced under the proper inspection, and the entire cost of tearing out and replacement, including the cost of all materials furnished by the District and used in the work torn out, shall be borne by the Contractor, whether the work torn out is found to be defective or not.

F-34. DEFECTIVE WORK OR MATERIAL

The inspection of the work shall not relieve the Contractor of any of his obligations to fulfill his contract as herein prescribed. If the work, or any part thereof, shall be found defective at any time before the final acceptance of the whole work, the Contractor shall forthwith make good such defect without compensation in a manner satisfactory to the District.

If any materials furnished and brought to the work site by the Contractor for use in the work or selected for the same by him, are not in conformity with the specifications, the Contractor shall remove them from the job site.

If the Contractor shall fail or neglect to make ordered repairs of defective work or to remove unsuitable materials from the work within ten (10) days after service by the District of any order to do such repair work or remove such materials, the District may make the ordered repairs or remove the unsuitable materials and deduct the cost thereof from any monies due the Contractor.

The District may accept defective Work instead of requiring its correction or removal and replacement. In such case, if acceptance occurs prior to the making of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Contract Price covering the value of such accepted defective Work and the additional costs the District may incur on account of such defective Work.

F-35. ACCESS TO WORK

The District shall at all times and for any purpose have access to the work and the premises used by the Contractor, and the Contractor shall provide safe and proper facilities therefore. The District shall, at all times, have access to all places of manufacture where machinery or materials are being manufactured, produced, or fabricated for use under these specifications. The Contractor shall, whenever so requested, give the District access to the proper invoices, bills of lading, etc., and shall provide scales and assistance for weighing, or assistance for measuring any of the materials.

F-36. TIME FOR COMPLETION AND FOR DAMAGES FOR LATE COMPLETION

- A. General. It is hereby understood and mutually agreed, by and between the Contractor and the District, that the date of beginning, rate of progress, and the time for completion of the work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the Work embraced in the Contract shall be commenced on the date specified in the Notice of Acceptance of Proposal.

The Contractor agrees that said work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified.

- B. Repair of Damage by "Acts of God". The Contractor shall not be responsible for the cost of repairing or restoring damage to the Work, which damage is determined to have been proximately caused by an act of God, in excess of five percent (5%) of the contracted amount, provided, that the work damaged is built in accordance with accepted and applicable building standards and the Contract Plans and Specifications.

In the event damage for said act of God exceeds 5%, the District shall be allowed, at its sole discretion, to terminate the Contract.

"Acts of God" shall include only the following occurrences or conditions and effects: earthquakes in excess of a magnitude of 3.5 on the Richter Scale with its epicenter within five (5) miles of the project site.

PAYMENT TO CONTRACTOR

F-37. QUANTITIES OF ESTIMATE

- A. The estimated quantities of work to be done and materials to be furnished under this Contract shown in any of the documents including the Proposal, are given only for use in comparing bids and to indicate approximately the total amount of the Contract. The right is reserved except as herein otherwise specifically limited to increase or decrease the estimated quantities as may be deemed reasonably necessary or desirable by the District to complete the Work. Any such increase or decrease shall not give cause for claims or liability for damages.

The Contractor shall furnish an itemized breakdown of the Contract price of all lump sum bid items for the District's approval. The breakdown shall include quantities, unit prices and any other information required, in sufficient detail, to enable it to be used by the District in preparing monthly progress estimates.

Unit prices for pipelines may be broken down as allowed by the specification section for the installation of the pipeline. All other costs not specifically shown by an item shall be prorated among the applicable items listed. No progress payments will be made until this breakdown is submitted by the Contractor pursuant to section titled Construction Schedule and Progress Payments and approved by the District. Schedule of Values (from Section 01026), shall be submitted by the Contractor and approved by the District by the tenth (10th) of the month to allow processing of the monthly progress payment. Submittal and approval of Schedule of Values beyond the tenth (10th) of the month will result in the progress payment being processed the following month. Payment for pipe delivery shall be based on submitted verifiable invoices for the pipe from the pipe manufacturer.

- B. No Payment for Temporary Works. Compensation for all temporary works and/or services, facilities, equipment, or material necessary or required to execute the work in accordance with the provisions of the Contract shall be considered as having been included in the prices stipulated for the appropriate items of work.

F-38. CLAIMS

The Contractor shall not be entitled to the payment of any additional compensation for any act, or failure to act, by the District, including failure or refusal to issue a change order, or for the happening of any event, thing, occurrence, or other cause, unless the Contractor shall have given the District due written notice of potential claim as hereinafter specified.

The written notice of potential claim shall be submitted to the District prior to the time that the Contractor performs the work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the District, or in all other cases within 3 days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential claim.

The notice shall set forth the facts and contractual basis for which the Contractor believes additional compensation will or may be due and the nature of the costs involved. Unless the amount of the potential claim has been stated in the written notice, the Contractor shall, within 7 days of submitting the notice, furnish an estimate of the cost of the affected work and impacts, if any, on project completion. The estimate of costs may be changed or updated by the Contractor when conditions have changed. When the affected work is completed, the Contractor shall submit substantiation of the Contractor's actual costs. Failure to provide the District with the information as detailed above and within the timeframes described shall be sufficient cause for denial of any claim subsequently filed on the basis of the notice of potential claim.

It is the intention of this section that differences between the parties arising under and by virtue of the contract be brought to the attention of the District at the earliest possible time in order that the matters may be settled, if possible, or other appropriate action promptly taken. The Contractor hereby agrees that the Contractor shall have no right to additional compensation for any claim that may be based on any act, failure to act, event, thing or occurrence for which no written notice of potential claim as herein required was filed.

Should the District require the Contractor's records of the project, as deemed by the District to be pertinent to the potential claim, all documents requested shall be made available to the District for inspection and copying upon immediate request.

Disputes of Construction Claims.

A. Upon receipt by District of a claim by Contractor for a time extension or payment, sent by registered mail or certified mail with return receipt requested, District shall, within 45 days, review the claim and provide Contractor a written statement indicating what portion of the claim is disputed and what portion is undisputed. Contractor shall furnish reasonable documentation to support the claim, and, upon mutual agreement, this time period may be extended.

If District requires Board approval to issue its written statement to Contractor, and the Board does not meet within the 45 days or mutually agreed upon time extension, District shall have 3 days after its next regular Board meeting following the expiration of the 45-day period or extension to provide Contractor with its written statement. Any payments owed Contractor on undisputed portions of its claim shall be made by District within 60 days of issuance of its written statement.

If Contractor disputes District's written response, or if District fails to provide a written response, Contractor may demand an informal settlement conference. Such demand shall be made in writing, sent by registered mail or certified mail, return receipt requested, and District shall schedule the settlement conference within 30 days of receiving demand.

Within 10 days following any settlement conference, District shall issue a second written statement indicating which portions of the claim are disputed and which portions are undisputed. Any payments owed for undisputed portions of the claim shall be made within 60 days of District's written statement.

Any remaining disputed portions of the claim shall be submitted to non-binding arbitration. If the Parties cannot agree on a mediator within 10 days after the disputed portion has been identified, each Party shall select a mediator, and those mediators shall select a neutral to conduct the mediation.

If mediation is unsuccessful, the portions of the claim remaining in dispute shall be subject to applicable procedures provided by law. If the matter is litigated, the mediation conducted pursuant to this provision shall satisfy the Parties' obligations under section 20104.4 to mediate after litigation has commenced.

Failure by District to comply with this provision shall result in the claim being denied in its entirety.

The procedures set forth in this provision shall apply to subcontractors and lower tier subcontractors, who may request that Contractor submit a claim to District on their behalf. If such a request is made, Contractor shall notify the requesting subcontractor within 45 days whether Contractor submitted the claim to District, and if not, the reasons therefor."

B. Pursuant to Section 20104, et seq. of the Public Contract Code, this article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a Contractor and the District. This article shall not apply to any claims resulting from this contract when the District has elected to resolve any disputes pursuant to the arbitration procedures set forth in section titled Arbitration.

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

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

For claims of less than fifty thousand dollars (\$50,000), the District 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 to the claim the District may have against the Contractor.

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

The District'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.

For claims greater than or equal to fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the District 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 to the claim the District may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the District and the Contractor.

The District's written response to the claim, as further documented, shall be submitted to the Contractor within 30 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.

If the Contractor disputes the District's written response, or the District fails to respond within the time prescribed, the Contractor may so notify the District, in writing, either within 15 days of receipt of the District's response or within 15 days of the District'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 District shall schedule a meet and confer conference within 30 days for settlement of the dispute.

Following the meet and confer conference, if the claim or any portion remains in dispute, the Contractor may file a claim as provided in Section 900 et seq., and Section 910 et seq. of the Government Code.

For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process. These provisions of the Public Contract Code do not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Section 900 et seq. and Section 910 et seq. of the Government Code.

Following the meet and confer conference and the applicable claims procedure, any civil action filed to resolve such a claim shall be subject to the following procedures. Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15 day period, any party may petition the court to appoint the mediator.

If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Section 1141.10 et seq. of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. Section 2016, et seq. of the Code of Civil Procedure shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

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

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

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

F-39. ARBITRATION

Any controversy or claim arising out or relating to this Contract, or the breach thereof, may upon prior written agreement by all parties, be submitted to and settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. Either party, upon agreeing to arbitration, shall have the right to require continuous sessions.

The Arbitrator's fee and scope of work shall be agreed upon in writing by all parties to the arbitration and fixed prior to the appointment of the Arbitrator(s).

Either party shall have the right to require in writing from the Arbitrator(s) the reasons for the decision rendered by the Arbitrator(s) in the form of a "conclusions of law/written decision/Findings of Fact" with the elements set forth below.

An award against the District reached through an arbitrated settlement must be presented in writing and include the following elements:

- A. Legal "Findings of Fact" established by the Arbitrator.
- B. A specific breakdown of the dollar amounts allocated for each issue under arbitration.
- C. The Arbitrator's "Conclusions of Law."
- D. A summary of the evidence.
- E. Reasons underlying the Arbitrator's award.

F-40. RETENTION

Not later than fifteen (15) calendar days following receipt from the Contractor of a duly certified and approved periodic estimate of the work performed prior to the twentieth (20th) day of the preceding calendar month, the District will make a partial payment to the Contractor on the basis of that estimate. To ensure the proper performance of this Contract from each progress estimate, 5 percent will be deducted and retained by the District, and payment of the remainder less the amount of all previous payments will be made. No progress payment made to the Contractor or its sureties will constitute a waiver of liquidated damages or any other damages or legal remedies that may arise under this Contract.

- A. Substitution of Securities
 - 1. Escrow Agreement. If Contractor, pursuant to Public Contract Code Sec.22300, elects to deposit securities with an Escrow

Agent as a substitute for contract retention required, he shall enter into an Escrow Agreement in the following form per attached Exhibit A entitled Escrow Agreement for Security Deposits.

2. Eligible Securities. 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 District.

F-41. PAYMENT FOR EQUIPMENT

In preparing estimates the material delivered on the site and preparatory work done may be taken into consideration. Payment in advance of installation for materials or equipment received at the site and properly stored and protected for future installation under the contract will be made only on major items, as determined by the District.

F-42. MEASUREMENT AND PAYMENT

Payment shall not relieve the Contractor from his obligations under the contract; nor shall such payment be construed as the transfer of ownership of any equipment or materials to the District. Responsibility of ownership shall remain with the Contractor who shall be obligated to store any fully or partially completed work or structure for which payment has been made; or replace any materials or equipment required to be provided under the contract which may be damaged, lost, stolen or otherwise degraded in any way prior to acceptance of the Work.

Payment for safety, sanitary and medical requirements shall be considered in the contract unit or lump sum prices paid for various items of work, and no additional allowance will be made therefore, unless a separate bid item for this work is included in the proposal.

Payment for maintenance of traffic and detours and for conforming to all of the provisions of these Specifications shall be considered to be included in the Contract unit or lump sum prices paid for various items of work where maintenance of traffic and detours is required, and no additional allowance will be made therefore, unless a separate bid item for this work is included in the proposal.

Preset Bid Item No. 1. A pre-determined lump sum bid item is included in the Proposal form for supplying Bonds, Insurance, Breakdown of Contract Price or Schedule of Values, and a Preliminary Project Schedule which is subject to the conditions and limitations in the Specifications.

Mobilization payment shall be paid on the first periodic estimate, provided that the bonds, insurance, Schedule of Values, and the Preliminary Project Schedule have been approved by the District.

F-43. DISTRICT'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION THEREOF

The Contractor agrees that he will indemnify and save the District harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, incurred in the furtherance of the performance of this Contract.

The Contractor shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If the Contractor fails to do so then the District may, after having served written notice on the said Contractor, either pay unpaid bills, of which the District has written notice, direct, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payment to the Contractor shall be resumed, in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Contractor or his surety.

In paying any unpaid bills of the Contractor, the District shall be deemed the agent of the Contractor, and any payment so made by the District shall be considered as a payment made under the Contract by the District to the Contractor, and the District shall not be liable to the Contractor for any such payment made in good faith.

At the option of the District, monies may be retained to cover properly executed claims from subcontractors, materialmen or suppliers indicating lack of payment by the Contractor for subcontracts, materials or equipment for which the Contractor has previously been paid by the District.

Implementation of this provision shall only be in accordance with the intent of the District to protect sufficient monies to complete the Contract and/or secure equipment warranties in the event of default of the Contract by the Contractor.

If, within the time fixed by law, a properly executed notice to stop payment is filed with the District, due to the Contractor's failure to pay for labor or materials used in the Work, 125% of all money due for such labor or materials will be withheld from payment to the Contractor in accordance with the applicable laws.

After the date of acceptance of the Work, or as prescribed by law, the amount deducted from the final estimate and retained by the District will be paid to the Contractor except such amounts as are required by law to be withheld by properly executed and filed notices to stop payment, or as may be authorized by the contract to be further retained.

F-44. FINAL ESTIMATE AND PAYMENT

Whenever, in the opinion of the District, the Contractor shall have completely performed the Work required in the Contract Documents, the District shall cause to be filed, a Notice of Acceptance of the Work in the County Recorder's office. After the filing of the Notice of Acceptance of the Work, the District shall pay to the Contractor the amount remaining net of all outstanding disputes, claims or liens. All prior certificates, upon which partial payments may have been made, being merely estimates, shall be subject to correction in the final certificate.

The requirements set forth in Section 7107 of the Public Contract Code shall be applicable to the project in regard to disbursement of retention proceeds withheld from any payment to the prime contractor.

F-45. PAYROLLS OF CONTRACTORS AND SUBCONTRACTORS

The regulations of the Secretary of Labor applicable to contractors and subcontractors (29 CFR Part 3), made pursuant to the Copeland Act, as amended (40 U.S.C. 276c) and to aid in the endorsement of the Anti-Kickback Act (18 U.S.C. 874) are made a part of this Contract by reference. The Contractor and each of his subcontractors shall prepare his payrolls on forms prescribed and in accordance with instructions to be furnished by the District. Within ten (10) days after regular payment date of the payroll, the Contractor shall deliver to the District a certified legible copy or copies of each such payroll.

Each payroll shall be sworn to in accordance with the Federal Regulations made pursuant to the "Kick-Back Statute." In the event of noncompliance with this requirement following ten (10) days specific written notice, the Contractor shall, pursuant to Section 1776 of the California Labor Code, forfeit as a penalty one hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from the progress payments due. Responsibility for compliance shall rest with the prime Contractor. A Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

Each Contractor or subcontractor shall preserve his weekly payroll records for a period of three (3) years from the date of completion of the Contract.

The payroll records shall set out accurately and completely the name, occupational classification, and hourly wage rate of each employee, hours worked by him during the payroll period, and full weekly wages earned by him, any deductions made from such weekly wages, and the actual weekly wages paid to him. Such payroll records shall be submitted to the Department of Industrial Relations Electronic Certified Payroll Records system, be made available for inspection by the District or its authorized representatives, and shall be furnished to the District or others upon request, pursuant to the provisions of the California Labor Code.

F-46. PREVAILING RATES OF WAGES

In accordance with the provisions of the California Labor Code, the Director of Industrial Relations has ascertained the general prevailing wage rates in the locality in which the work is to be performed, for each craft or type of workman needed to execute the contract, and said wage rates are on file at the District office and will be made available to any interested party on request. The Contractor must pay prevailing wages.

The Contractor shall comply with the applicable provisions of the Labor Code including, but not limited to, the following.

The Contractor shall forfeit as a penalty to the District two-hundred dollars (\$200.00) for each calendar day, or portion thereof, for each workman paid less than the said stipulated prevailing rates for any work done under the contract by him, or by any subcontractor under him, in violation of the provisions of the California Labor Code, for transmittal to the State Treasurer ninety (90) days after acceptance of the work. This penalty shall be in addition to any shortfall in wages paid.

There shall be paid each laborer or mechanic of the Contractor or subcontractor engaged in work on the project under this contract in the trade or occupation listed by the Director of the California Department of Industrial Relations, not less than the hourly wage rate or holidays or overtime wage rate for the same, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such laborers and mechanics.

The foregoing specified wage rates are minimum rates only, and the District will not consider any claims for additional compensation made by the Contractor because of payment by the Contractor of any wage rate in excess of the applicable rate contained in this contract. Increased costs resulting from increases in ascertained wage rates subsequent to the contract advertisement or award shall be borne solely by the Contractor.

Upon request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, penalties shall be withheld from progress payments due.

The Contractor agrees that, in case of underpayment of wages to any worker on the project under this Contract by the Contractor or any subcontractor, the District shall withhold from the Contractor out of payments due, an amount sufficient to pay such worker the difference between the wages required to be paid under this Contract and the wages actually paid such worker for the total number of hours worked and that the District may disburse such amount so withheld by it for and on account of the Contractor to the employee to whom such amount is due. The Contractor further agrees that the amount to be withheld pursuant to this paragraph may be in addition to the percentages to be retained by the District pursuant to other provisions of this Contract.

F-47. COMPLETION AND ACCEPTANCE

The Work will be inspected by the District for acceptance upon receipt of the Contractor's written representation that the Work has been completed.

If, in the District's judgment, the Work has been completed and is ready for acceptance, it will so certify the completion of the work.

All work shall be guaranteed by the Contractor against defective workmanship and materials furnished by the Contractor for a period of 1 year from the date the Work was completed. The Contractor shall replace or repair any such defective work in a manner satisfactory to the District, after notice to do so from the District, and within the time specified in the notice. If the Contractor fails to make such replacement or repairs within the time specified in the notice, the District may perform this work and the Contractor's sureties shall be liable for the cost thereof.

F-48. FINAL PAYMENT DECLARATION

Prior to final payment, the Contractor shall provide a declaration certifying that all labor and material has been paid for, together with releases from all subcontractors and materialmen, or documenting all outstanding obligations. Contractor shall also, in writing, waive all claims by the Contractor against the District, or document all outstanding claims.

F-49. PAYMENT ONLY IN ACCORDANCE WITH CONTRACT

The Contractor shall not demand nor be entitled to receive payment for the Work or materials, nor any portion thereof, except in the manner set forth in the Contract.

F-50. SUBSTANTIAL COMPLETION

At the discretion of the District, part or all of the project may be placed into operation prior to full completion of the work. If applicable, the District may not assess liquidated damages to that portion of the work, after the date of substantial completion.

F-51. MONIES MAY BE RETAINED

The District may retain any monies which would otherwise be payable at any time hereunder, and apply the same, or so much as may be necessary therefore, to the payment of any expenses, losses, or damages, as determined by the District, incurred by the District, for which the Contractor is liable under the Contract.

F-52. UNPAID CLAIMS

Persons providing labor, equipment, materials or services toward performance of this Contract, and who claim to have not been paid for work done or items furnished, shall comply with the applicable provisions of California Civil Code for the filing of a Preliminary Notice and Stop Notice. In the discretion of the District, the Contractor may be permitted to file a bond, pursuant to Civil Code section 3196. The filing of such a bond will result in no further withholding on account of the stop notice.

F-53. EIGHT HOUR LAW

Pursuant to the provisions of the California Labor Code, including Section 1810 to Section 1815 inclusive, eight (8) hours labor shall constitute a legal day's work and the time of service of any worker employed on the work shall be limited and restricted to eight (8) hours during any one calendar day, except in cases of extraordinary emergency, caused by fire, flood, or danger to life or property. The Contractor shall forfeit as a penalty to the District twenty-five dollars (\$25.00) for each worker employed in the execution of this Contract by him or by any subcontractor under him, for each calendar day during which such worker is required or permitted to labor more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of said Labor Code.

The Contractor shall be bound by and comply with applicable provisions of the Labor Code and Federal, State, and local laws related to labor. The Contractor shall strictly adhere to the provisions of the Labor Code regarding minimum wages; the 8 hour day and 40 hour work week; overtime; Saturday, Sunday, and holiday work.

F-54. OVERTIME - NO EXTRA COMPENSATION

Overtime work, i.e., work in excess of forty (40) hours in any work week, or work performed on a Sunday or other legal holiday shall not entitle the Contractor to any compensation for any contract items in addition to that stipulated in the Contract for the kind of work performed, even though such overtime or legal holiday work may be required under emergency conditions, and may be ordered by the District in writing.

In case of extra work ordered by the District under the provisions of paragraph titled Changes in Work and Extras hereof, no additional payment will be made to the Contractor because of the payment by him of overtime or legal holiday rates for such work unless the use of overtime or legal holiday work in connection with such extra work is specifically ordered in writing by the District, and then only to such extent as extra payment is regularly being made by the Contractor to his employees for overtime or legal holiday work of a similar nature in the same locality.

F-55. POSTING MINIMUM WAGE RATES

The Contractor shall post at appropriate conspicuous points at the site of the project a copy of the applicable state wage rates, in addition to Federal Wage Determinations when specifically required, for the various classes of laborers and mechanics to be engaged in work on the project under this Contract and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.

PERSONNEL

F-56. ACCIDENT PREVENTION - PUBLIC SAFETY

Precaution shall be exercised at all times for the protection of persons (including employees) and property, and hazardous conditions shall be guarded against or eliminated. The Contractor shall make adequate provisions, subject to the approval of the District, to protect the project and the Contractor's facilities from fire, flooding, theft, and vandalism, and the public from exposure to injury.

During the performance of the Work the Contractor shall erect and maintain temporary fences, bridges, railings, and barriers and shall take all other necessary precautions and place proper guards for the prevention of accidents; shall put up and keep suitable and sufficient lights and other signals. The Contractor shall indemnify and save harmless the District from all damages and costs to which it may be put by reason of injury to person or property resulting from the Contractor's negligence or carelessness in the performance of the work, or in guarding the same, or from any improper materials, implements, or appliances used in its construction, or by or on account of any act or omission of the Contractor or his agents.

Nothing in this section shall be construed to impose tort liability on the District.

F-57. CHARACTER OF WORKERS

None but skilled workers shall be employed on work requiring special qualifications. When required in writing by the District, the Contractor or any subcontractor shall discharge any person who is, in the opinion of the District, incompetent, unfaithful, disorderly or otherwise unsatisfactory, and shall not again employ such discharged person on the Work except with the consent of the District.

Such discharge shall not be the basis of any claim for compensation or damages against the District.

F-58. EMPLOYMENT

No convict labor shall be directly employed by the Contractor or any subcontractor in the performance of any work done under this Contract.

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

F-59. NONDISCRIMINATION IN EMPLOYMENT

Pursuant to the requirements of Federal and State law, including, but not limited to, California Labor Code Section 1735 and 29 U.S.C. 623, the Contractor shall not discriminate in the employment of persons because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex or age of such persons.

F-60. ENFORCEMENT OF ORDER

The Contractor shall be responsible for maintaining good order at all locations where work is performed under this contract and to that end shall employ such guards or other persons as may be required. Unauthorized persons shall be excluded from the site of the Work. The Contractor shall not sell, nor shall he permit the introduction or use of, intoxicating liquors or narcotics upon the works described in these specifications or upon any of the grounds occupied or controlled by him in connection with such works.

F-61. SAFETY, SANITARY AND MEDICAL REQUIREMENTS

- A. General. The Contractor shall abide by Labor Code Section 6401.7 which requires him to establish, implement and maintain an Injury and Illness Protection Program. The Contractor and his subcontractors and employees shall promptly and fully carry out the safety, sanitary, and medical requirements as hereinafter stated or as may from time to time be prescribed by the District, to the end that proper work shall be done, and the safety and health of the employees and of the local communities may be preserved and safeguarded. The Contractor shall dismiss and shall not engage except with the written consent of the District any employee who violates the safety, or medical requirements.
- B. Trench Shoring. Pursuant to the provisions of Section 6500, et . seq. of the California Labor Code, the Contractor planning excavation or trench work is required to obtain a permit for such work from the Division of Occupational Safety and Health.

The Contractor is required to submit a detailed plan, which shall be accepted by the District, in advance of any excavation. The detailed plan must show 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 such trench or trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

- C. Safety Officer. The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of hazards and accidents. This person shall be the Contractor's Superintendent unless otherwise designated in writing by the Contractor to the District.
- D. Representatives for Emergencies. The Contractor shall file with the District a written list giving the names, addresses, and telephone numbers of a least two of his representatives who can be contacted at any time in case of emergency, not limited to working hours. The representatives shall be fully authorized and equipped to correct unsafe or inconvenient conditions on short notice. The Contractor shall promptly notify the District of all changes in the listing.

F-62. SANITATION

All parts of the Work shall be maintained in a neat, clean and sanitary condition. Fixed and portable toilets shall be provided wherever needed for use of employees and their use shall be strictly enforced. All waste and refuse from sanitary facilities provided by the Contractor or from any other source related to the Contractor's operations shall be taken care of in a sanitary manner satisfactory to the District and in accordance with the laws and regulations pertaining thereto. The Contractor shall furnish all the facilities and means for the proper sanitation of the work and shall protect and save harmless the District.

F-63. FIRST AID AND PROTECTIVE FACILITIES

First Aid facilities and supplies shall be kept on the Work and instructions in first aid shall be given as required by the State Regulations, and the Contractor shall provide and maintain all measures required by said regulations for the safety and protection of employees.

End of Section F

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ESCROW AGREEMENT FOR SECURITY DEPOSITS

IN LIEU OF RETENTION

Pursuant to Section 22300, payment of retentions earned shall be deposited in a trust account with a state or federally chartered bank or savings association.

THIS ESCROW AGREEMENT is made and entered into by and between EASTERN MUNICIPAL WATER DISTRICT, whose address is P.O. Box 8300, Perris, California 92572-8300 (hereinafter called "DISTRICT");

_____ whose address is _____ (hereinafter called CONTRACTOR"); and _____ whose address is _____ (hereinafter called "escrow agent").

FOR CONSIDERATION HEREINAFTER SET FORTH, THE DISTRICT,
CONTRACTOR, AND ESCROW AGENT AGREE AS FOLLOWS:

1. Pursuant to Section 22300 of the Public Contract Code of the State of California, the CONTRACTOR has the option to deposit securities with the escrow agent as a substitute for retention earnings required to be withheld by the DISTRICT pursuant to the Construction Contract entered into between the DISTRICT and CONTRACTOR for

in the amount of _____ dated _____ (hereinafter referred to as the "Contract"). Alternatively, on written request of the CONTRACTOR, the DISTRICT shall make payments of the retention earnings directly to the escrow agent.

When the CONTRACTOR deposits the securities as a substitute for Contract earnings, the escrow agent shall notify the DISTRICT within ten days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the DISTRICT and the CONTRACTOR. Securities shall be held in the name of EASTERN MUNICIPAL WATER DISTRICT, and shall designate the CONTRACTOR as the beneficial owner.

2. The DISTRICT shall make progress payments to the CONTRACTOR for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the escrow agent holds securities in the form and amount specified above.

3. When the DISTRICT makes payment of retentions earned directly to the escrow agent, the escrow agent shall hold them for the benefit of the CONTRACTOR until such time as the escrow created under this contract is terminated. The CONTRACTOR may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the DISTRICT pays the escrow agent directly.

4. The CONTRACTOR shall be responsible for paying all fees for the expenses incurred by escrow agent in administering the Escrow Account and all expenses of the DISTRICT. These expenses and payment terms shall be determined by the DISTRICT, the CONTRACTOR and escrow agent.

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

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

7. The DISTRICT shall have a right to draw upon the securities in the event of default by the CONTRACTOR. Upon seven days' written notice to the escrow agent from the DISTRICT of the default, the escrow agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the DISTRICT.

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

9. The escrow agent shall rely on the written notifications from the DISTRICT and the CONTRACTOR pursuant to Sections (5) to (8), inclusive, of this Agreement and the DISTRICT and CONTRACTOR shall hold escrow agent harmless from escrow agent's release, conversion and disbursement of the securities and interest as set forth above.

10. The names of the persons who are authorized to give written notice or to receive written notice on behalf of the DISTRICT and on behalf of CONTRACTOR in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of District:

Chief Financial Officer

Title

John Adams

Name

Signature

P.O. Box 8300, Perris, CA 92572

Address

OR

Controller

Title

Wilma T. Garriz, CPA

Name

Signature

P.O. Box 8300, Perris, CA 92572

Address

On behalf of escrow agent:

Title

Name

On behalf of Contractor:

Title

Name

Signature

Address

Signature

At the time the Escrow Account is opened, the DISTRICT and CONTRACTOR shall deliver to the escrow agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

DISTRICT

CONTRACTOR

Title

Title

Name

Name

Signature

Signature

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