



MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

CALL FOR BIDS

SLEEPY HOLLOW STEELHEAD REARING FACILITY RAW WATER INTAKE AND WATER SUPPLY SYSTEM UPGRADE PROJECT

DAVID J. STOLDT, GENERAL MANAGER

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MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

NOTICE INVITING SEALED BIDS

SLEEPY HOLLOW STEELHEAD REARING FACILITY RAW WATER INTAKE AND WATER SUPPLY SYSTEM UPGRADE PROJECT

NOTICE IS HEREBY GIVEN, that sealed bids will be received by the Board of Directors, Monterey Peninsula Water Management District, at the District office, 5 Harris Court, Bldg G, P. O. Box 85, Monterey, California, 93942-0085, until 3 p.m. on June 29, 2018, at which time they shall be publicly opened and read for performing work as follows:

- Approximately 2,400 cubic yards of excavation
- Approximately 1,000 tons of imported rock
- Trenching and installation of approximately 650 lineal feet of various pipe sizes and appurtenances
- Construction of a 1,750 square-foot building and equipment for a recirculating aquaculture system
- Installation of a 720 square-foot settling basin
- Installation and modification of associated equipment
- Temporary dewatering of the Carmel River channel
- Installation of a new river water intake

Any bids received after the deadline for bid submittal shall be returned unopened.

Site is located at 45 San Clemente Drive, Carmel Valley, California 93924.

This work shall be done in accordance with the Specifications therefore adopted, to which special reference is hereby made. The Contractor shall furnish all labor, supplies, equipment, and services required to perform the work, except as expressly stated in the Construction Specifications. The Contractor shall hold a valid Class A, General Contractors License issued by the State of California. Other State of California licenses may be required for sub-contracting portions of the work described including C-10 – Electrical Contractor, C-34 – Pipeline Contractor, and C-36 – Plumbing Contractor.

Each bid shall be accompanied by U.S. currency, certified check, cashiers check, or Contractor's bond in an amount not less than ten percent (10%) of the bid amount, and shall be made payable to the Monterey Peninsula Water Management District.

Responses to this Call for Bids shall incorporate the general prevailing rates in the locality in which the work is to be performed as determined by the State Director of the Department of Industrial Relations. It shall be incumbent upon the successful bidder to pay not less than the minimum hourly wage required by the Schedule of Wage Determinations to be paid to the various laborers and mechanics employed directly upon the site of the work. In the event that any change in the

above rates is made, said changed rates shall apply to this public project without adjustment in bid price. A copy of said Schedule of Wage Determinations is on file at the District office.

The District reserves the right to reject any and all bids or to waive any irregularities or informalities in any bid or in the bidding. No bidder shall withdraw his or her bid for a period of 180 calendar days after the date set by the District for the opening thereof. Award of a contract and Notice to Proceed is subject to the District obtaining all necessary permits and authorizations for work.

Timing is of the essence in the conduct of this project. Upon authorization of a contract by the District Board of Directors, a notice of award will be sent to the successful bidder. The successful bidder will then have 10 calendar days to return a signed contract agreement, together with faithful performance bonds and any other required documentation.

Work must begin within 10 calendar days from issuance of the notice to proceed by the District. The work must be completed by May 1, 2019. If the bidder fails or refuses to enter into a contract to do the work, then the bid guaranty accompanying the bid shall be paid to the District as liquidated damages (General Provisions Sect. 2.03).

The Engineer's estimate for this work is \$1.4 million. **There will be an optional field inspection of the project area on Friday, June 15, 2018 at 1:00 p.m.** Please meet at the entrance gate to the San Clemente Dam Removal Project located on Carmel Valley Road (County Road G16) approximately 0.2 miles west of San Clemente Drive. All prospective Contractors must confirm attendance with Larry Hampson. Please note that cell phone service is limited in this area (there is no Verizon service, but some AT&T service).

Plans, Specifications, and bid forms may be secured at no charge from the Monterey Peninsula Water Management District, 5 Harris Court, Bldg. G Street, P. O. Box 85, Monterey, California 93942-0085 or may be downloaded from the District's web page at:

<http://www.mpwmd.net/who-we-are/project-bids-rfps/>

For further information, please contact Larry Hampson, larry@mpwmd.net or at 831-658-5620.

INSTRUCTIONS TO BIDDERS

BID SUBMITTAL

A sealed bid shall be made and submitted on the blank form provided herein, without substitution or omission, in accordance with Section 1.02 of the General Conditions. An electronic version of the bid shall be included on a compact disc or flash drive. The bid shall be sealed in an envelope marked "**Sleepy Hollow Steelhead Rearing Facility Raw Water Intake and Water Supply System Upgrade Project Bid**". All bids received by mail shall be sealed and clearly marked. Bids that do not meet these requirements shall not be eligible for consideration. No bids will be accepted by e-mail.

BID GUARANTY

Each bid shall be accompanied by either U.S. currency, certified check, cashier's check, or proposed Contractor's bond of a surety company acceptable to the District in an amount not less than ten percent (10%) of the bid amount, and shall be made payable to the Monterey Peninsula Water Management District.

BID PRICE

The bid price shall include everything necessary for the performance of the complete job, including but not limited to furnishing all materials, equipment, tools, superintendence, labor, and services except as expressly stated in the Construction Specifications.

TAXES

Bid prices shall include allowance for all federal, state, and local taxes.

BONDS

The posting of a Faithful Performance Bond by the Contractor in the amount of one hundred percent (100%) of the total contract price as specified in Section 4 of the General Provisions will be required as part of this project.

A Material-and-Labor Bond shall also be required to be posted by the Contractor in the amount of one hundred percent (100%) of the total contract price, as specified in Section 4 of the General Provisions.

A Warranty Bond shall also be required to be posted by the Contractor in the amount of fifty percent (50%) of the total contract price, as specified in Section 15 of the Special Conditions.

The Contractor has the option to substitute certain securities for a faithful performance bond, pursuant to an escrow agreement. The Contractor shall inform the District in writing upon submittal of the bid of his intention to substitute securities for a faithful performance bond.

TIME OF COMPLETION

Upon receipt of the notice of award, the successful bidder will have 10 calendar days to return a signed contract agreement, together with faithful performance bonds and other required documentation. Work must begin within 10 calendar days of the Notice to Proceed and be completed by May 1, 2019. Note that there are limitations on when work can occur in the Carmel River.

**MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
MONTEREY COUNTY, CALIFORNIA**

**BID TO PROVIDE SLEEPY HOLLOW STEELHEAD REARING FACILITY RAW
WATER INTAKE AND WATER SUPPLY SYSTEM UPGRADE**

Monterey Peninsula Water Management District
5 Harris Court Bldg. G, Monterey CA 93940
or
P.O. Box 85, Monterey, CA 93942-0085

Ladies and Gentlemen:

Pursuant to the foregoing Notice Inviting Sealed Bids, the undersigned hereby proposes and binds himself by the District, under this Bid, to execute in accordance with such award, a contract of which this Bid and the Specifications shall be a part, to furnish any and all labor, materials, equipment, and services necessary for satisfactory performance and completing the work set forth in said Specifications within the time hereinafter set forth and at the prices named in this bid as follows*:

BID FORM

Item	Description	Quantity	Unit	Unit Cost	Total Cost
	Mobilization and General Conditions				
1	Mobilization/Demobilization	1	LS		
2	Demolition	1	LS		
3	Erosion Control, Dewatering & Exclusionary Fencing	1	LS		
	River Intake				
4	Concrete Base with embedded Pipe ¹	1	LS		
5	Intake Screen Assembly with Control System in Equipment Building.	1	LS		
6	Spray Bar and Connection with Site Piping	1	LS		
7	Import and Place Crushed Rock ²	35	TON		
8	Import and Place Riprap ²	540	TON		
	River Intake Pump Station				
9	Pumps - 30Hp	2	EA		
10	Wet Well, Valve Vault, and Flow Meter Vault ³	1	LS		
11	Flow Meter	1	LS		
12	River Water Process Piping and Connection with Site Piping	1	LS		
	Cooling Tower Degas and Gas Conditioning				
13	Cooling Tower Structural Modifications including Concrete for Degas and Gas Conditioning Equipment ⁴	1	LS		
14	Cooling Tower Process Piping	1	LS		
15	Degas and Gas Conditioning Equipment	1	LS		
16	Degas and Gas Conditioning Process Piping	1	LS		
	Re-use Treatment & Pumping				
17	Diversion Box Structural, Gate, Screen and Process Piping including Connection to Site Piping	1	LS		
18	Equipment Building including all related Architectural and Structural ⁵	1	LS		
19	Equipment Building Mechanical, Tanks and Process Piping including Connection to Site Piping	1	LS		
20	Drum Filter (1350 gpm, 40 micron) including Vendor Control System	2	EA		
21	Pumps - 20 hp	2	EA		
22	UV System Including Vendor Control System	1	LS		
	Reuse System Flow Meter	1	LS		

Item	Description	Quantity	Unit	Unit Cost	Total Cost
	Sediment Basin				
23	Sediment Basin Structural including Cover	1	LS		
24	Sediment Basin Gates and Connection to Site Piping	1	LS		
	Site Civil and Piping				
25	Site Process Piping - Intake Screen to Wet Well	1	LS		
26	Site Process Piping – Pressure	1	LS		
27	Site Process Piping – Gravity Supply Pipe	1	LS		
28	Site Process Piping – Gravity Drain Pipe	1	LS		
29	Excavation, Earthwork, Trenching and Backfill	1	LS		
30	Site Restoration including Landscape and Gravel Surfaces	1	LS		
	Electrical and Controls				
31	Site Electrical	1	LS		
32	Electrical and Controls				
	Transport and Dispose Excess Material				
33	Transport and Dispose Excess Material ⁶	1	LS		
34	Archeological Monitoring	1	LS		
	Total				

Footnotes - quantities are approximate

1. Item includes excavation of river bottom and streambank = about 400 CY.
2. Estimate only. This item to be paid based on actual tonnage placed and includes excavation and bank restoration.
3. Depth of wet well may vary slightly according to field conditions. See geotechnical investigation. Item includes mechanical appurtenances.
4. Includes all work required to raise cooling tower including new slab and modifications to mechanical and electrical. Includes related excavation with approximate quantities as follows. Excavation = 40 CY. Imported granular structural fill = 13 CY. Concrete = 20 CY. Galvanized = 3 tons.
5. Excavation = 510 CY. Imported Granular Structural = 100 CY. Concrete pad = 107 CY. Foundation walls = 13 CY. Grating and handrail = 80 LF.
6. Approximately 1,800 CY will be moved off site to a disposal area.

* Upon award, this Bid Form shall become a part of the final contract

The undersigned has examined the location of the proposed work and/or is familiar with the Specifications and the local conditions in the place where the work is to be done.

The undersigned has checked carefully all the above figures and understands that the District shall not be responsible for any errors or omissions on the part of the undersigned in making up this bid.

The undersigned understands that the District reserves the right to reject any or all bids, and to waive any irregularities or informalities in bids received. Award shall be made which, in the judgement of the District, is to the best interest of the District. It is agreed that this bid may not be withdrawn within a period of 180 days after the date set for the opening thereof.

In accordance with the Construction Specifications, the undersigned further agrees to so plan the work and prosecute it with such diligence that said work shall be commenced within 10 days after issuance of the notice to proceed, and the work shall be completed within ____ days from issuance of the notice to proceed.

The undersigned agrees, if awarded the contract, that there shall be paid by the undersigned and all subcontractors under him, to all laborers, workmen, and mechanics employed in the execution of such contract or any subcontract thereunder, not less than the general prevailing rate of per diem wages, and rates for overtime and legal holidays in the locality in which the work is to be performed, as established by the State Director of the Department of Industrial Relations.

The undersigned or his or her subcontractors currently possess and agree to maintain valid **Contractor's Licenses** issued by the State of California necessary to prosecute the work.

Bidder: _____ Tax I.D.Number: _____

Business Address: _____

List all Contractor's License No.: _____

Telephone:(____) _____

e-mail: _____

By: _____ Dated: _____

Title: _____

This form to be submitted with the bid.

BIDDER'S EXPERIENCE QUALIFICATIONS

The Bidder has been engaged in the contracting business, under the present business name for ____ years. Experience in work of a nature similar to that covered in the bid extends over a period of ____ years. **The Bidder must demonstrate successful completion of at least one project involving heavy construction work in a live stream containing steelhead or other salmonid species.**

The bidder, as a contractor, has never failed to satisfactorily complete a contract awarded to him, except as follows:

Year	Type of Work	Contract Amount	Location and for Whom Performed
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Bidder _____

Signed _____

Title _____

Date _____

This form to be submitted with the bid.

SUBCONTRACTOR'S EXPERIENCE QUALIFICATIONS

The subcontractor has been engaged in the contracting business, under the present business name for _____ years. Experience in work of a nature similar to that covered in the bid extends over a period of _____ years.

The subcontractor has never failed to satisfactorily complete a contract awarded to him, except as follows:

Please indicate for whom the work was conducted, the type of work, and who can be contacted as a reference for the work:

Year	Type of Work	Contract Amount	Location and for Whom Performed
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Please attach additional sheet(s) as needed.

Signed _____

Title _____

Date _____

This form to be submitted with the bid.

SECURITY FOR COMPENSATION CERTIFICATION

TO: MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

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

Date

(Signature of Bidder)

Business Address:

Place of Residence:

(This certificate must be executed by the successful bidder prior to the award of Contract.)

FAIR EMPLOYMENT PRACTICES CERTIFICATION

TO: MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

The undersigned, in submitting a bid for performing the following work by Contract, hereby certifies that he has or shall meet the standards of affirmative compliance with Fair Employment Practices requirements of the special provisions contained herein:

Date

(Signature of Bidder)

Business Address:

Place of Residence:

(This certification must be executed by the successful bidder prior to the award of the Contract.)

State of California)
) ss.
County of _____)

Signature

The title of the affidavit provides that it is "to be executed by bidder and submitted with the bid."

CONTRACT AGREEMENT

This agreement, made and entered into this _____ day of _____, 20____, by and between the Monterey Peninsula Water Management District, Monterey County, State of California, hereinafter called the District, and _____ hereinafter called the Contractor.

WITNESSETH: That the District and Contractor have mutually covenanted and agree, and by these presents do covenant and agree with each other as follows:

1. That for and in consideration of the covenants and agreements hereinafter contained on the part of the District, and the sums of money hereinafter designated to be paid to the Contractor by the District in the manner and form as hereinafter provided in the attached Specifications, the Contractor hereby covenants and agrees with the District to furnish all labor, tools, appliances, equipment, plant and transportation, and any and all other expenses necessary or incidental to the performance of certain work hereinafter specified, and to build, construct and complete all works for the Monterey Peninsula Water Management District, State of California, all as more particularly as set forth in these Specifications filed in the District Office, and identified by the signatures of the parties to the Agreement.

This Agreement specifically includes all items of work described in the Bid, all in accordance with the Specifications. All terms and conditions contained in any of the component parts of this contract shall apply to the above designated schedule.

2. Time of Performance. In accordance with the Specifications, the undersigned further agrees to so plan the work and to prosecute it with such diligence that said work shall be completed prior to May 1, 2019.

In the event the work is not completed within the time agreed upon, the provisions of General Provisions Paragraph 11.08 regarding damages shall govern.

3. Payments. Payments shall be made by check to Contractor for work performed at the times and in the manner provided in the Specifications and General Provisions, Section 11).
4. Component Parts. This Contract shall consist of the following documents, each of which is on file in the office of the District Secretary and all of which are incorporated herein and made a part herein and made a part hereof by reference thereto:

Bid Form
Contractor's Experience Qualifications
Subcontractor's Experience Qualifications, if any
Security for Compensation Certification
Fair Employment Practices Certification
Non-Collusion Affidavit
Contract Agreement
Special Conditions
Technical Specifications
Construction Drawings
General Provisions
Addenda, if any

5. Wage Scale. Reference is hereby made to the wage scale established by the State Director of the Department of Industrial Relations which is hereby specified as the rate of prevailing wage to paid workers on this project, and the provisions of Article 2, Chapter 1, Part 7, Division 2 (commencing with Section 1770) of the Labor Code shall be complied with. A copy of the prevailing wage rates is on file and may be inspected at the District office.

It is further agreed that no person shall be hired by the undersigned or any sub-contractor under him, who is a not a Citizen of the United States, unless the undersigned or any sub-contractor has verified the person's right to live and work in the United States as stipulated in Section 121 of the U.S. Immigration Reform and Control Act (P.L. 99-603).

6. Hours of Labor. The Contractor shall forfeit, as penalty to the District, twenty-five dollars (\$25) for each worker employed in the execution of the Contract by him or by the subcontractor, for each calendar day during which any workman 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 Article 3, Chapter 1, Page 7, Division 2 (commencing with Section 1810) of the Labor Code of the State of California.
7. Apprentices. In accordance with the provisions of Section 1777.5 of the Labor Code, and in accordance with the rules and procedures of the California Apprenticeship Council, properly indentured apprentices shall be employed in the prosecution of the work. The number so employed shall be as set forth in the certificate issued by the appropriate joint apprenticeship committee unless a certificate of exemption has been issued by the Division of Apprenticeship Standards. Willful failure by the Contractor to comply with said Section 1777.5 shall result in his being denied the right to bid on a public works contract for a period of six months from the date the determination is made.

Information relative to number of apprentices, identifications, wages, hours of employment and standards of working conditions shall be obtained from the Director of the Department of Industrial Relations, who is the Administrative Officer of the California Apprenticeship Council.

8. Trenching. Trenching shall be done in accordance with Sections 6705, 6706, 6707 of the Labor Code.

9. Worker's Compensation Insurance. In accordance with the provisions of Article 5, Chapter 1, Part 7, Division 2 (commencing with Section 1860) and Chapter 4, Part 1, Division 4 (commencing with Section 3700) of the Labor Code of the State of California, the Contractor is required to secure the payment of compensation to his employees and shall for that purpose obtain and keep in effect adequate Worker's Compensation Insurance. Proof of such insurance coverage shall be provided to the District prior to commencement of any work on this project.

The undersigned Contractor is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and shall comply with such provisions before commencing the performance of the work in this Contract.

10. Security for Compensation. Contractor hereby stipulates that the provisions of Section 1775 of the Labor Code of the State of California shall be complied with. Contractor further agrees to secure the payment of compensation to his employees in accordance with the provisions of Section 3700 of the Labor Code of the State of California.

11. Discrimination. Attention is directed to Section 1735 of the Labor Code, which reads as follows:

"No discrimination shall be made in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code and every contractor for public works violating this section is subject to all penalties imposed for a violation of this chapter.

(Amended by Stats. 1976, c. 1174, p. 5270, subsection 1; Stats. 1980, c. 992, p. 3166, subsection 10.)

In connection with the performance of work under this Contract, the Contractor agrees as follows:

- (a) The Contractor shall not willfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex. Such action shall include, but not be limited to, the following: Upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants to employment, notices setting forth the provisions of this Fair Employment Practices section.
- (b) The Contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding,

a notice, advising the said labor union or worker's representative of the Contractor's commitments under this section, and shall post copies of the notices in conspicuous places available to employees and applicants to employment.

- (c) The Contractor shall permit access to his records of employment, employment advertisements, application forms, and other pertinent data and records by the Fair Employment Practices Commission, the awarding authority or any other appropriate agency of the State of California designated by the awarding authority, for the purposes of investigation to ascertain compliance with the Fair Employment Practices section of this Contract.
- (d) A finding of willful violation of the Fair Employment Practices section of this Contract or of the Fair Employment Practices Act shall be regarded by the awarding authority as a basis for determining the Contractor to be not a "responsible bidder" as to future contract for which such Contractor may submit bids, for revoking the Contractor's prequalification rating, if any, and for refusing to establish, reestablish or renew a prequalification rating for the Contractor.

The awarding authority shall deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has investigated and determined that the Contractor has violated the Fair Employment Practices Act and has issued an order under Labor Code Section 1426 or obtained an injunction under Labor Code Section 1429.

Upon receipt of such written notice from the Fair Employment Practices Commission, the awarding authority shall notify the Contractor that unless he demonstrates to the satisfaction of the awarding authority within a stated period that the violation has been corrected, his prequalification rating will be revoked at the expiration of such period.

- (e) The Contractor agrees that should the awarding authority determine that the Contractor has not complied with the Fair Employment Practices section of this Contract, then pursuant to Labor Code Sections 1735 and 1775 the Contractor shall, as a penalty to the awarding authority, forfeit for each calendar day or portion thereof, for each person who was denied employment as a result of such non-compliance, the penalties provided in the Labor Code for violation of prevailing wage rates. Such moneys may be recovered from the Contractor. The awarding authority may deduct any such damages from any moneys due the Contractor.
- (f) Nothing contained in this Fair Employment Practices section shall be construed in any manner of fashion so as to prevent the awarding authority or the State of California from pursuing any other remedies that may be available by law.

(g) Prior to awarding the Contract, the Contractor shall certify to the awarding authority that he has or will meet the following standards for affirmative compliance, which shall be evaluated in each case by the awarding authority.

(1) The Contractor shall provide evidence, as required by the awarding authority, that he has notified all supervisors, foremen and other personnel officers in writing of the content of the anti-discrimination clause and their responsibilities under it.

(2) The Contractor shall provide evidence, as required by the awarding authority, that he has notified all sources of employees' referrals (including unions, employment agencies, advertisements, Department of Employment) of the content of the anti-discrimination clause.

(3) The Contractor shall file a basic compliance report, as required by the awarding authority. Willfully false statements made in such reports shall be punishable as provided by law. The compliance report shall also spell out the sources of the work force and who had the responsibility for determining who to hire, or whether or not to hire.

(4) Personally, or through his representatives, the Contractor shall, through negotiations with the unions with whom he has agreements, attempt to develop an agreement which will:

- a. Spell out responsibilities for nondiscrimination in hiring, referral, upgrading and training.
- b. Otherwise implement an affirmative anti-discrimination program in terms of the unions' specific areas of skill and geography to the end that qualified minority workers shall be available and given an equal opportunity for employment.

(5) The Contractor shall notify the contracting agency of opposition to the anti-discrimination clause by individuals, firms or organizations during the period of its prequalification.

(h) The Contractor shall include the provisions of the foregoing paragraphs 1 through 5 in every first-tier subcontract so that such provisions shall be binding upon each subcontractor.

12. Contract Sum. The contract sum is the total amount payable by District to Contractor for the performance of the work encompassed by the Contract documents. The contract sum is _____ dollars (\$ _____), unless modified in accordance with the Contract.

13. Disputes. Contractor shall continue to perform under this Agreement during any dispute. Contractor and the District hereby agree to make good faith efforts to resolve disputes as

quickly as possible. In the event any dispute arising from or related to this Agreement results in litigation or arbitration, the prevailing party shall be entitled to recover all reasonable costs incurred, including court costs, attorney fees, expenses for expert witnesses (whether or not called to testify), expenses for accountants or appraisers (whether or not called to testify), and other related expenses. Recovery of these expenses shall be as additional costs awarded to the prevailing party, and shall not require initiation of a separate legal proceeding.

14. Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the District and Contractor under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
15. Notices. Notices required under this Agreement shall be delivered personally or by first class, postage pre-paid mail to the District's and Contractor's contract administrators at the addresses listed below: _____.
16. Conflict of Interest. Contractor represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement which would directly or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.
17. Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the District and the Contractor.
18. Assignment and Subcontracting. The Contractor shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the District. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the District. Notwithstanding any such subcontract, Contractor shall continue to be liable for the performance of all requirements of this Agreement.
19. Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the District and the Contractor. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
19. Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
20. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
21. Construction of Agreement. The District and Contractor agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
22. Counterparts. This Agreement may be executed in two or more counterparts, each of

which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

23. Authority. Any individual executing this Agreement on behalf of the District or the Contractor represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
24. Integration. This Agreement, including the exhibits any documents incorporated by reference, represent the entire Agreement between the District and the Contractor with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the District and the Contractor as of the effective date of this Agreement, which is the date that the District signs the Agreement.
25. Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of any exhibit or other attachment to this Agreement, the General Provisions of this Agreement shall prevail and control.
26. Severability. If any of the provisions contained in the Contract are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability and indemnities shall survive termination of the Contract for any cause. If a part of this Contract is valid, all valid parts that are severable from the invalid part remain in effect. If a part of this Contract is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.
27. Engineer. References to “Engineer” in these contract documents shall mean the District Engineer or designated staff of the District.
28. Owner. References to “Owner” in these contract documents shall mean the District.

IN WITNESS WHEREOF, District Board of Directors has caused these presents to be executed by its officers, thereunto duly authorized, and Contractor has subscribed same, all on the day and year first above written.

Contractor

By _____

Title _____

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

By _____

Title _____

APPROVED AS TO FORM:

District Counsel

SPECIAL CONDITIONS

1. CLEANUP WORK

- a. During construction, the Contractor shall keep the worksite, areas adjacent to the worksite and access roads in an orderly condition, free and clear from debris and discarded materials. Care shall be taken to prevent spillage when hauling is being done. Any spillage or debris resulting from the Contractor's operations shall be immediately removed.
- b. Upon completion of the work the Contractor shall remove from the worksite, areas adjacent to the worksite and access roads all plant, building, debris, unused material, and other material belonging to the Contractor or used under the Contractor's direction during construction. The Contractor shall repair all damage caused by the Contractor to a condition that equals or exceeds the condition at the start of the work.
- c. The Contractor shall repair any damage caused by the project work to private access roads and adjacent landscaped areas. Repair work shall restore damaged areas to the original condition. Such repairs shall be made in a timely manner and shall be inspected by the District Engineer prior to completion of contract work.
- d. Areas used to temporarily store equipment, rip-rap and/or other construction materials shall be returned to a pre-project condition. The Contractor shall identify such areas to the District Engineer, who shall review and approve the location. All areas outside of the river channel that are disturbed or compacted by heavy equipment shall be returned to pre-project conditions. All rip-rap and/or other materials inadvertently covered over at temporary storage site(s) shall be excavated and removed from the temporary storage site.

2. QUANTITIES OF WORK AND MATERIALS

The quantities listed in the bid schedule for which unit prices are requested are estimates only. See clause title "Quantity Variations" of these Special Conditions.

3. QUANTITY VARIATIONS

- a. Where the quantity of work shown for an item in the bid schedule, including any modifications thereof, is estimated, no adjustment of the contract price nor of the performance time shall be made for overruns or underruns which are within 20 percent of the estimated quantity of any such item.
- b. For overruns of more than 20 percent, the District Engineer shall re-estimate the quantity for the item, establish an equitable contract price for the overrun of more than 20 percent, adjust contract performance time equitably, and modify the contract in writing; accordingly, this clause to thereafter be applicable to the total re-estimated item quantity.

- c. For underruns of more than 20 percent, the District Engineer shall determine the quantity for the item, establish an equitable contract price therefore, adjust contract performance time equitably, and modify the contract in writing accordingly.

4. WEATHER

- a. The District Engineer may order suspension of the work in whole or in part, commencing with the day after receipt of the Notice to Proceed by the Contractor, due to weather or the effects of weather at the site, for such time as he or she considers it unfavorable for satisfactory prosecution of the work.
- b. When the District Engineer orders suspension under (a) of this clause, the contract completion date shall be extended a full calendar day for each calendar day during suspension of the work if:
 - 1. All work is suspended (work of an emergency, protective or maintenance nature may be performed at any time); and
 - 2. The hours lost in any workday of the authorized work week through suspension equal one-half or more of an authorized workday.
- c. If the District Engineer orders suspension of work as provided in (a) of this clause and the hours lost in the work day immediately preceding a non-work day equal one-half or more of the hours in an authorized work day, the contract completion date shall be extended a full calendar day for each non-work day during suspension of the work.
- d. When the District Engineer orders any suspension of the work under this clause, the Contractor shall not be entitled to any cost or damages resulting from such suspension.
- e. When the contract completion date is extended under this clause, the contract shall be modified in writing accordingly.

5. NON-COMPLIANCE WITH CONTRACT REQUIREMENTS

- a. The District Engineer may order suspension of the work in whole or in part for such time as he deems necessary because of the failure of the Contractor to comply with any of the requirements of this contract, and the completion date shall not be extended on account of any such suspension of the work.
- b. When the District Engineer orders any suspension of the work under (a) of this clause, the Contractor shall not be entitled to any costs or damages resulting from such suspension.
- c. The rights and remedies of the District provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

6. SHUTDOWN OF WORK DUE TO HIGH FLOWS IN RIVER

Some of the work contained in this contract is to be performed in the Carmel River, and thus is subject to the continuance of flows within the stream channel. If, in the opinion of the District Engineer, in consultation with the California Department of Fish and Wildlife and the National Marine Fisheries Service, the flows within the banks of the river exceed allowable levels, the work in the flowing stream contained in this contract shall be immediately ended. The District Engineer shall determine the actual amount of work performed by the Contractor, and shall utilize the clause entitled "Quantity Variations" to determine if an adjustment in contract price is necessary due to the cancellation of the remaining work.

When the District Engineer orders a cancellation of the work under this clause, the Contractor shall not be entitled to any costs or damages resulting from such cancellation, except those previously covered under this clause.

7. PERMIT REQUIREMENTS AND INTERPRETATION OF PLANS AND SPECIFICATIONS

This project operates under provisions of federal, state and local statutes. The District has obtained or will obtain all applicable permissions and permits prior to initiation of construction. The Contractor shall comply with all applicable laws and ordinances for work in the riverbed of the Carmel River. The District Engineer or his designated substitute shall perform project supervision and inspection during the construction period. Additionally, the District Engineer or his designated substitute shall have final authority over interpretation of the Plans and Specifications.

8. PRESERVATION OF EXISTING VEGETATION

Live trees within the project area shall not be damaged or removed, except as specified in the Plans and Specifications. The Contractor shall be responsible for trimming of trees. The Contractor shall furnish equipment and labor for the removal of trees and limbs.

9. THREATENED SPECIES and SPECIAL STATUS SPECIES

Two sensitive species, steelhead (*Oncorhynchus mykiss*) and California red-legged frogs (*Rana aurora draytonii*) (CRLF), may be present in or near the work site. Both species are listed as threatened and are under the protection of the Federal Endangered Species Act (ESA). The Federal permit from the U.S. Army Corps of Engineers for this project includes protections to reduce or minimize potential impacts to these species and their habitats. A copy of the permit may be obtained from the District. All employees and subcontractors of the Contractor must be able to identify these threatened species and their habitats. MPWMD biologists will provide worker training at the site prior to commencement of construction. Failure to adhere to the conditions of the Federal permit may subject the Contractor to severe penalties up to and including a \$50,000 fine for each mortality of a threatened species and/or one year in jail if convicted of a violation of the ESA.

MPWMD biologists will comply with terms and conditions of the permits for the project that include pre-construction surveys, monitoring, and any relocation of threatened species. The Contractor will be expected to coordinate construction activities with MPWMD biologists in order to be in compliance with all terms and conditions of the permits issued for work.

If individuals of CRLF, western pond turtles, or two-striped garter snakes are encountered, work activities within 50 feet of the individual must cease immediately and the on-site construction supervisor notified.

If clearing, grubbing, and tree removal or pruning are to be conducted during the breeding season (i.e., February 1 through August 31), MPWMD will conduct a preconstruction nesting bird survey.. If no nesting or breeding activity is observed, work may proceed without restrictions. To the extent allowed by access, all active nests identified within 92 m (300 feet) for raptors and 31 m (100 feet) for passerines would be mapped.

10. DUST CONTROL

The Contractor shall control dust from use of access roads to the site and from grading activities within the river bottom. Control methods may include the use of watering trucks, placement of decomposed granite or other suitable material. The cost of dust control shall be included in the price of labor, equipment, and materials for the work.

Water is available on site through an emergency back-up pump. California American Water also maintains a fire hydrant connection near the project site. In order to use Cal-Am water, a hydrant meter must be obtained from the Cal-Am office in Pacific Grove. Cal-Am requires an \$800 deposit.

11. WORK IN THE LIVE STREAM

Work in the live stream is not permitted, except as directed in the Plans and Specifications and permits for the work. All equipment operators working in the channel of the river shall carry a copy of the Stream Alteration Agreement issued by the California Department of Fish and Wildlife to MPWMD. Work in the channel may be prohibited between November 1 and July 1 and during times of high flow.

12. EXOTIC SPECIES

All materials and equipment brought into work sites shall be free of exotic species. Equipment shall be cleaned by the Contractor and inspected by the District Engineer prior to entering the work site. It should be noted that New Zealand mud snail, an invasive species, is present in the Carmel River and can be spread by equipment that comes into contact with the snail.

13. ARCHEOLOGICAL MONITORING

It is the Contractor's responsibility to retain a qualified archaeological monitor who will be on-site during construction that may extend into native sediments. If archaeological materials are encountered, the monitor will be authorized to stop construction as necessary to protect the find. The monitor will contact the qualified archaeologist. The qualified archaeologist will work with the District to assess the significance of the find, contact the Native American Heritage Commission (NAHC), and determine appropriate avoidance or mitigation measures. Construction may resume in the area when mitigation has been completed and the District has authorized the activity.

A Monterey County Archeological Consultant list is available at:

<http://www.co.monterey.ca.us/home/showdocument?id=32020>

A member of the Register of Professional Archaeologists who is familiar with Central Coast archaeology is also considered to qualified.

Should any items with archeological significance be found during construction, the Contractor may request reimbursement for costs associated with notifying NAHC and for costs associated with avoidance or mitigation measures. [It should be noted that no archeological items have been recovered at this site from previous excavation into native sediments.]

14. OFFSITE DISPOSAL OF EXCESS CUT

Excess cut may be disposed at a site along San Clemente Drive as shown in Figure 1 below. Only native sediments excavated during project construction may be placed. Excess material shall be placed at approximately two to three feet deep and the material is to be graded to match surrounding contours. Upon completion, the disturbed area shall be hydroseeded with a native seed mix approved by the District Engineer.

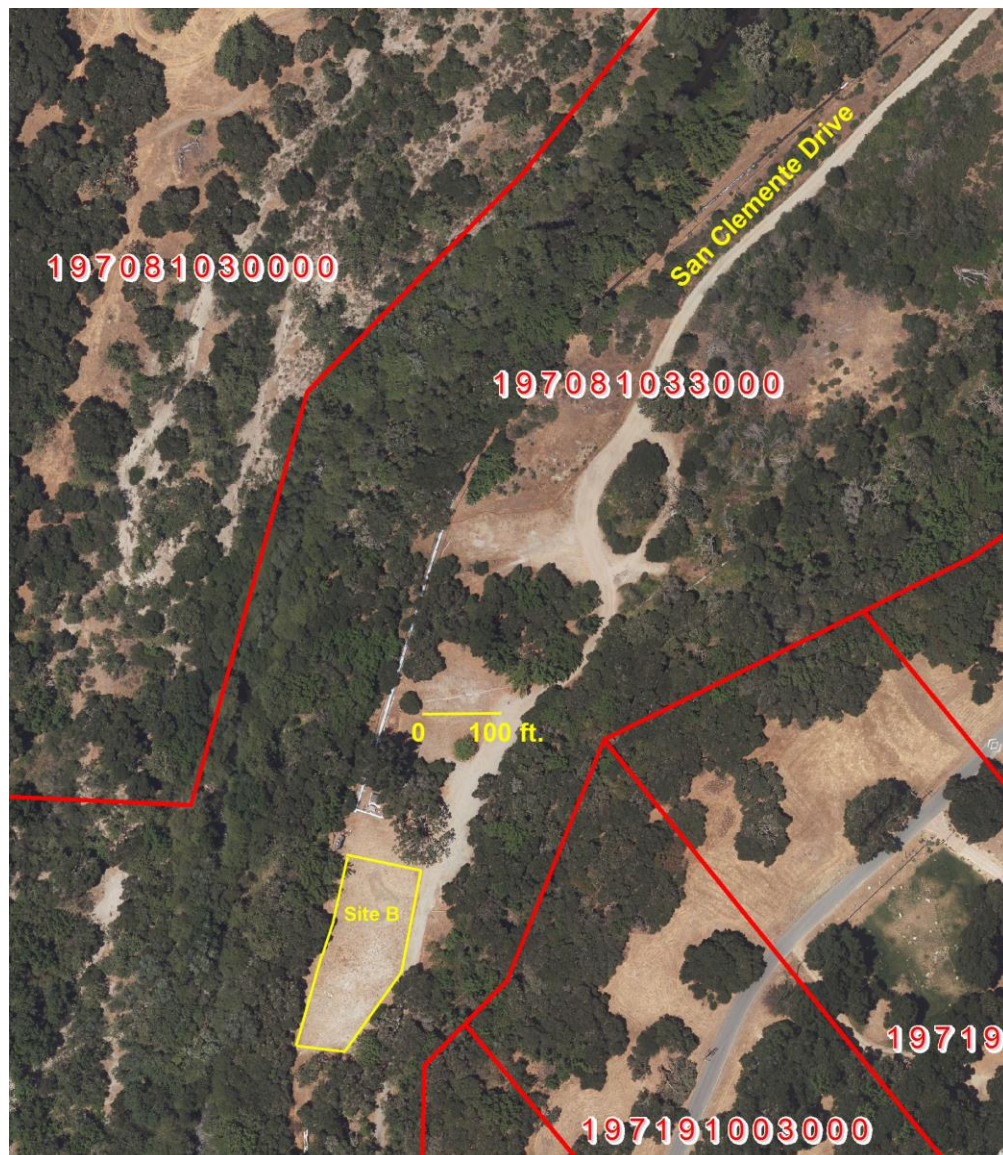


Figure 1 – Offsite Disposal Area

15. MEETINGS

- A) Prior to the commencement of Work at the Site, a preconstruction conference will be held at District's Office at a mutually agreed time, but no later than 14 days after the Notice to Proceed. The conference shall be attended by Contractor's Project Manager, Superintendent, Quality Control Engineer, Safety Representative, and Subcontractors. Subcontractor attendance shall be requested and approved by District Engineer. Other attendees will be:
- 1) District Engineer and other authorized District employees.
 - 2) Other Governmental Representatives, as appropriate.
 - 3) Utilities Representatives, as appropriate.
 - 4) Others as Requested by Contractor and Owner upon Approval by the District Engineer.
- B) The purpose of the conference is to designate responsible personnel and establish a working relationship. Matters requiring coordination will be discussed and procedures for handling such matters established. The complete agenda will be furnished to Contractor prior to the meeting date. However, Contractor should be prepared to discuss all of the items listed below.
- 1) Contractor's initial schedules.
 - 2) Procedures for and transmittal, review, and distribution of Contractor's submittals (normal and deferred).
 - 3) Processing applications for payment.
 - 4) Maintaining record documents.
 - 5) Special inspection procedures.
 - 6) Critical work sequencing.
 - 7) Field decisions and Change Orders.
 - 8) Use of Site, office and storage areas, security, housekeeping, and Owner's needs.
 - 9) Major equipment deliveries and priorities.
 - 10) Contractor's assignments for safety and first aid.
 - 11) Daily Report Form.
 - 12) Submittal Transmittal Form.
 - 13) Temporary utilities.
 - 14) Special Conditions
- C) District Engineer will preside at the preconstruction conference and will arrange for keeping and distributing the minutes to all persons in attendance. Contractor shall advise District Engineer within 5 days of receipt of minutes if Contractor does not agree with the content of minutes.
- D) **PROGRESS MEETINGS**
- 1) District Engineer will schedule and hold regular on-site progress meetings at least weekly and at other times as requested by Contractor or as required by progress of the Work. Contractor and District Engineer shall attend each meeting and other representatives of District may also attend. Contractor may at its discretion request attendance by representatives of its suppliers, manufacturers, utilities, and subcontractors. Attendance by such representatives shall be subject to approval of District Engineer.

- 2) District Engineer will preside at the progress meetings and will arrange for keeping and distributing the minutes. Contractor shall advise District Engineer within 5 days of receipt of minutes if Contractor does not agree with content of minutes. The purpose of the meetings is to review the progress of the Work including review of Contractor's three week look-ahead schedule, review submittal and Request for Information status, review change order status, review coordination with operations, maintain coordination of efforts, address field problems, and resolve other problems which may develop. The three-week look-ahead schedule shall include but not be limited to key upcoming activities such as major equipment deliveries to the Site, key construction activities and key testing activities. The three-week look-ahead schedule shall be in the form of marked-up Drawings and schedules/flow charts to depict the activities. During each meeting, Contractor shall present any issues that may impact its progress and propose solutions with a view to resolve these issues expeditiously.

15. PROJECT CLOSEOUT

A) SUMMARY

- 1) This section details the general requirements pertaining to the closeout of the construction project. Not all requirements are listed herein and the Contractor shall provide all paperwork and closeout items required by the contract.

B) CLOSEOUT TIMETABLE

- 1) The Contractor shall establish dates for equipment testing, acceptance periods, and on-site training sessions (as required under the contract). Such dates shall be established not less than 10 days prior to beginning any of the foregoing items, to allow the District and their authorized representatives sufficient time to schedule attendance at such activities. The timetable shall be presented to the District Engineer in a written format.

C) SUBSTANTIAL COMPLETION

- 1) When the Contractor considers that the Work, is substantially complete as defined in the General Conditions, the Contractor shall prepare for submission to the District Engineer a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all work in accordance with the Contract Documents.

- 2) When the District Engineer on the basis of an inspection determines that the Work is substantially complete, the District Engineer will then prepare a Certificate of Substantial completion which shall establish the date of substantial completion; state the responsibilities of the District and Contractor for security, maintenance, heat, utilities, damage to the work and insurance; and fix the time within which the Contractor shall complete the items listed therein.

- 3) Warranties required by the Contract Documents shall commence on the date of substantial completion of the work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion

shall be submitted to the District and the Contractor for their written acceptance of the responsibilities assigned to them in such certificates.

4) Upon substantial completion of the work and upon application by the Contractor and certification by the District Engineer, the District shall make payment, reflecting adjustment in retainage, if any, for such work or portion thereof, as provided in the contract document.

D) WARRANTY

1) A warranty bond for 50% of the face value of the Contract shall be provided to the District for a one-year warranty period. The bond shall guarantee repairs and/or replacement of all project works that fail or do not meet design requirements for one year after final acceptance of the Work.¹

E) WRITTEN RELEASES

1) Whenever any of the work is accomplished on or through property other than that controlled by the District, the Contractor shall furnish the District, before final acceptance of the Work by the District, a written release from the subject property owner or proper authority citing for the owner of the property affected, stating that the restoration of structures and surfaces has been satisfactorily accomplished. If in the opinion of the District the release is arbitrarily withheld, the District may at its sole discretion, accept the portion of the Work involved and cause final payment therefore to be made.

F) FINAL WALKTHROUGH INSPECTION

1) When the Contractor has informed the District Engineer that the Work has been completed, the Contractor shall participate in a final walkthrough inspection with the District Engineer at which time the final punchlist will be prepared. The punchlist shall include all previously noted preliminary punchlist items and/or non-compliance or uncompleted work items. The Contractor shall complete and sign off all punchlist items with the District Engineer.

G) FINAL CLEANUP

1) The Contractor shall promptly remove from the vicinity of the completed Work, all rubbish, unused materials, concrete forms, construction equipment, and temporary structures and facilities used during construction. Final acceptance of the Work by the District will be withheld until the Contractor has satisfactorily performed the final cleanup of the site.

¹ Damage from high Carmel River flows to the intake screen and riprap used for streambank stabilization is excluded from the warranty.

H) CORRECTION OF DEFECTIVE WORK

1) The Contractor shall comply with the defective Work correction requirements contained in the General Conditions.

2) Replacement of earth fill or backfill, where it has settled below the required finish elevations, shall be considered as a part of such required corrective work, and any repair or resurfacing constructed by the Contractor which becomes necessary by reason of such settlement shall likewise be considered as a part of such required corrective work unless the Contractor shall have obtained a statement in writing from the affected private owner or public agency releasing the District from further responsibility in connection with such repair or resurfacing

3) The Contractor shall make all repairs and replacements promptly upon receipt of written order from the District. If the Contractor fails to make such repairs or replacements promptly, the District reserves the right to do the Work and the Contractor and its surety shall be liable to the District for the cost thereof.

I) FINAL SUBMITTALS

1) The Contractor, prior to requesting final payment, shall obtain and submit the following items to the District Engineer for transmittal to the District:

- i) Written guarantees, as required.
- ii) O&M information and instructions as specified in section 01730.
- iii) Maintenance stock items; spare parts; special tools.
- iv) Completed record drawings.
- v) Certificates of inspection and acceptance by local governing agencies having jurisdiction.
- vi) Correction period bonds.
- vii) Written releases from all parties (including private property owner's whose properties were used for yard or staging areas or were damaged) who are entitled to claims against the subject project, property, or improvement pursuant to the provisions of law.
- viii) Copies of final inspection certificates for all required building, electrical and mechanical permits.
- ix) Equipment manufacturer's startup test reports, installation certifications affidavits, and warranties.

GENERAL PROVISIONS

SECTION 1. BID REQUIREMENTS AND CONDITIONS

1.01 Examination of Plans, Specifications, Contract, and Site of Work The Contractor shall examine carefully the site of the work contemplated, the plans and specifications, and the proposal and contract forms therefor. The submission of a bid shall be conclusive evidence that the contractor has investigated and is satisfied as to the conditions to be encountered, as to the character, quality, and scope of work to be performed, the quantities of materials to be furnished, and as to the requirements of the proposal, plans, specifications, and the contract.

Where the District has made investigations of site conditions including surface and subsurface conditions in areas where work is to be performed under the contract, bidders or Contractors may, upon written request, inspect the records of the District as to such investigations subject to and upon the conditions hereinafter set forth. Such investigations are made only for the purpose of study and design.

Where there has been prior construction by the District or other public agencies within the project limits, records of such prior construction that are currently in the possession of the District and which have been used by, or are known to, the designers and administrators of the project will be made available for inspection by bidders or Contractors, upon written request, subject to the conditions hereinafter set forth. Such records may include, but are not limited to, as-built drawings, design calculations, foundation and site studies, project reports and other data assembled in connection with the investigation, design, construction and maintenance of such prior projects.

Inspection of such records of investigations and project records may be made at the office of the District. The records of investigations and project records are not a part of the contract and are available solely for the convenience of the bidder or Contractor. It is expressly understood and agreed that the District assumes no responsibility whatsoever in respect to the sufficiency or accuracy of the investigations thus made, the records thereof, or of project records, or of the interpretations set forth therein or made by the District in its use thereof. There is no warranty or guaranty, either express or implied, that the conditions indicated by such investigations or records are representative of those existing in the project area, or that unlooked-for developments may not occur, or that materials other than, or in proportions different from those indicated, may not be encountered.

No information derived from such inspection of investigations or compilation thereof made by the District or from the District Engineer, or any of his assistants, will in any way relieve the bidder or Contractor from any risk or from properly fulfilling the terms of the contract.

The availability or use of information described in this Section 1.01 is not to be construed in any way as a waiver of the provisions of the first paragraph in this Section 1.01. A bidder or Contractor is cautioned to make such independent investigation and examination as he deems necessary to satisfy himself as to conditions to be encountered in the performance of the work.

1.02 Bid Submittal. A sealed bid shall be made of the original bid documents and any subsequent Addenda provided by the District, without substitution or omission. All bids shall be signed, with address included, by the bidding Contractor or the bidding contractor's authorized representative. Bids made by individuals must show the individual's signature and post office

address; if made by a firm or partnership, the name and post office address of the firm or partnership and the signature of one or all partners must be shown. Bids submitted by corporations must show the name and post office address of the corporation, the name of the state under whose laws the corporation is chartered, and the signature and title of the person signing on behalf of the corporation.

Any bid submitted by a partnership shall be signed by an authorized general partner; any bid submitted by a corporation shall be signed by an authorized corporate officer. Deviations shall cause the bid to be rejected.

Each bid shall be enclosed in a sealed envelope and endorsed as specified in the notice to contractors. Bidding Contractors are warned against bids containing irregularities of any kind, including erasures, omissions, conditions, alterations, or additional bids, as such bids may be rejected.

1.03 Withdrawal of Bids. Any bid may be withdrawn at any time prior to the hour fixed in the notice to contractors for the opening of bids, provided that a request in writing, executed by the bidder or his duly authorized representative, for the withdrawal of such bid, is filed with the District. The withdrawal of a bid shall not prejudice the right of a bidder to file a new bid.

1.04 Public Opening of Bids. Bids shall be publicly opened and read at the time and place indicated in the notice to bidders. Bidding Contractors or their agents are invited to be present.

1.05 Bid Guaranty. Each bid shall be accompanied by either a U.S. currency certified check, cashier's check, or bidding Contractor's bond of a surety company acceptable to the District in an amount not less than ten percent (10%) of the bid amount, and shall be made payable to the District.

1.06 Qualifications of Bidders. Each bidding Contractor shall be licensed in accordance with the provisions of Sections 7065, et seq., Business and Professions Code, State of California, and shall be skilled and regularly engaged in the general class or type of work called for under this contract.

It is the intention of the District to award a contract only to a bidding Contractor who is able to furnish satisfactory evidence that he has the requisite experience and ability and that he has sufficient capital, facilities, and plant to enable him to prosecute the work successfully and promptly, and to complete it within the time set forth in the contract.

In determining the degree of responsibility to be credited to a bidding Contractor, the District shall weigh any evidence indicating the Contractor, or personnel guaranteed to be employed in responsible charge of the work, has satisfactorily performed other contracts of like nature and magnitude. The District shall perform such an investigation of the low bidder prior to award of the Contract.

1.07 Disqualification of Bidders. More than one bid from an individual, firm or partnership, a corporation or an association under the same or different names shall not be considered. Reasonable ground for believing that any bidding Contractor is interested in more than one bid for the work shall cause the rejection of all bids in which such bidding Contractor is interested. If there is reason to believe that collusion exists among the bidding Contractors, none of the participants

in such collusion will be considered. Bids in which the prices obviously are unbalanced may be rejected.

1.08 List of Subcontractors. In accordance with Sections 4100-4114, Public Contract Code, each bid shall have listed the name and address of each subcontractor and sub- subcontractor to whom the bidder proposes to sublet or permit to be sub-sublet portions of the work. A subcontractor is defined as one who contracts with the Contractor to furnish materials and labor, or to perform labor only for performance of work at the building site. Subcontractors shall be listed on the form provided herewith. In the list of Subcontractors, the Contractor shall specify the portion of the work which will be done by each subcontractor.

SECTION 2. AWARD AND EXECUTION OF CONTRACT

2.01 Award of Contract. Award of contract, if it be awarded, shall be to the lowest responsible bidding Contractor whose bid complies with all the specified requirements. The award, if made, will be made within sixty (60) days after the opening of the bids. The District reserves the right to reject any and all bids. Sub-subcontractors are defined as those who contract a subcontractor to furnish materials and labor, or to perform labor only for performance of work at the building site. Sub-subcontractors shall be listed on the form provided herewith when their identity is known in advance, and shall be listed in a subsequent writing which shall be transmitted to the District without delay for those sub-subcontractors whose identity cannot presently be ascertained.

2.02 Return of Bid Guaranties. Within sixty (60) days after the bids are opened, the District shall return the bid guaranties accompanying each of the bids that are not to be considered in making the award. All other bid guaranties shall be held until the contract has been fully executed, after which they shall be returned to the respective bidders whose bids they accompany. The District will return all bid guaranties within a reasonable time but in no event later than sixty (60) days from date of the award.

2.03 Execution of Contract. The contract agreement shall be signed by the successful bidder and returned to the District, together with the faithful performance bonds, within five (5) days after the notice of award has been sent to him by mail at the address given by him in his bid. If the bidder fails or refuses to enter into a contract to do the work, then the bid guaranty accompanying the bid shall be paid to the District as liquidated damages.

SECTION 3. NATURE OF CONTRACT

3.01 Definitions. Whenever any word or expression defined in this section, or pronoun used in its stead, occurs in these contract documents, it shall have and is mutually understood to have the meaning given:

- a. "District" shall mean the Monterey Peninsula Water Management District, its board of directors or any other board, body, official or officials to which or to whom the power belonging to the District has been properly delegated. The District is recognized as "owner" in the specifications for this Project.
- b. "Biologist" shall mean the Biologist duly and officially appointed by the District to monitor the work of construction under this contract, acting personally or through agents or

assistants duly authorized by him, such agents or assistants acting within the scope of the particular duties entrusted to them. By this designation, no requirement shall attach that such individual be licensed by the State of California.

- c. "District Engineer" shall mean the Engineer duly and officially appointed by the District to supervise and direct the work of construction under this contract, acting personally or through agents or assistants duly authorized by him, such agents or assistants acting within the scope of the particular duties entrusted to them. By this designation, no requirement shall attach that such individual be licensed by the State of California.
- d. "Engineer of Record" shall mean the Engineer who has prepared the plans and specifications. By this designation, the Engineer shall be licensed by the State of California unless the Engineer works for the District.
- e. "Inspector" shall mean the engineering or technical inspector or inspectors duly authorized or appointed by the District Engineer or District, limited to the particular duties entrusted to said inspector(s).
- f. "Contractor" shall mean the party entering into contract with the District for the performance of work covered by this contract, and his authorized agents or legal representatives. This term shall also apply to all bidding contractors insofar as the provisions of Section 1 of the General Provisions apply.
- g. "Date of Signing of Contract" or words equivalent thereto, shall mean the date upon which this contract, with the signature of the Contractor affixed, together with the prescribed bonds, shall be or shall have been delivered to the District or its duly authorized representative.
- h. "Day" or "Days", unless herein otherwise expressly defined, shall mean a calendar day or days of twenty-four (24) hours each, beginning at 00:00 and ending at 24:00 (midnight).
- i. "The Work" shall mean the work to be done under this contract, unless some other meaning is indicated by the context.
- j. "Contract Drawings" or "Plans" shall mean and include all drawings which may have been prepared by or on behalf of the District, as a basis for bids, when duly signed and made a part of this contract by incorporation or reference; all drawings submitted in pursuance of the terms of this contract by the successful bidder with his bid and by the Contractor to the District if and when approved by the District Engineer; and all drawings submitted by the District Engineer to the Contractor during the progress of the work as provided for herein.

All such Contract drawings or plans shall be stamped by a licensed professional engineer registered within the State of California.

- k. Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that reference to the drawings accompanying these specifications is made unless stated otherwise. Where "as directed", "as permitted", "approved", or words of similar import are used, it shall be understood that the direction, requirements,

permission, approval, or acceptance of the District Engineer is intended unless stated otherwise. As used herein, "provide" shall be understood to mean "provide complete in place", that is "furnish and install". "Install" shall mean the installation complete in place of an item of equipment furnished by the District.

- l. Specifications. The directions, provisions, and requirements contained here; supplemented by any special provisions as provided herein, pertaining to the method and manner of performing the work, to kinds, quantities, and qualities of materials to be furnished under the contract, and method of measurement and payment.
- m. Superintendent. The executive representative of the Contractor, **present on the work site at all times during progress**, authorized to receive and fulfill instructions from the District Engineer and to accept orders for changed and extra work.
- n. Change Orders. A written order by the District Engineer or his authorized representative to the Contractor making changes in the plans or specifications. If the change involves items for which there is no contract unit price, the order shall so state and stipulate that the changes shall be performed as extra work or work omitted.
- o. Extra Work. Work or material, the performance or furnishing of which is found necessary for the proper completion of the improvement, the payment for which is not covered by any item of the bid schedule and for which no means of payment, direct or indirect, has been provided in the contract.

3.02 Official Copies of Contract. This Contract shall be executed and signed in duplicate, one copy shall be filed with the District, and one copy shall be delivered to the Contractor.

3.03 Titles and Headings. The subheadings and titles printed on the drawings, in these general provisions, in the specifications, and elsewhere in the contract documents, are inserted for the convenience of reference only, and shall not be taken or considered as having any bearing on the interpretation thereof.

3.04 Effect of Inspection and Payments. Inspection by the District Engineer or by any Inspector, or any order, measurement, approved modification, certificate or payment of money, or acceptance of any part or whole of the work, or any extension of time, or any possession by the District or its agents, shall not operate as a waiver for any provision of this contract or of any power reserved therein to the District, or any right to damage thereunder; no breach of this contract shall be held to be a waiver of any or subsequent breach. All remedies shall be taken and construed as cumulative.

3.05 Effect of Extension of Time. The granting of any extension of time due to delays which in the judgment of the District are unavoidable delays, shall in no way operate as a waiver on the part of the District of its rights under this contract.

3.06 Extra Work. If change orders requiring extra work are given in accordance with the provisions of this contract, such work shall be considered a part hereof and subject to each and all of the contract terms and requirements. No extra work which is reasonably estimated to exceed twenty percent (20%) of the cost of the contract work or project is authorized without compliance

with applicable competitive bidding statutes.

3.07 Recognition of Subcontractors or Sub-Subcontractors. No subcontractor or sub-subcontractor shall be recognized as such, and all persons engaged in the work of construction shall be considered as employees of the Contractor and their work shall be subject to the provisions of the contract, including specifically these general provisions, the specifications and the contract drawings.

SECTION 4. BONDS

4.01 Faithful Performance Bond. As a part of the execution of this contract, the Contractor shall furnish and bear the cost of a bond of a Surety Company acceptable to the District, which bond is conditioned upon the faithful performance of all covenants and stipulations under this contract. The amount of the bond shall be one hundred percent (100%) of the total contract price, as such sum is set forth in the agreement.

As a condition precedent to satisfactory completion of this contract, an amount equal to ten percent (10%) of the contract price shall be withheld for the period specified in said bond until completion and acceptance of the work by the District.

4.02 Material-and-Labor Bond. As a part of the execution of this contract, the Contractor shall furnish and bear the cost of a bond of a Surety Company acceptable to the District in a sum not less than one hundred percent (100%) of the total contract price, as such sum is set forth in the agreement, for the payment in full of all persons, companies, or corporations who perform labor upon or furnish materials to be used in the work under this contract, in accordance with the provisions of Sections 3247 and 3248, Civil Code.

4.03 Notification of Surety Companies. The surety companies shall familiarize themselves with all of the conditions and provisions of this contract, and they waive the right of special notification of any change or modification of this contract or of extension of time, or of decreased or increased work, or of the cancellation of the contract, or of any other act or acts by the District or the District's authorized agents, under the terms of this contract, including but not limited to change orders or extra work, and failure to so notify the aforesaid surety companies of changes shall in no way relieve the surety companies of their obligation under this contract.

4.04 Power of Attorney. Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their Power of Attorney.

SECTION 5. INSURANCE

5.01 Indemnification Agreement. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Monterey Peninsula Water Management District, their officers, agents and employees both severally and collectively from and against all claims, damages, losses, injury, liability, costs, and expenses of whatsoever kind or nature including but not limited to attorney's fees and all defense costs howsoever the same may be caused resulting directly or indirectly from or arising out of the activities, operations, or work performed by the Contractor, its employees, agents, subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and without limiting the generality of

the foregoing, the same shall include; (1) bodily injury, sickness, disease or death to any person or persons or, (2) injury to or destruction of tangible and/or property including that of the Monterey Peninsula Water Management whether direct or consequential including the loss of use resulting therefrom. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described herein. The District, at its sole option, may choose to provide all or a portion of the defense of claims, damages, losses, liability, costs, and expenses as set forth above, and in such event, Contractor shall indemnify and hold harmless the District from the costs and expenses, including attorney's fees, of such defense.

5.02 General Insurance Requirements. The Contractor shall procure, purchase at its expense and maintain in full force and effect such insurance as will protect it from claims, damages, losses, liability, costs, and expenses as set forth herein which may arise out of or result from or in any way connected with the Contractor's activities, work, services, and/or operations performed by the Contractor under the Contract, whether such activities or operations be by itself or by any subcontractor or by any sub-subcontractor or by anyone directly or indirectly employed by any of them, or by anyone else for whose acts the Contractor or any of them is or may be liable. The procurement and maintenance by the Contractor of policies required under this Contract shall not relieve, limit or satisfy Contractor's obligation to indemnify, defend and save harmless the District, their officers, directors, agents and employees.

- a. Contractor represents that he will, prior to commencement of work pursuant to this agreement, name and endorse on to his Comprehensive General Liability insurance policy the District as an "Additional Insured" as respect to liability arising out of your activities, services, operations or work performed by Contractor for District (ISO form CG 20 09 11 85 or its equivalence). Contractor shall obtain and keep in full force and effect insurance policies and in appropriate limits as specified by the Insurance Requirements and shall require any subcontractor or sub-subcontractor to provide evidence of similar liability insurance coverages.
- b. Contractor shall add to his Comprehensive General Liability insurance policy a severability or interest clause or such similar wording if his policy does not automatically have this clause already written into it. Such language shall be similar to: "The insurance afforded applies separately to each insured against whom claim is made or suit is brought, including claims made or suits brought by any person included within the persons insured provision of this insurance against any other such person or organization."
- c. All policies carried by Contractor shall contain a provision or be endorsed to state that coverage as respects to District shall not be suspended, voided, canceled or non-renewed except after the insurance company has given to District at least thirty (30) days prior written notice to the address shown below prior to any such termination of coverage becomes effective.
- d. Contractor shall on all policies or coverages required to be carried by Contractor pursuant to this contract, agrees to give to District thirty (30) days prior written notice by certified mail, return receipt requested, to the address shown below notification of any limitations, reductions or material change in coverage or in limits available.

- e. Prior to the execution of the contract, Contractor shall file with District copies of all insurance policies, certificates of insurance of coverage actually in force, along with original endorsements effecting coverages required to be carried by Contractor pursuant to this section. With respects to each renewal or replacement of any such insurance, the requirements of this paragraph must be complied with not less than thirty (30) days prior to the expiration or cancellation of the policy being renewed or replaced.
- f. All insurance policies carried by or available to Contractor shall be primary and not excess nor contributing with any insurance issued to or available to District. Any insurance or self-insurance maintained or carried by District shall be excess of the Contractor's insurance and shall not participate in nor contribute with such insurance carried by or available to Contractor. District will not be responsible for any payment of premiums due as a result of compliance with the terms and conditions of the insurance requirements. The cost of such insurance shall be borne solely by the Contractor.
- g. District shall be under no duty either to ascertain the existence of or to examine such insurance policies or to advise Contractor in the event such insurance coverage does not comply with the requirements hereof. However, District may, at any time, and from time to time, inspect and copy any and all insurance policies, endorsements, certificates and correspondence required to be carried by Contractor pursuant to this Contract.

5.03 Workers' Compensation Insurance. Each Bidder shall submit concurrently with his Bid a Certificate of Insurance for Compensation, in accordance with the provisions of Labor Code Sections 1860-61 and any acts amendatory thereof. Before beginning the work the Contractor shall furnish to the District satisfactory proof that he has taken out, for the period covered by the work under this contract, full compensation insurance for all persons whom he may employ directly or through subcontractors, in carrying out the work contemplated under this Contract, in accordance with the "Workers' Compensation and Insurance Act," Sections 3200 et seq., Labor Code.

- a. The following endorsements are to be attached to the Worker's Compensation Policy:
 - (1) Waiver of Subrogation Endorsement
 - (2) Alternate Employer Endorsement
 - (3) Thirty (30) Days Prior Notice
- b. If the Contractor fails to maintain such insurance, the District may take out compensation insurance which the District might be liable to pay under the provisions of the Act by reason of any employee of the Contractor being injured or killed, and deduct and retain the amount of the premiums for such insurance from any sums due the Contractor.
- c. If any injury occurs to any employee of the Contractor for which the employee, or his dependents in the event of his death, is entitled to compensation from the District under the provisions of said Act, or for which compensation is claimed from the District, the District may retain from the sums due the Contractor under this contract an amount sufficient to cover such compensation, as fixed by said Act, until such compensation is paid, or until it is determined that no compensation is due, and if the District is compelled to pay such compensation District will deduct and retain from such sums the amount so paid.

5.04 Specific Insurance Requirements

- a. Provide evidence of valid and collectible insurance carried for those exposures indicated by an "X". [coverages to be determined for each contract]
- A. _____ Professional Liability Errors & Omissions
 - B. _____ Workers Compensation and Employers Liability
 - C. _____ Automobile Liability - "Any Auto - Symbol 1"
 - D. _____ Comprehensive General Liability, including: Bodily Injury, Property Damage, Personal Injury (A,B,C,D,&E), "X,C,U"
Broad Form Blanket Contractual, Broad Form Property Damage
 - E. _____ Protection & Indemnity (Aviation)
- b. Minimum Limits of Insurance. For coverage specified in 5.04 (a), Contractor shall maintain limits of insurance protection no less than:
- (1) Professional Liability shall be not less than \$2,000,000 per claim and in the aggregate.
 - (2) Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of Bodily Injury by Accident \$2,000,000 Each accident, Bodily Injury by Disease \$2,000,000 Each Employee; and Bodily Injury by Disease \$2,000,000 Policy Limit.
 - (3) Business Automobile Liability, Insurance Services Offices, "ISO" from CA 00 01 12-92 or its equivalence with limits not less than \$2,000,000 combined single limit per accident for bodily injury and property damage.
 - (4) Commercial General Liability, Insurance Services Offices, "ISO" form CG 00 01 11-88 or its equivalence with limits not less than \$2,000,000 combined single limit per occurrence for bodily injury, property damage, personal injury and shall specifically include contractual liability providing protection for liability assumed by the Contractor under this contract. Coverage for "Explosion, Collapse and Underground" shall be specifically endorsed on to the policy for full coverage under the policy.
 - (5) Protection & Indemnity (Aviation) shall not be less than \$5,000,000 combined single limit, including passengers.
- c. All insurance correspondence, certificates, binders, etc., shall be mailed to:
- Monterey Peninsula Water Management District**
Attn: Administrative Services Manager
P.O. Box 85
Monterey, CA 93942-0085
- d. All policies carried by the Contractor shall be primary coverage to any and all other policies that may be in force. The "District" will not be responsible for payment of premiums due as a result of compliance with the terms and conditions of the insurance requirements.

- e. All such policies of insurance shall be issued by domestic United States insurance companies with general policy holders' rating of not less than "B" and admitted to do business in the State of California.

5.05 Other Insurance Provisions. The Contractor shall comply with the following insurance provisions:

- a. Additional Insured. The "Persons Insured" provision on each policy shall include as additional insureds: (1)"Monterey Peninsula Water Management District, their officers, directors, agents and employees.
- b. Waiver of Subrogation. Contractor hereby waives any and all right of recovery against (1) the Monterey Peninsula Water Management District, their officers, directors, agents, and employees for any loss or damage sustained by the Contractor which is insured under valid and collectible insurance policy or policies secured pursuant to Paragraph 5.02 or any other property insurance applicable to the activities of the Contractor.

5.06 Hold Harmless. The following entities are to be held harmless: (1) Monterey Peninsula Water Management District and its directors, officers, agents and employees.

5.07 Property Insurance. If required by District, the Contractor shall, before commencing the work, take out and maintain during the life of this contract, an "All Risk" Property Insurance Policy as shall protect him, any sub-contractor performing work covered by this contract, the District and its officers, directors, agents, and employees, from any damage to the work being performed under this contract, including finished structures, partially finished structures, and all materials and equipment which are to be incorporated into the work. The Contractor shall furnish the District satisfactory proof that such a policy has been secured, and which shall be for not less than the amount listed in the contract documents.

5.08 Issuance of Stop-Work Order. The Contractor will be issued an immediate stop-work order when the District is notified of cancellation of any insurance required under this Contract. Such stop order shall continue until District is notified and provided proof of new or reinstated insurance. Neither the Contractor nor the subcontractor shall be entitled to any increase in Contract performance time, or to any adjustment in Contract price due to the effects of such a stop-work order.

SECTION 6. DUTIES AND RESPONSIBILITIES OF CONTRACTOR

6.01 Legal Address of Contractor. The Contractor's address as shown in the bid, as well as such office or headquarters the Contractor establishes at the site of the work, hereby are designated as addresses to which drawings, samples, notices, letters, articles, or other communications to the Contractor may be mailed or delivered. The delivery at either of these places of any item or communication from the District or agents thereof to the Contractor shall be deemed sufficient service of such delivery. The Contractor's address as shown in the bid may be changed at any time by notice in writing from the Contractor to the District. Nothing herein contained shall be deemed to preclude or render inoperative the service of any drawing, sample, notice, letter or other article or communication to or upon the Contractor personally.

6.02 Contractor's Representative and Office at Site. Before starting work, the Contractor shall designate in writing a representative who shall have complete authority to act for it. An alternative representative may be designated as well. The representative or alternate shall be present at the Work site whenever work is in progress or whenever actions of the elements necessitate its presence to take measures necessary to protect the Work, persons, or property. Any order or communication given to this representative shall be deemed delivered to the Contractor. A joint venture shall designate only one representative and alternate. In the absence of the Contractor's representative or alternate, instructions or directions may be given by the District Engineer to the superintendent or person in charge of the specific work to which the order applies. Such order shall be complied with promptly and referred to the Contractor or its representative.

In order to communicate with the District, the Contractor's representative, superintendent, or person in charge of specific work shall be able to speak, read, and write the English language.

The names of Contractors, Subcontractors, architects, or engineers may be displayed at the work site on removable signs. The size, location and content of each sign, however, shall require the advance written approval of the District Engineer.

During the performance of this contract the Contractor shall maintain a suitable office at the site of the work which shall be the headquarters of a representative authorized to receive drawings, instructions or other communications or articles from the District or District's agents; and any such thing given to the said representative or delivered at the Contractor's office at the site of the work in his absence shall be deemed to have been given to the Contractor. A signed receipt shall be given to the District or District's representative upon such delivery. The Contractor shall maintain a complete set of plans and specifications at the site office whenever work is in progress.

6.03 Permits and Licenses. Unless otherwise described under Special Conditions, the Contractor shall acquire, pay for and possess such State and local permits or licenses as are required by law, such as the general building permit, the plan check fee, utility connection fees, Department of Fish and Game permits, and Army Corps of Engineer permits, and the Contractor shall furnish satisfactory proof to the District, upon request, that such permits or licenses are and will be in effect throughout the entire life of this contract. **The Contractor shall keep all permits and licenses posted on the job site or other location approved by the District, and forward copies of all permits obtained to the District.**

The District, at its sole option, may choose to provide any or all permits and licenses.

6.04 Attention to Work. The Contractor shall give his personal attention to and shall supervise the work to the end that it shall be prosecuted faithfully, and when he is not personally present on the work, he shall at all reasonable times be represented by a competent superintendent or foreman who shall receive and obey all instructions or orders given under this contract, and who shall have full authority to execute the same and to supply materials, tools and labor without delay, and who shall be the legally appointed representative of the Contractor. The Contractor shall be liable for the faithful observation of any instructions delivered to him or to his authorized representative.

6.05 Liability of Contractor. The Contractor shall do all of the work and furnish and pay for all labor, materials, tools, and appliances, except as otherwise herein expressly stipulated,

necessary or proper for performing and completing the work herein required in the manner and within the time herein specified. The mention of any specific duty or liability imposed upon the Contractor shall not be construed as a limitation or restriction of any general liability or duty imposed upon the Contractor by this contract, said reference to any specific duty or liability being made herein merely for the purpose of explanation.

6.06 Status of Contractor. The right of general inspection by the District shall not make the Contractor an agent of the District, and the liability of the Contractor for all damages to persons or to public or private property, arising from the Contractor's execution of the work, shall not be lessened because of such general inspection.

6.07 Right of Appeal. The Contractor shall have the right to appeal from any decision by any inspector to the District Engineer and from the District Engineer to the General Manager of the Monterey Peninsula Water Management District.

6.08 Protection of Persons and Property. The Contractor shall at all times during the progress of the work, or temporary suspension of the work, provide, erect and maintain all proper and/or necessary temporary walks, roads, driveways, guards, railings, lights and warning signs, provide a sufficient number of flagmen and take all necessary precautions at all times for the protection of the work and safety of the public, and those engaged in the work. Streets and alleys closed to traffic shall be protected by effective barricades. Signs and barricades shall conform to standards approved by the District Engineer. All barricades and obstructions shall be illuminated at night with reflector signs and lights, and all lights for this purpose shall be kept burning from sunset to sunrise. If in the opinion of the District Engineer or his authorized representative, the Contractor, during the course of the work, does not provide sufficient light and barricades and other safety devices, the District may provide them and deduct the cost thereof from monies due the Contractor under this contract. The Contractor shall also furnish, install and maintain at his own expense, such temporary fences, gates and barricades as may be required to confine cattle or other stock to the limits existing before the start of construction operations.

6.08.1 Cleanup and Dust Control. Throughout all phases of construction, including suspension of work, and until the final acceptance, the Contractor shall keep the site clean and free from rubbish and debris. The Contractor shall also abate dust nuisance by cleaning, sweeping and sprinkling with water, or other means as necessary. The use of water resulting in mud on public streets will not be permitted as a substitute for sweeping or other methods.

Materials and equipment shall be removed from the site as soon as they are no longer necessary. Before the final inspection, the site shall be cleared of equipment, unused materials, and rubbish so as to present a satisfactory clean and neat appearance. All cleanup costs shall be included in the Contractor's Bid.

Care shall be taken to prevent spillage on haul routes. Any such spillage shall be removed immediately and the area cleaned.

Failure of the Contractor to comply with the District Engineer's cleanup orders may result in an order to suspend work until the condition is corrected. No additional compensation will be allowed as a result of such suspension.

6.08.2 Water Pollution Control. The Contractor shall exercise every reasonable precaution to protect channels, storm drains, and bodies of water from pollution. It shall conduct and schedule operations so as to minimize or avoid muddying and silting of said channels, drains, and waters. Water pollution control work shall consist of constructing those facilities which may be required to provide prevention, control, and abatement of water pollution.

6.08.3 Drainage Control. The Contractor shall maintain drainage within and through the work areas. Earth dams will not be permitted in paved areas. Temporary dams of native material, sandbags, or other acceptable material will be permitted when necessary. Such dams shall be removed from the site as soon as their use is no longer necessary.

6.08.4 Air Pollution Control. The Contractor shall not discharge smoke, dust, or any other air contaminants into the atmosphere in such quantity as will violate the regulations of any legally constituted authority.

6.09 Use of Explosives. When the use of explosives is necessary for the prosecution of the work, the Contractor shall use the utmost care not to endanger life or property. Before blasting operations are undertaken, at least twenty-four (24) hours written notice must be given to the District and the District Engineer. The Contractor shall be responsible for obtaining permits from the appropriate authorities. Explosives shall at all times be handled, used and stored in accord with all applicable regulations. Approval of the use of explosives by the District Engineer or District shall not relieve the Contractor from liability for claims caused by blasting operations.

6.10 Notice of Entrance. If any portions of the work specified herein are to be installed in rights-of-way passing through privately owned land, it is of utmost importance that before entering any private property, the Contractor shall give the tenant and inspector a minimum of forty-eight (48) hours' notice.

6.11 Preservation and Restoration of Property. The Contractor shall be responsible for the preservation of all public and private property along and adjacent to the work being constructed, and shall be responsible for restoring said property to the condition in which it existed before the Contractor undertook the work. The Contractor shall not be required to restore trees if they have been specifically designated for removal, but otherwise shall be required to restore all property including but not limited to trees, vegetation, lawns, land monuments, utilities, fences, driveways, and bridges which have been disturbed in performance of the work. The Contractor shall carefully protect from disturbance or damage all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location.

The Contractor shall confine his operations to the area within the limits of construction, and not disturb ground outside of construction stakes, and shall not unreasonably encumber the site with materials or equipment.

The Contractor shall be familiar with all restrictions which apply to works or activity within streambeds and watercourses and shall insure that all activities of Contractor, subcontractors, and sub-subcontractors comply with those restrictions and protect the streambed, banks, water, and

water life from disturbance and/or damage.

6.12 Maintenance of Traffic. Throughout the performance of the work in connection with this contract, the Contractor shall construct and adequately maintain suitable and safe crossings over trenches and such detours as are necessary, to care for public and private traffic, and to permit ingress and egress from public ways and private dwellings. The material excavated from trenches shall be compactly deposited along the sides of the trench in such manner as shall give as little inconvenience as possible to the traveling public and to adjoining property owners.

6.13 Protection of Utilities. The Contractor's attention is directed to the potential existence of pipes, cables, culverts, and other above and below ground structures and improvements which may or may not be shown on the plans. It is the responsibility of the Contractor to use reasonable care to ascertain the existing location of such utilities in advance of any operations so that they shall not be disturbed or damaged by him during the progress of the work. The contractor shall exercise care in avoiding damage to those utility facilities which are to remain in service subsequent to the construction of the work under this contract, and he will be held responsible for their repair if damaged. There is no guarantee that all utilities or obstructions are shown on construction drawings or that locations indicated are accurate.

The Contractor shall uncover all piping, conduit or other buried utilities, to a point one foot below the pipe or conduit, where crossings, interferences or connections are indicated, prior to trenching or excavating for any work structure, to determine actual elevations. If the contractor does not expose all required utilities, he shall not be entitled to additional compensation for work necessary to avoid interferences nor for repair to damaged utilities.

The Contractor shall be compensated for costs of locating and repairing damages not due to the failure of the contractor to exercise reasonable care and for the costs of removing or relocating such utility facilities and for equipment on the project necessarily idled during such work.

The Contractor shall not be assessed liquidated damages for delay in completion of the project, when such delay was caused by the failure of the District or the District Engineer or the owner of the utility to provide for removal or relocation of such utility facilities.

If the location of pipelines or other works being installed by the Contractor under this contract conflicts with the location of existing pipelines, the Contractor shall so notify the District Engineer in writing. The District Engineer shall ascertain the location of the existing utility in question and may at his discretion relocate the pipeline or other work being installed for the convenience of the Contractor. It shall not be construed that the District or the District Engineer is in any way required or obligated to locate or relocate pipelines or other works to locations other than shown on the construction drawings.

6.14 Protection of Bridges. The Contractor shall be responsible for any damage which he may cause to bridges, culverts and road structures. He shall determine in advance the allowable safe load for each structure and, if necessary, provide special shoring and support at his expense.

6.15 Assumption of Risks. Until the completion and final acceptance by the District of all of the work under and implied by this contract, the work shall be under the Contractor's responsible care and charge. The Contractor shall rebuild, repair, restore and make good all injuries, damages,

re-erections, and repairs, occasioned or rendered necessary, by causes of any nature whatsoever, excepting only acts of God and none other, to all or any portions of the work, excepting as otherwise stipulated.

6.16 Responsibility for Damage. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the District, its officers, agents and employees both severally and collectively from and against all claims, damages, losses, injury, liability, costs, and expenses of whatsoever kind or nature including but not limited to attorney's fees and all defense costs howsoever the same may be caused resulting directly or indirectly from or arising out of the activities, operations, or work performed by the Contractor, its employees, agents, subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and without limiting the generality of the foregoing, the same shall include; (1) bodily injury, sickness, disease or death to any person or persons or; (2) injury to or destruction of tangible and/or property including that of the District's whether direct or consequential including the loss of use resulting therefrom; (3) loss of, injury to, or destruction of materials, supplies, equipment, or tools, including those of owner, contractor, subcontractors, or sub-subcontractors. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described herein. The District, at its sole option, may choose to provide all or a portion of the defense of claims, damages, losses, liability, costs, and expenses as set forth above, and in such event, Contractor shall indemnify and hold harmless the District from the costs and expenses, including attorney's fees, of such defense. The District shall have the right to estimate the amount of such damage and to cause the District to pay the same, and the amount so paid for such damage shall be deducted from the money due the Contractor under this contract; or the whole or so much of the money due or to become due the Contractor under this contract, as may be considered necessary by the District, shall be retained by the District until such suits or claims for damages shall have been settled or otherwise disposed of, and satisfactory evidence to that effect furnished to the District.

6.17 Protection of District Against Patent Claims. All fees, royalties, or claims for any patented invention, article, or method that may be used upon or in any manner connected with the work under this contract shall be included in the price bid for the work, and the Contractor and his sureties shall protect and hold the District, together with all of the District's officers, agents and employees, harmless against any and all demands made for such fees or claims brought or made by the holder of any invention or patent, and before the final payment is made on account of this contract the Contractor shall, if requested by the District Engineer, furnish acceptable proof of a proper release from all such fees or claims.

Should the Contractor, his agents, or employees, or any of them, be enjoined from furnishing or using any invention, article, material or appliance supplied or required to be supplied or used under this contract, the Contractor shall promptly substitute other articles, materials or appliances, in lieu thereof, of equal efficiency, quality, finish, suitability and market value and satisfactory in all respects to the District Engineer. Or in the event that the District Engineer elects, in lieu of such substitution, to have supplied, and to retain and use, any such invention, article, material or appliance, as may by this contract be required to be supplied, in that event the Contractor shall pay such royalties and secure such valid licenses as may be requisite and necessary for the District, the District's officers, agents, and employees, or any of them to use such invention, article, material or appliance without being disturbed or in any way interfered with by any proceeding in law or equity

on account thereof. Should the Contractor neglect or refuse to make the substitution promptly, or to pay such royalties and secure such licenses as may be necessary, then in that event the District Engineer shall have the right to make such substitution, or the District may pay such royalties and secure such licenses and charge the cost thereof against any money due the Contractor from the District or recover the amount thereof from him and his sureties notwithstanding final payment under this contract may have been made.

6.18 Cooperation and Collateral Work. The Contractor shall cooperate with all other contractors who may be performing work on behalf of the District and workers who may be employed by the District on any work in the vicinity of the work to be done under this contract; and he shall so conduct his operations as to interfere to the least possible extent with the work of such contractors or Agents. He shall make good promptly, at his own expense, any injury or damage that may be sustained by other contractors or employees of the District at his hands.

The Contractor shall be responsible for ascertaining the nature and extent of any simultaneous, collateral, and essential work by others. The District, its workers and contractors and others, shall have the right to operate within or adjacent to the Work site during the performance of such work. The District, the Contractor, and each of such workers, contractors and others, shall coordinate their operations and cooperate to minimize interference. The Contractor shall include in its Bid all costs involved as a result of coordinating its work with others. The Contractor will not be entitled to additional compensation from the District for damages resulting from such simultaneous, collateral, and essential work. If necessary to avoid or minimize such damage or delay, the Contractor shall redeploy its work force to other parts of the Work. Should the Contractor be delayed by the District, and such delay could not have been reasonably foreseen or prevented by the Contractor, the District Engineer will determine the extent of the delay, the effect on the project, and any extension of time.

If the work of the Contractor is delayed because of any acts or omissions of any other contractor or of the District, the Contractor shall on that account have no claim against the District other than for an extension of time.

If any portions of the work specified herein are to be installed in any right-of-way owned by the State, County, Municipality, or other public entities or public utilities, it shall be incumbent upon the Contractor to familiarize himself with the regulations of each of these agencies, especially concerning traffic controls, lights, barricades, and backfill requirements. Such portions of the work which may fall within the right-of-way of the agencies described above will necessarily be subject to their inspection and approval before acceptance of these portions of the work by the District Engineer. Any costs for inspection by agents other than those of the District shall be borne by the Contractor. Where other agencies have jurisdiction over some portion of the work, and the requirements of the agencies are at variance with this specification, then that portion of the work shall be done in accordance with the requirements of the agency(ies), as agreed to by the District.

6.19 Compliance with Laws and Regulations. The Contractor shall keep himself fully informed of all existing and future State and Federal laws and County, Municipal or District ordinances and regulations which in any manner affect those engaged or employed in the work, or the materials and equipment used in the work, or which in any way affect the conduct of the work and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over

the same. If any discrepancy or inconsistency is discovered in the drawings or specifications, or in this contract in relation to any such law, ordinance, regulation, order or decree, the Contractor shall forthwith report the same to the District Engineer in writing. He shall at all times observe and comply with, all such existing and future laws, ordinances, regulations, order and decrees. The Contractor shall protect and indemnify the District and all of the District's officers, agents and employees against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order or decree, whether by the Contractor himself or by his employees or by subcontractors or sub-subcontractors.

The Contractor shall be aware of and comply with any of the following provisions of law that may apply to the performance of work under this Contract:

- a. The Fair Labor Standards Act of 1939 (20 U.S.C. 201-219);
- b. The Walsh-Healy Public Contracts Act (41 U.S.C. 35-45);
- c. The Contract Work Hours Standards Act - Overtime Compensation (40 U.S.C. 327-330, and the California state requirement under Labor Code '1810, 1811, and 1815 which define 8 hours as a legal day's work;
- d. Laws restraining the Use of Convict Labor;
- e. Utilization of Small Business and Small Disadvantaged Business Concerns (Public Law 95-507);
- f. The Equal Employment Opportunity clause in Section 202 of Executive Order (E.O.) 11246, as amended, and the implementing rules and regulations 41 CFR Part 60) are incorporated herein by reference, unless this order is exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of E.O. 11246 or provisions of any superseding E.O. As used in this clause, "Contractor" means Seller. Unless this order is exempted, the applicable Equal Employment Opportunity Compliance Certificate previously submitted by Seller to Buyer is by reference also incorporated herein.
- g. The affirmative action for Handicapped Workers Clause in Title 41, Code of Federal Regulations, Part 60, Subsection 741.4 and the implementing rules and regulations of the Department of Labor associated therewith are incorporated herein by reference unless the contract amount is under \$2,500.
- h. The Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era Clause of Title 41, Code of Federal Regulations, Part 60, Subsection 25014 and the implementing rules and regulations of the Department of Labor associated therewith are incorporated herein by reference, unless the contract amount is under \$10,000.
- I. The requirements of Labor Code '3700 and '1860 which require the contractor to secure the payment of compensation to its employees, and which require the contractor to execute a certification form, as follows:

"I am aware of the provisions of section 3700 of the Labor Code

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

- j. The requirements of Public Contract Code '7106 which requires the contractor to execute a noncollusion affidavit.
- k. The requirements of Public Contract Code '4104 setting forth the "Subletting and Subcontracting Fair Practices Act" and which require the Contractor to identify any subcontractor who will perform work or render service in excess of one-half of one percent of the Contractor's total bid estimate.
- l. The requirements of Labor Code '1776 which requires the Contractor to keep accurate payroll records, and make them available for inspection on request, and Labor Code '1777.5 requirements for apprentice labor.
- m. Public Contract Code '7104 which requires a clause specific to hazardous waste and unforeseen conditions in any public works contract involving excavations deeper than four feet. The Code also requires the Contractor to notify the District in writing if any hazardous waste or other unforeseen latent physical conditions are found in the course of excavation. The District must promptly investigate and issue a change order if necessary.
- n. Labor Code '6705 which requires special trench shoring for public works in excess of \$25,000.
- o. Business & Professions Code "7028.7 and 7028.15 pertaining to licensing requirements for Contractors who perform public works.
- p. Public Contract Code '7013(b) requires a provision regarding antitrust claims assignments. The contractor or subcontractor must "offer and agree to assign any antitrust claim arising from the purchase of goods, services or materials."
- q. Workers' compensation laws (Labor Code '3700 - insurance, Business & Professions Code "7124.6 - disclosure of complaints, 7125 - address of insurance carrier, and 7125.1 - evidence of coverage).
- r. All other federal, state and local laws; and
- s. All other federal, state and local regulations and orders issued under any applicable law.
- t. Governing Law and Venue. In the event of litigation, the contract documents and all matters related to the work shall be governed by and controlled only in accordance with the laws of the State of California. Venue shall be with the appropriate state court in the County of Monterey only.
- u. The Americans with Disabilities Act (ADA) prohibiting discrimination on the basis of

disability.

6.20 Construction Utilities. The Contractor shall be responsible for providing and bearing the cost, for and in behalf of his work under this contract, all necessary utilities, such as special connections to water supply, telephones, power lines, fences, roads, watchmen, suitable storage places, and approved sanitary facilities for his employees.

6.21 Approval of Contractor's Plans. The approval by the District Engineer of any drawing or any method of work proposed by the Contractor shall not relieve the Contractor of any of his responsibility for any errors therein and shall not be regarded as any assumption of risk or liability by the District or any officer or employee thereof, and the Contractor shall have no claim under this contract on account of the failure or partial failure or deficiency of any plan or method so approved. Such approval shall be considered to mean merely that the District Engineer has no objection to the Contractor's using upon his own full responsibility, the plan or method proposed.

6.22 Suggestions to Contractor. Any plan or method of work suggested by the District Engineer to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor; and the District Engineer and the District shall assume no responsibility therefor.

6.23 Termination of Unsatisfactory Subcontractors. Should any subcontractor or sub-subcontractor fail to perform in a satisfactory manner the work undertaken by him, such subcontractor or sub-subcontractor shall be terminated immediately by the Contractor upon written notice from the District Engineer or such sub-subcontractor shall be terminated by the sub-contractor at the direction of the Contractor upon written notice from the District Engineer.

6.24 Hiring and Dismissal of Employees. During the performance of this contract, the Contractor agrees as follows:

- a. The Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, mental condition, marital status, or sex. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Equal Opportunity clause.
- b. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, mental condition, marital status, or sex.

The Contractor shall employ only such foremen, mechanics and laborers as are competent and skilled in their respective lines of work and whenever the District Engineer shall notify the Contractor in writing that any person on the work is, in his opinion, incompetent, unfaithful,

intemperate, or disorderly, or refuses to carry out the provisions of this contract, or uses threatening or abusive language to any person on the work representing the District, or is otherwise unsatisfactory, such person shall be discharged immediately from the work and shall not be re-employed upon it except with the consent of the District Engineer.

6.25 Wages of Employees. The Contractor shall provide a copy of his certified payroll for the project weekly to the District Engineer. The District shall investigate any discrepancies in actual payments to those required by the general prevailing rates determined by the State Director of the Department of Public relations for the locality in which the work is performed.

The time of service of any worker shall be restricted to eight (8) hours during any calendar day and forty (40) hours during a calendar week unless overtime compensation is paid at not less than one and one-half times the basic rate of pay.

The Contractor shall forfeit, as penalty, to the District, fifty dollars(\$50) for each worker employed in execution of the contract by him or by any subcontractor, for each calendar day during which any worker is required or permitted to labor more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) calendar week in violation of the provisions of Section 1775, Labor Code.

The Contractor shall comply with Section 1776, Labor Code, by maintaining accurate and complete payroll records and making such records available for inspection. Subcontractors shall also comply with the Section 1776 provisions, but the prime responsibility for maintenance and availability of complete and accurate payroll records rests with the Contractor.

6.26 Preservation of Stakes and Marks. The Contractor shall preserve carefully bench marks, reference points, and stakes, and in case of willful or careless destruction he will be charged with the resulting expense of replacement and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

6.27 Protection of Contractor's Work and Property. The Contractor shall protect his work, supplies, and materials from damage due to the nature of the work, the action of the elements, trespassers, or any cause whatsoever until the completion and acceptance of the work by the District.

Neither the District nor any of the District's agents assume any responsibility for collecting indemnity from any person or persons causing damage to the work of the Contractor.

6.28 Assistance to District Engineer. At the request of the District Engineer, the Contractor shall provide workers from his force, and tools, stakes and other materials to assist the District Engineer temporarily in making measurements and surveys and in establishing temporary or permanent reference marks. Payment for such materials and assistance will be made as provided for under the caption "Extra Work," provided, however, that the cost of setting stakes and marks carelessly lost or destroyed by the Contractor's employees will be assessed to the Contractor.

6.29 Removal of Condemned Materials and Structures. The Contractor shall remove from the site of the work, without delay, all rejected and condemned materials or structures of any kind brought to or incorporated in the work, and upon his failure to do so, or to make satisfactory

progress in so doing, within forty-eight (48) hours after the service of a written notice from the District Engineer, the condemned materials or work may be removed by the District and the cost of such removal shall be deducted from the money that may be due or may become due the Contractor on account of or by virtue of this contract. No such rejected or condemned material shall again be offered for use by the Contractor under this contract.

6.30 Proof of Compliance with Contract. In order that the District Engineer may determine whether the Contractor has complied with the requirements of this contract not readily ascertainable through inspection and tests of the work and materials, the Contractor, shall, at any time when requested, submit to the District Engineer properly authenticated documents or other satisfactory proofs as to his compliance with such requirements.

6.31 Approval of Variations. The work done by the Contractor under this contract shall not vary in any manner from the specifications, drawings and contract stipulations, or from any materials, samples of which have been submitted and approved, except by written permission of the District Engineer.

6.32 Modification of Work by Contractor. Should conditions develop during the progress of the work to make it impossible or impracticable for the Contractor to comply strictly with the terms of this contract, the Contractor shall apply in writing to the District Engineer for modification, provided that it be not detrimental to the work or of additional cost. If such modification is acceptable to the District Engineer, the Contractor shall be so notified in writing, whereupon the modification may be made. If such modification is not acceptable to the District Engineer, the Contractor shall determine some other method of doing the work which shall be acceptable to and duly accepted by the District Engineer.

Such modifications shall in no way affect, vitiate, or make void this contract or any part thereof, except what is necessarily affected by such alterations and is clearly the evident intention of the parties to this contract.

6.33 Cleaning Up. The Contractor shall not allow the site of the work to become littered with trash and waste material, but shall maintain the same in a neat and orderly condition throughout the construction period. The District Engineer shall have the right to determine what is or is not waste material or rubbish and the place, manner and timing of disposal.

On or before the completion of the work, the Contractor shall, without charge therefore, carefully clean out all pits, pipes, chambers or conduits and shall tear down and remove all temporary structures built by him and shall remove rubbish of all kinds from any of the grounds which he has occupied and leave them in first-class condition, to the satisfaction of the District's Representative.

6.34 Subsequent Repair. The Contractor shall promptly make all needed repairs arising out of defective materials and equipment or faulty workmanship whether caused by the Contractor, sub-contractors or sub-subcontractors, irrespective of fault, during the period specified in the Bond of Faithful Performance after the date of completion of the work under this contract and the final acceptance of the same by the District. The District is hereby authorized to make such repairs if within ten (10) days after the mailing of a notice in writing to the Contractor, or his agent, the said Contractor shall neglect to make or undertake with due diligence the aforesaid repairs; provided,

however, that in case of an emergency where, in the opinion of the District, delay would cause serious loss or damage, repairs may be made without notice being sent to the Contractor, and the Contractor shall pay the costs thereof.

6.35 Hazardous Waste and Differing Site Conditions.

- a. When the work involves digging trenches or other excavations deeper than four feet, the Contractor shall promptly, and before disturbing the site, notify the District Engineer in writing of: (1) material believed to be hazardous waste as defined in Section 25117, Health and Safety Code; (2) subsurface or latent physical conditions at the site differing from those indicated; or (3) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract. The District Engineer shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.
- b. No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in (a) above; provided, however, the time prescribed therefor may be extended by the government. If a dispute arises whether the conditions materially differ or involve hazardous waste or cause a change in the cost or time for performance of the work, the Contractor shall not be excused from the scheduled completion date, but shall proceed with all work to be performed under the contract. Contractor shall retain all rights under the Contract or by law with respect to the dispute.
- c. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.
- d. The removal of 100 square feet or more of surface area of asbestos-related material or of other hazardous substances as defined in Section 7058.7, Business and Professions Code, shall be encompassed by a new and separate contract undertaken with a contractor certified in accordance with Section 7058.5(a), Business and Professions Code. If, however, an emergency condition arises by reason of the discovery of asbestos-related material or hazardous substances, the removal thereof shall be contracted and performed as day labor or by contract without giving notice for bids, or both.

The meaning of "emergency condition" shall be that as defined by Sections 10122 and 22035, Public Contract Code.

- 6.36 Assignment of Antitrust Claims. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the District all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this public works contract or the subcontract. This assignment shall be made and

become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties. (Public Contract Code, ' 7103.5).

6.37 Records and Confidentiality.

- a. Confidentiality. Contractor and its officers, employees, agents, and subcontractors shall comply with all federal, state, and local laws which provide for the confidentiality of records and other information. Contractor shall not disclose any confidential records or other confidential information received from the District or prepared in connection with the performance of this Agreement, unless District specifically permits Contractor to disclose such records or information. Contractor shall promptly transmit to District any request for disclosure of any such confidential records or information. Contractor shall not use any confidential information gained by Contractor in the performance of this Agreement except for the sole purpose of carrying out Contractor's obligations under this Agreement.
- b.
- c. District Records. When this Agreement expires or terminates, Contractor shall return to District any District records which Contractor used or received from District to perform services under this Agreement.
- d. Maintenance of Records. Contractor shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and District rules and regulations related to services performed under this Agreement. Contractor shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three-year period, then Contractor shall retain said records until such action is resolved.
- e. Access to and Audit of Records. The District shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the Contractor and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the District or as part of any audit of the District, to examination and audit of matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- f. Royalties and Inventions. District shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. Contractor shall not publish any such material without the prior written approval of District.

SECTION 7. DUTIES AND POWERS OF DISTRICT

7.01 Authority of the District Engineer. All work done under this contract shall be done in a workmanlike manner and shall be performed to the reasonable satisfaction of the District Engineer who shall have general supervision of all work included hereunder. To prevent disputes and

litigation, the District Engineer shall in all cases determine the amount, quality, acceptability and fitness of the several kinds of work and materials which are to be paid for under this contract; shall decide all questions relative to the true construction, meaning, and intent of the specifications and drawings; shall decide all questions which may arise relative to the classifications and measurements of quantities and materials and the fulfillment of this contract; and shall have the power to reject or condemn any work or material which does not conform to the terms of this contract. His estimate and decision in all matters shall be a condition precedent to an appeal to the District, or the right of the Contractor to receive, demand, or claim any money or other compensation under this agreement and a condition precedent to any liability on the part of the District to the Contractor on account of this contract.

Prior to giving approval of extra work or work omitted as contemplated by Section 11.05 of this contract, the District Engineer shall obtain written approval by the District.

7.02 Substitute for District Engineer. Whenever the District Engineer shall be unable to act, in consequence of absence or other cause, then such person as the District Engineer or the District shall designate, shall perform any and all of the duties and be vested with any or all powers herein given to the District Engineer.

7.03 Authority of Inspectors. Properly authorized and accredited inspectors shall be considered to be the representatives of the District limited to the duties and powers entrusted to them. It will be their duty to inspect materials and workmanship of those portions of the work to which they are assigned, either individually or collectively, under instructions of the District Engineer and to report any and all deviations from the drawings, specifications, and other contract provisions which may come to their notice. Any inspector may be considered to have the right to order the work entrusted to his supervision stopped, if in his opinion such action becomes necessary, until the District Engineer is notified and has determined and ordered that the work may proceed in due fulfillment of all contract requirements.

7.04 Liability of District Officials. No District official, nor the District Engineer, nor any authorized assistant of any of them, shall be personally responsible for any liability arising under this contract.

7.05 Termination of Contract. If the work provided for under this contract shall be abandoned or if the contract shall be sublet or sub-sublet or assigned without the consent of the District or if at any time the District Engineer shall be of the opinion that the conditions specified as to the rate of progress are not being fulfilled, or that the work or any part thereof is unnecessarily delayed, or that the Contractor is willfully violating any of the conditions or provisions of this contract or is executing the same in bad faith, or if the Contractor is adjudged bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, the District shall notify in writing the Contractor to fulfill the conditions of this contract, and should the Contractor fail to begin compliance with said notice within five (5) days, the District may, at the District's discretion, notify in writing the Contractor to discontinue all work under this contract, or any part thereof, and thereupon the Contractor shall discontinue work, and the District may, by contract or otherwise, at the District's discretion, complete the work or such part thereof, and may take possession of the work and use therein such materials, machinery, implements and tools of every description as shall be found upon the work or provide whatever is needed for the completion of the work and charge the expense thereof to the Contractor.

In order to meet the expense so incurred, the District is hereby authorized by the Contractor to draw a warrant in the name of the Contractor and in favor of those persons, firms, or corporations doing the work or providing the materials or labor therefor, against the fund or appropriation set aside for the purpose of this contract, and when a warrant is so drawn it shall be conclusive upon the Contractor, and shall be to all intents and purposes the same as drawn by the Contractor in person. When any of the said demands have been audited and paid, the amount of the same shall be deducted from the fund or appropriation set aside for the purposes of this contract being so terminated. The Contractor shall immediately, upon due notice in writing from the District Engineer, remove from the premises all materials and personal property belonging to him which have not already been used in the construction of the work, or which are not in place in the work and he shall forfeit all sums due him under this contract, and both he and his sureties shall be liable on his bond for all damages caused the District by reason of his failure to complete this contract.

Neither the extension of time, for any reason, beyond the date fixed for the completion of this work, nor the doing and acceptance of any part of the work called for by the terms of this contract, subsequent to the said date, shall be deemed to be a waiver by the District of the right to abrogate, annul, or terminate this contract for abandonment or cause as provided above.

7.06 Early Termination. Notwithstanding any provision to the contrary, if for any fiscal year of this agreement, the governing body of the District fails to appropriate or allocate funds for future periodic payments under the Agreement after exercising reasonable efforts to do so, the District, may, upon thirty (30) days notice, order work on the project to cease. The District will remain obligated to pay the work already performed but shall not be obligated to pay the balance remaining unpaid beyond the fiscal period for which funds have been appropriated or allocated and for which the work has not been done.

7.07 Access to Work. During the performance of the work under this contract, the District and the District's agents and employees may at any time enter upon the work, or the shops where any part of such work may be in preparation, or the factories where any materials for use in the work are being or are to be manufactured or fabricated, and the Contractor shall provide proper and safe facilities therefor, and shall make arrangements with manufacturers to facilitate inspection of their processes and products to such extent as the District's interest may require. Other contractors performing work for the District may also, for all purposes required by their respective contracts, enter upon the work.

7.08 Removal or Replacement of Work Done without Lines, Grades, or Levels. Any work done without lines, levels, or grades being given by the District Engineer or without the supervision of an inspector, or which in the opinion of the District Engineer is deficient in construction, may be ordered replaced at the Contractor's sole cost and expense, except when such work is authorized by the District Engineer in writing.

7.09 Retention of Imperfect Work. If any portion of the work done or material furnished, under this contract, shall prove defective and not in accordance with the specifications and drawings, and if the imperfection in the same shall not be of sufficient magnitude or importance to make the work dangerous or undesirable, or, if the removal of such work is impracticable or will create conditions which are dangerous or undesirable, the District Engineer shall have the right and authority to retain such work instead of requiring the imperfect work to be removed and reconstructed, but he

shall make such deductions therefor in the payments due or to become due the Contractor as may be just and reasonable. A contract modification shall be written containing any such deductions.

7.10 Modification of Work by District. The District Engineer shall have the right, in writing, to order additions to, omissions from, or corrections, alterations and modifications in the line, grade, form, dimensions, plan or kind or amount of work or materials herein contemplated, or any part thereof, either before or after the beginning of construction.

The order of such additions, omissions, corrections, alterations, and modifications shall be in writing and signed by the District Engineer, and such order shall then be binding upon the Contractor.

Such alterations shall in no wise affect, vitiate or make void this contract or any part thereof, except that which is necessarily affected by such alterations and is clearly the evident intention of the parties to this contract.

7.11 Extra Work by District. In case of neglect or refusal by the Contractor to perform any extra work which may be authorized by the District Engineer or to make satisfactory progress in the execution of the same, the District may employ any person or persons to perform such work and the Contractor shall not in any way interfere with the person or persons so employed.

7.12 Additional and Emergency Protection. Wherever, in the opinion of the District Engineer, the Contractor has not taken sufficient precautions for the safety of the public or the protection of the works to be constructed under this contract, or of adjacent structures or property which may be injured by processes of construction on account of such neglect, and whenever, in the opinion of the District Engineer, an emergency shall arise and immediate action shall be considered necessary in order to protect public or private personal or property interest, then and in that event, the District Engineer, with or without notice to the Contractor, may provide suitable protection to the said interests by causing such work to be done and such material to be furnished as shall provide such protection as the District Engineer may consider necessary and adequate.

The cost and expense of such work and material so furnished shall be borne by the Contractor and if the same shall not be paid on presentation of the bills therefor, then such costs shall be deducted from any amounts due or to become due the Contractor. The performance of such emergency work under the direction of the District Engineer shall in no way relieve the Contractor from any damages which may occur during or after precaution has been taken by the District Engineer.

7.13 Use and Possession Prior to Completion. The District shall have the right to take possession of or use any completed or partially completed part of the work. Prior to such possession or use, the District's representative shall furnish the Contractor an itemized list of work remaining to be performed or corrected on such portions of the project as are to be possessed or used by the District, provided that failure to list any item of work shall not relieve the Contractor of responsibility for compliance with the terms of the contract. Such possession or use shall not be deemed an acceptance of any work under the contract. If such prior possession or use by the District delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment in the contract price or the time of completion will be made and the contract shall be modified in writing accordingly.

7.14 Rights-of-Way. The District shall provide all rights-of-way and easements in or beneath pipes and other structures which will be constructed by the Contractor under this contract. If through the failure of the District to acquire or clear title to rights-of-way, the Contractor sustains loss which could not have been avoided by the judicious handling of forces and plant, there shall be paid to the Contractor such amount as the District Engineer may find to be a fair and reasonable compensation for such part of the Contractor's actual loss as the District Engineer deems unavoidable.

Actual loss shall be understood to include no items other than necessary payments, idle time of men, idle time of equipment, cost of extra moving of equipment, and cost of longer hauls, with no allowance in any case for overhead or profit.

If performance of the Contractor's work is delayed as the result of the failure of the District to acquire or clear title to rights- of-way, a commensurate extension of time will be granted.

7.15 Relocating Existing Public Utilities. Should it be necessary to move the property of any owner of a public utility or franchise, such owner shall be notified by the District Engineer, upon proper application by the Contractor, to move the property within a specified time, and the Contractor shall not interfere with said property before the expiration of the time so specified. Should the Contractor desire to have any alterations made in public utility or private improvements in order to facilitate his operations and for his sole benefit, which alterations would not be otherwise required, he shall make whatever arrangements are necessary with the owners of that utility or private improvement and bear all expenses in connection therewith.

SECTION 8. SCOPE AND INTENT OF SPECIFICATIONS AND DRAWINGS

8.01 Interpretation of Specifications and Drawings. The specifications and the contract drawings are intended to be explanatory of each other. Any work indicated in the contract drawings and not in the specifications, or vice versa, is to be executed as if indicated in both. Should it appear that the work to be done, or any of the matters relative thereto, are not sufficiently detailed or explained in these contract documents, including the contract drawings, the Contractor shall apply in writing to the District Engineer for such further explanations as may be necessary, and shall conform thereto as part of this contract, so far as may be consistent with the terms of this contract. In the event of any doubt or question arising respecting the true meaning of the specifications, reference shall be made to the District and its decision thereon shall be final.

8.02 Figured Dimensions. Figured dimensions on the contract drawings shall in all cases be given precedence over scaled dimensions. If figured dimensions do not correspond to scaled dimensions, the Contractor shall request the District Engineer to verify the accuracy of the figured dimensions. It shall be the responsibility of the Contractor to ascertain the correct scale of all contract drawings in his possession including those which may have been reduced for reproduction.

8.03 Errors or Discrepancies. If the Contractor, in the course of the work, discovers any discrepancies between the drawings and the conditions of the ground, or any errors or omissions in the drawings or in the layout given by stakes, points or instructions, it shall be his duty to inform the District Engineer immediately in writing, and the District Engineer shall promptly verify the same. Any work done after such discovery, until authorized, will be done at the Contractor's risk.

8.04 Drawings to be Furnished by Contractor. As soon as practicable after the execution of this contract, the Contractor shall supply working drawings of devices to be furnished hereunder as are called for herein or as are required by the District Engineer to make clear the details of construction and to demonstrate fully that all materials and equipment comply with the intent and provisions of this contract. Unless otherwise herein specified, such drawings shall be submitted to the District Engineer for his approval upon his request. Should any drawings furnished by the Contractor not be approved by the District Engineer, the Contractor shall make the revisions required and resubmit them to the District Engineer for approval. After due approval by the District Engineer, these drawings shall become a part of this contract and the work shall be done in conformity therewith. No such work shall be begun or devices purchased until the drawings detailing such items have been approved. The approval of the drawings shall not relieve the Contractor of responsibility or waive or modify any of the provisions or requirements of this contract.

All plans and drawings, whether prepared by the Contractor, Subcontractors, Architect, or District Engineer, are the property of the District.

8.05 Additional Drawings by District. The contract drawings are intended to be comprehensive and to indicate in detail the scope of the work. However, the District Engineer may furnish the Contractor additional drawings during the progress of the work in order to clarify and define in greater detail the intent of the contract drawings or specifications. The Contractor may request such detailed drawings by submitting his request in writing to the District Engineer at least two (2) weeks in advance of the time they are required.

8.06 Lines and Grades. All work under this contract shall be constructed to the lines and grades shown on the contract drawings which shall be furnished by the District Engineer. The Contractor shall advise the District Engineer at least forty-eight (48) hours in advance of the time and place he wishes to do work, in order that lines and grades may be furnished and necessary measurements for record and payment made with minimum inconvenience to the District Engineer and/or delay to the Contractor.

8.07 Method of Measurement. Unless specifically stated otherwise in this contract, no extra measurement or measurements according to local custom of any kind shall be allowed in measuring the work under this contract, but only the length, area, solid contents, number, weight, or time in standard units, as the case may be, shall be considered as specified. Pipelines shall be measured horizontally.

SECTION 9. WORKMANSHIP, MATERIALS AND EQUIPMENT

9.01 General Quality. Materials and equipment shall be new and of a quality equal to or superior to that specified or approved. Work shall be done and completed in a thorough and workmanlike manner and in strict conformance with the plans and specifications.

9.02 Quality in Absence of Detailed Specifications. Whenever under this contract it is provided that the Contractor shall furnish materials or manufactured articles or shall do work for which no detailed specifications are set forth, the materials or manufactured articles shall be of the best grade in quality and workmanship obtainable in the market from firms of established good

reputation, or, if not ordinarily carried in stock, shall conform to the usual standards for first-class materials or articles of the kind required, with due considerations of the use to which they are to be put. In general, the work performed shall be in full conformity and harmony with the intent to secure the best standard of construction and equipment of the work as a whole or in part.

9.03 Domestic Preference. The District reserves the right to specify only manufactured materials produced in the United States. If required under Special Conditions, only manufactured materials made in the United States substantially from materials produced in the United States, shall be employed in the performance of this contract, in accordance with the provisions of Sections 4300-4305 and of Sections 4330-4334 (Articles 1 and 2, Chapter 4, Division 5) of the Government Code of the State of California and any acts amendatory thereof and under the proviso of Title III, Section 3, of the Act of March 3, 1933, 47 Stat. 1520 (U.S. Code, Title 41, Sec. 10b).

9.04 Samples and Tests. No material shall be used in the work until it has been approved by the District Engineer. All material and equipment are subject to test to determine their conformity with these specifications. Certified factory and mill tests normally shall be acceptable for standard manufactured items. Tests on other materials, including concrete mix designs and aggregate quality tests shall be made in a materials testing laboratory, approved by the District Engineer. All tests shall be performed as specifically or otherwise designated by the District Engineer, and shall be completed to his satisfaction.

All tests shall be furnished by the Contractor at his expense except the following, which shall be performed at the District's expense: Initial soil compaction and stabilization tests, foundation bearing tests, concrete cylinder compression tests. In areas where soil compaction must be repeated due to failure of the compacted material to pass the initial compaction tests, the Contractor shall pay for any and all retesting required subsequent to the initial test.

9.05 Materials and Equipment Specified by Name. Unless otherwise specified in the technical sections of these specifications, any material or equipment indicated or specified by patent, proprietary, or manufacturer's name, shall be considered as used for the purpose of describing the items desired and establishing the standard of quality and utility required. In such cases, the names shall be considered as followed by the words "or approved equal." The Contractor may supply any material or equipment which is equal in every respect to that specified, provided, however, that written approval for its use is first obtained from the District Engineer who shall be the sole judge of its quality and ability to meet the specifications. The Contractor shall append to the request for substitution sufficient data, drawings, samples, literature or other detailed information as will demonstrate to the District Engineer that the proposed substitute material is equal in quality and utility to the material specified. The Contractor shall also append the exact amount of credit or charge to be received by the District resulting from said substitution.

The District Engineer shall approve, in writing, such proposed substitution provided its quality and utility are, in his exclusive opinion, satisfactorily demonstrated and the resulting credit or charge to the District warrants such substitution. Such approval shall not relieve the Contractor from complying with the requirements of the contract documents, and the Contractor shall be responsible at his own expense for any changes caused by this proposed substitution which affects other parts of his own work or the work of other contractors.

9.06 Standard Specifications. Wherever standard specifications are referred to, they shall be

the latest revised edition of the Standard Specification referred to and shall be considered to be a part of these specifications insofar as they apply. Standard specifications from the following may be referred to herein:

American Concrete Institute (ACI)
American Institute of Steel Construction (AISC)
American Society for Testing Materials (ASTM)
American Standards Association (ASA)
American Water Works Association (AWWA)
Federal Specifications (Fed. Specs.)
Uniform Building Code (UBC)
State of California, Division of Highways, (Caltrans.)

9.07 Inspection. All work and materials shall be subject to inspection by the District Engineer.

The District Engineer may assign such assistants as he may deem necessary to inspect the material to be furnished and the work to be done under this contract, and to see that the same strictly conform therewith.

The District Engineer shall be notified at the time and place of preparation, manufacture, or construction of all material for work or any part of the work which he may wish to inspect, and of the time and place of making the factory tests required under this contract. Such notification shall be given a sufficient length of time in advance of the beginning of the work on such material or part or of the beginning of such test to allow arrangements to be made for inspecting and testing or witnessing, as the case may be, if such inspection and testing or witnessing are deemed practicable by the District Engineer.

When the District Engineer considers such action to be proper and practicable, he shall at the written request of the Contractor cause materials for use upon the work to be inspected at the point of production or manufacture. The District Engineer may at any time, if he so desires, cause an inspection to be made.

Any work done in the absence of an inspector that may be complete or in progress shall be subject to examination, if required by the District Engineer, and the Contractor shall furnish all tools, labor, materials, and other facilities necessary to make such examination, even to the extent of uncovering or taking down portions of the finished work. The cost of making such examination and the removal of defective work and reconstruction shall be defrayed by the Contractor.

9.08 Compliance with State Safety Code. This is covered in Section 01060.

9.09 Storage of Materials. Materials shall be so stored as to ensure the preservation of their quality and fitness for the work. They shall be so located and disposed that prompt and proper inspection thereof may be made.

9.10 Field Tests, Adjustments and Operation. As soon as the progress of the work permits it shall be placed in service.

The Contractor shall arrange for the presence, as necessary during the succeeding thirty-day (30)

period, of representatives of manufacturers of all the various pieces of equipment and parts of the installation, or other qualified persons, who shall instruct the District operating personnel in the operation and care thereof. The Contractor shall superintend the operation of any equipment during the thirty-day (30) period and shall be responsible for the proper operation thereof; and he shall make no claim against the District for any damage to the equipment during such operation, or for the services of the above-mentioned representatives or other qualified persons. The Contractor shall make such changes, adjustments, or replacements as may be required to make the same comply with the specifications, or to replace any defective parts or material.

9.11 Warranty of Supplies, Equipment and Related Services. Notwithstanding the inspection and acceptance by the District of all supplies, equipment and related services furnished under the Contract, the Contractor warrants that:

- a. All supplies, equipment and related services under this Contract will be free from defects in material or workmanship and will comply with the specifications of the Contract.
- b. All aspects of the shipment of supplies and equipment related to the Contract will conform to the specifications of the Contract. Failure by the Contractor to conform to the shipping requirements stated in this Contract shall constitute a breach."

9.12 Guarantees. In addition to guarantees called for elsewhere in this Contract, Contractor shall and does guarantee all work and materials for a minimum period of one year from the date of recordation of the Notice of Completion against defective material or faulty workmanship that may arise within that period.

SECTION 10. PROSECUTION OF THE WORK

10.01 Equipment and Methods. The work under this contract shall be prosecuted with all materials, tools, machinery, apparatus, and labor and by such methods as are necessary to complete execution of everything described, shown, or reasonably implied under this contract.

The Contractor shall give the District Engineer full information in advance as to his plans for carrying out any part of the work. If at any time before the beginning or during the progress of the work, any part of the Contractor's plant, or equipment or any of his methods of execution of the work, appear to the District Engineer to be unsafe, inefficient, or inadequate to insure the required quality or rate of progress of the work, he may order the Contractor to increase or improve his facilities or methods, and the Contractor shall comply promptly with such orders; but neither compliance with such orders or failure of the District Engineer to issue such orders shall relieve the Contractor from his obligation to secure the degree of safety, the quality of the work, and the rate of progress required of the Contractor. The Contractor alone shall be responsible for the safety, adequacy, and efficiency of his plant, equipment and methods.

10.02 Time of Completion. The Contractor shall promptly begin the work under this contract and all portions of the project made the subject of this contract shall be begun and so prosecuted that they shall be completed and ready for full use within the Contract performance time listed in the contract.

10.03 Avoidable Delays. Avoidable delays in the prosecution or completion of the work shall include all delays which might have been avoided by the exercise of care, prudence, foresight, and

diligence on the part of the Contractor.

Delays in the prosecution of parts of the work, which may in themselves be unavoidable but do not necessarily prevent or delay the prosecution of other parts of the work nor the completion of the whole work within the time herein specified, reasonable loss of time resulting from the necessity of submitting plans to the District Engineer for approval and from the making of surveys, measurements, and inspections, and by such interruptions as may occur in the prosecution of the work on account of the reasonable interference of other contractors employed by the District, which do not necessarily prevent the completion of the whole work within the time herein specified, will be considered by the District as avoidable delays within the meaning of this contract.

10.04 Unavoidable Delays. Unavoidable delays in the prosecution or completion of the work under this contract shall include all delays which may result, through causes beyond the control of the Contractor and which he could not have provided against by the exercise of care, prudence, foresight and diligence. Orders issued by the District changing the amount of work to be done, the quantity of material to be furnished, or the manner in which the work is to be prosecuted, and unforeseen delays in the completion of the work of other contractors under contract with the District will be considered unavoidable delays, so far as they necessarily interfere with the Contractor's completion of the whole of the work. Delays due to adverse weather conditions may, at the discretion of the District, be considered unavoidable. However, the Contractor shall anticipate such delays and plan his work accordingly. The District shall provide an extension for weather delays as covered in the Special Provisions to the contract.

10.05 Notice of Delays. Whenever the Contractor foresees any delay in the prosecution of the work, and in any event immediately upon the occurrence of any delay which the Contractor regards as an unavoidable delay, he shall notify the District Engineer in writing of the probability of the occurrence of such delay and its cause, in order that the District Engineer may take immediate steps to prevent, if possible, the occurrence or continuance of the delay, or, if this cannot be done, may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and completion of the work are to be delayed thereby.

After the completion of any part of the whole of the work, the District Engineer, in estimating the amount due the Contractor, shall assume that any and all delays which have occurred in its prosecution and completion have been avoidable delays, except such delays as shall have been called to the attention of the District Engineer in writing at the time of their occurrence and found by him to have been unavoidable. The Contractor shall make no claim that any delay not called to the attention of the District Engineer at the time of its occurrence has been an unavoidable delay.

10.06 Extension of Time. Should any delays occur which the District Engineer may consider unavoidable, as herein defined, the Contractor shall, pursuant to his application, be allowed an extension of time, beyond the time herein set forth, proportional to said delay or delays in which to complete this contract; and liquidated damages for delay shall not be charged against the Contractor by the District during an extension of time granted because of unavoidable delay or delays.

10.07 Unfavorable Weather and Other Conditions. During unfavorable weather and other conditions, the Contractor shall pursue only such portions of the work as shall not be damaged thereby. No portions of the work on which satisfactory quality or efficiency will be affected by

any unfavorable conditions shall be constructed while these conditions remain, unless by special means or precautions approved by the District Engineer, the Contractor shall be able to overcome them.

10.08 Sunday, Holiday and Night Work. No work shall be done between the hours of 6 p.m. and 7 a.m., nor on Sundays or legal holidays except such work as is necessary for the proper care and protection of work already performed, or except in case of an emergency, and in any case only with the permission of the District Engineer.

It is understood, however, that night work may be established as a regular procedure by the Contractor if he first obtains the written permission of the District Engineer and that such permission may be revoked at any time by the District Engineer if the Contractor fails to maintain at night adequate force and equipment for reasonable prosecution and to justify inspection of the work.

SECTION 11. PAYMENT

11.01 Progress Payments. Payments shall be made within 30 days upon presentation of undisputed and properly submitted estimates prepared jointly by the Contractor and District's representative and received and properly certified and approved by the District Engineer. Payments shall be based upon the percentage of the work completed under each payment item during the preceding month, or upon actual quantities performed.

If the District fails to make a timely payment after receipt of an undisputed, properly submitted payment request or estimate, interest shall be paid the Contractor at the legal rate until paid.

Payment requests or estimates determined not to be properly submitted or disputed shall be returned, with written reasons therefor, to the Contractor as soon as practicable, but not later than seven (7) days after receipt.

The number of days available to the District to make a payment without incurring interest shall be reduced by the number of days, if any, exceeding the seven-day return requirement of disputed or improperly submitted payment requests or estimates.

These provisions shall not apply to that portion of the final payment designated by the Contract as retention earnings.

- A. Partial payment of bid items shall be in conformance with the General Conditions. Partial payment for work completed, and materials on site, which will become an integral part of the finished work, shall be determined by the Owner and shall be made on the basis of duly certified and approved estimates of the work, which, in the opinion of the Owner, has been satisfactorily completed. It is understood that the determination by the Owner as to whether or not a certificate or estimate for payment should be issued, or the amount of said payment, shall be based entirely upon the opinion of the Owner. Said determination shall include without limitation the following factors:

- 1. All phases of the work being accomplished in a proper manner and being pursued in a proper sequence of operation, particularly with regard to testing, cleanup and surface restoration.

2. The observance by the Contractor of the requirement that all work and operations be preceded by necessary submittals and approvals.
3. On the monthly estimates, partial payments for work performed but not completed, may be made in accordance with the following schedule, except as otherwise noted in the specifications:

Cost of material delivered to the site	95% of the invoice cost of the material
Materials installed, backfill and compacted, prior to testing	80% of price for materials in place
Cleanup, surface restoration, testing and startup completed	95% of unit price

4. Retainage will be deducted from the above amounts as specified in the Contract Agreement.

11.02 Retentions. The District shall retain five percent (5%) of the amount of each progress estimate, and the accumulation of said amounts so retained from the progressive payments to the extent unencumbered shall be paid to the Contractor in no less than thirty-five (35) days after the completion of the work and acceptance by the District Engineer and the District.

In lieu of retention of five percent (5%) of the amount of each progress payment, the Contractor may elect to deposit certain securities (certificate of deposit or other interest bearing securities) equivalent to the amount to be withheld. The Contractor shall notify the District in writing upon the presentation of estimates of the Contractor's intention to enter into an escrow agreement.

The Contractor also has the option, at his cost, to request the District to make payment of retentions earned, directly into an escrow agent, pursuant to the terms of Section 22300, Public Contract Code.

11.03 Acceptance. The Contractor shall notify the District Engineer in writing of the completion of the work whereupon the District Engineer shall promptly, by personal inspection, satisfy himself as to the actual completion of the work in accordance with the terms of the contract. After receiving a recommendation for acceptance of the work from the District Engineer in writing, the District shall either accept or reject the work, stating the conditions for acceptance if the work is rejected. When the District accepts the work, it shall file a "Notice of Completion" with the County Recorder in the County of Monterey and shall promptly notify the Contractor in writing of the recordation. The Contractor warrants and guarantees that title to all work, materials and equipment accepted by the District shall pass to the District free and clear of all liens, claims, security interests or encumbrances, and that no work, materials or equipment accepted will have been acquired by the Contractor, subcontractor or sub-subcontractor, or by any other person performing the work at the site or furnishing materials or equipment for the project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

11.04 Final Quantities and Payment. The District Engineer shall, as soon as practicable after the final acceptance of the work done under this contract, make a final determination of the amount of work done thereunder and the value thereof.

Such final determination shall be signed by the District Engineer, and after approval, the District shall pay or cause to be paid to the Contractor, in the manner provided by law, the entire sum so found to be due hereunder, after deducting therefrom all previous payments and such other lawful amounts as the terms of this contract prescribe.

In no case shall final payment be made in less than thirty-five (35) days after the completion of the work and its acceptance by the District.

A. Lump Sum Bid Item

The lump sum price constitutes full compensation for upgrade of and construction of the Sleepy Hollow Raw Water Intake and Water Supply System including all equipment, labor and materials for demolition, excavation, site work, electrical, controls, mechanical equipment, dewatering, bypassing pumping and piping work and all associated improvements shown and specified in the Contract Documents.

11.05 Extra Work and Work Omitted. Whenever corrections, alterations, or modification of the work under this contract are ordered by the District Engineer and approved by the District and increase the amount of work to be done, such added work shall be known as extra work, and when such corrections, alterations, or modifications decrease the amount of work to be done, such subtracted work shall be known as work omitted.

When the Contractor considers that any changes ordered involve extra work, he shall immediately notify the District Engineer in writing and after receipt of the District Engineer's written authorization to proceed, and subsequently keep him informed as to when and where alleged extra work is to be performed and shall make claim for compensation therefor each month not later than the first day of the month following that in which the work claimed to be extra work was performed, and he shall submit a daily complete statement of materials used and expenses incurred on account of extra work performed, showing allocation of all materials and expenses.

All such claims shall state the date of the District Engineer's written order authorizing the work on account of which claim is made. Unless such notification is made in writing and unless complete statements of materials used and expenses incurred on account of such alleged extra work are furnished as above required, the Contractor shall not be entitled to payment on account of such alleged extra work and any future claims for compensation for such alleged extra work shall be invalidated.

When changes decrease the amount of work to be done, they shall not constitute a claim for damages on account of anticipated profits on the work that may be omitted.

11.06 Compensation for Extra Work or Work Omitted. Whenever corrections, additions, or modifications in the work under this contract change the amount of work to be done or the amount of compensation due the Contractor and such changes have been ordered in writing by the District Engineer, then a price may be agreed upon, or failing such an agreement in price, an amount equal to the sum of the following five (5) items shall be used as the full and proper compensation therefor, and such amount shall be added to or subtracted from, as the case may be, the price fixed by the terms of this contract for the part of the work affected:

- a. The necessary reasonable cost to the Contractor of the material required for the work as furnished by the Contractor and delivered by him at the site of the work.
- b. The necessary cost to the Contractor of the labor (including foremen devoting their exclusive attention to the work in question), required to incorporate all of said material into the work and to finish the work in accordance with directions.
- c. Appropriate overhead and profit.
- d. The cost of workers= compensation insurance premiums on the labor included in item (b).

In order that a proper estimate may be made by the District Engineer of the net cost of labor and materials entering into extra work, in accordance with the procedure just stated, the Contractor shall furnish daily an itemized statement of material and labor supplied, together with the cost of such material and the wages paid, and shall furnish vouchers for quantities and prices of such labor, material, or work. In case the Contractor fails to comply with the above provisions, such failure shall be deemed a voluntary waiver of right, and Contractor thereafter shall have no claim for compensation against the District.

This method of determining the price of work shall not apply to the performance of any work which is required or reasonably implied to be performed or furnished under this contract.

11.07 Compensation to District for Extension of Time. In case the work called for under this contract is not completed within the time limit stipulated herein, the District shall have the right, as provided hereinabove, to extend the time of completion thereof. If the time limit be so extended, the District shall have the right to charge to the Contractor and to deduct from the final payment for the work the actual cost to the District of Engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the extension of time. The cost of final surveys and preparation of the final estimate shall not be included in such charges.

11.08 Liquidated Damages for Delay. It is agreed by the parties to the contract that time is of the essence and that in case all the work is not completed before or upon the expiration of the time limit as set forth, damage will be sustained by the District, and that it is and shall be impracticable to determine the actual amount of damage by reason of such delay, and it is therefore agreed that the Contractor will pay to the District the sum of two hundred fifty dollars (\$250) per day for each and every calendar day's delay beyond the time prescribed. It is agreed that such damages shall be in addition to the compensation required pursuant to paragraph 11.07 above.

In addition, the District shall have the right to charge to the Contractor and to deduct from the final payment for the work the actual cost to the District of Engineering, inspection, superintendence, and other overhead expenses, which are directly chargeable to the contract and which accrue during the period of such delay, except that the cost of final surveys and preparation of the final estimate shall not be included in such charges.

No liquidated damages shall be paid to the District for unavoidable delays pursuant to sections 6.13 and 10.06 of these General Provisions.

11.09 Progress Schedule and Report. Before beginning work, the Contractor shall file with the

District Engineer a proposed schedule of progress indicating the various subdivisions of the work and the time required to complete them. On the last day of each calendar month, a copy of the schedule shall be submitted with note thereon indicating the percentage completion of each division of work on that date. The form of the schedule shall be approved by the District Engineer. No payments shall be made to the Contractor until such schedule has been submitted and approved by the District Engineer.

11.10 Cost Breakdown. Within fifteen (15) days after execution of the contract, the Contractor shall submit in an acceptable form a schedule showing the subdivision of his contract into its various parts, with quantities and prices, as a basis for checking and computing monthly estimates. No payments shall be made to the Contractor until such schedule has been submitted and approved by the District Engineer.

11.11 Compliance with terms of State or Federal Grant. If this Contract has been or will be funded with monies received by the District pursuant to a contract with the state or federal government in which the District is the grantee, Contractor will comply with all the provisions of said contract, to the extent applicable to Contractor as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, District will deliver a copy of said contract to Contractor, at no cost to Contractor.

SECTION 12. EMPLOYMENT OF APPRENTICES

12.01 Apprentices. Attention is directed to the provisions in Sections 1777.5 (Chapter 1411, Statutes of 1968) and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or subcontractor under him.

Section 1777.5, as amended, requires the Contractor or subcontractor employing tradesmen in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate shall also fix the ratio of apprentices to journeymen that shall be used in the performance of the contract. The ratio of apprentices to journeymen in such cases shall not be less than one to five except:

- a. When employment in the area of coverage by the joint apprenticeship committee has exceeded an average of 15 percent (15%) in the ninety (90) days prior to the request for certificate, or,
- b. When the number of apprentices in training in the area exceeds a ratio of one-to-five, or
- c. When the trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis statewide or locally, or
- d. When assignment of an apprentice would create a condition which would jeopardize his/her life or the life, safety, or property of fellow employees or the public at large or if the specific assigned task is of such a nature that training cannot be provided by a journeyman.

Where the Contractor properly shows that apprentices are employed in the state on all contracts on an annual average of not less than one hour of apprentice labor to five hours of journeyman

labor, a certificate may be granted by the Division of Apprenticeship Standards exempting the Contractor from the one to five hourly ratio otherwise required by Section 1777.5, Labor Code.

The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.

The Contractor shall be responsible to comply with the requirements of Sections 1777.5 and 1777.6 in the employment of apprentices.

Information relative to apprenticeship standards, wage schedule, and other requirements may be obtained from the Division of Apprenticeship Standards at <https://www.dir.ca.gov/das/das.html> .

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