STRAWBERRY RECREATION DISTRICT

NOTICE INVITING BIDS

Strawberry Recreation Center Playground and Turf Field Site Work

Sealed bids for this project will be received by the General Manager at 118 E. Strawberry Dr. Mill Valley, CA 94941 until 2:00 p.m. on Monday, November 30, 2026, at which time they will be publicly opened and read. Bids must be made on the proposal forms included in the Contract Documents. The sealed envelope should be clearly marked with the name of the project and the time of the bid opening.

Bids will be opened at the time indicated above 118 E. Strawberry Dr. Mill Valley, CA 94941.

In general, this project includes: site work to prepare for playground and turf installation, including construction of a retaining wall, concrete pathways and stairs, fencing, and nail board for turf. The work is to be complete within a period of 180 days after issuance of the Notice to Proceed, unless otherwise agreed upon. Surface work (including retaining wall, concrete work, and surface prep) to be completed within 120 days after Notice to Proceed. **A Notice to Proceed will be issued once all insurance, bonds, and critical submittals have been approved.**

Requests for information on receiving bid packages or questions concerning the project should be directed to General Manager Nancy Shapiro at 415-383-6494 or gm@strawberryrec.org. You may view the plans and bid package at https://strawberry.marin.org/about-us/procurement/.

All bids must include a bid security for at least ten percent (10%) of the total bid price including any additive items, which may be in the form of cash, a certified or cashier's check, or a bidder's bond. Bonds or securities assuring faithful performance and payment for labor and materials in an amount of at least one hundred percent (100%) of the contract amount, and insurance policies as required by the contract documents shall be furnished to the District upon execution of the contract.

Pursuant to California Business and Professions Code section 7059, the Contractor, at the time of bid submittal, must have the State of California General Contractor's license, Class A, or a combination of appropriate licenses required to perform the entire work.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations ("DIR"). No contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. No contractor or subcontractor shall be qualified to bid on, be listed in a bid proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. By submitting a bid or proposal to the District, Contractor is certifying that it has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration, including each subcontractor's DIR registration number, to the District.

Contractor and their subcontractors shall furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.

In accordance with California Labor Code Section 1771, all workers engaged in performance of the specified contract work shall be paid not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the project is to be performed, including for holiday and overtime work as determined by the Director of Industrial Relations. Copies of the prevailing rate of per diem wages are available at the District's office at 118 E. Strawberry Drive, Mill Valley, CA 94941, and shall be made available to any interested party on request.

Prevailing rate of per diem wages are also available online at:
http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm

California Labor Code Sections 1777.1, 1775, and 1813 describing potential penalties contractors or subcontractors may be subject to for failure to comply with the prevailing wage law.

This project is also subject to compliance monitoring by the District pursuant to California Air Resources Board's In-Use Off-Road Diesel-Fueled Fleets Regulation (Cal. Code regs. title 13, section 2449). By submitting a bid to the District, Bidder is certifying that its own fleet and that of any subcontractor are in compliance with the Regulation, and Bidder shall furnish valid Certificates of Reported Compliance with this bid unless exempt. More information on these regulations is available online at: https://ww2.arb.ca.gov/our-work/programs/use-road-diesel-fueled-fleets-regulation

The District reserves the right to reject any and all bids and/or to waive any bid irregularity to the extent permitted by law. If the District elects to award a contract for performance of the project, the contract will be to the lowest responsible bidder. All bids shall remain valid for sixty (60) days after the bid opening.

Bidders are directed to the Instructions for Bidders for additional contract requirements.

STRAWBERRY RECREATION DISTRICT

INSTRUCTIONS TO BIDDERS

Strawberry Recreation Center Playground and Turf Field Site Work

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1. Proposal Requirement and Bidder's Representations

1.1 Format of Bids. Bids shall be submitted in writing on the Proposal Form provided by the District. All information requested therein must be clearly and legibly set forth in the manner and form indicated. The District will not consider any proposal not meeting these requirements.

1.2 Bidder Representations. Each bidder by submitting a bid represents that:

a. The bidder has read and understands the Contract Documents and the bid is in accordance with all of the requirements of the Contract Documents and applicable law.

b. The bidder has visited and familiarized him or herself with the site conditions. It will be the sole responsibility of each bidder to conduct any additional examination, investigation, exploration, test, study or other inquiry and to obtain any additional information pertaining to the physical conditions (including surface and underground utilities) that may affect the cost, progress, or performance of the Project. Bidders seeking any such additional examination or other inquiries or information concerning the Project will do so at the bidder's sole expense.

c. The bidder has informed the District in writing no later than five (5) working days prior to the time specified for bid opening of any apparent conflicts, errors, or ambiguities contained in the Contract Documents or between the contents of the Contract Documents and the Project site.

d. Interpretation, correction, or change of the Contract Documents prior to bid opening will be made by addendum signed by an authorized representative of the District and transmitted to all Contract Documents recipients. No other interpretation or information concerning the Contract Documents issued prior to the date specified for opening bids will be binding. All addenda signed by an authorized representative of the District and issued prior to the time and date specified for opening bids will form a part of the contract documents and must be acknowledged on the proposal forms. Any changes, exceptions, or conditions concerning the Project and/or the Contract Documents submitted by any bidder as part of a bid may render that bid non-responsive.

1.3 Eligibility and Responsibility.

a. The District has absolute discretion to determine the lowest responsive, responsible Bidder. The Contract will not be awarded to any Bidder who cannot give

satisfactory assurance of their ability to perform the Contract if it is awarded to them. Each Bidder may be required to furnish satisfactory evidence that it has sufficient means and facilities and has had ample experience in the type of work contemplated herein to deliver the materials and complete the installation in accordance with the specifications and within the time limit guaranteed.

b. All bidders must be Contractors holding a valid license to perform the required work as provided by the Business and Professions Code (see license requirements in the Notice to Bidders). The Bidder's license(s) must remain active and in good standing throughout the term of the Contract.

c. The Bidder is required to be registered as a public works contractor with the Department of Industrial Relations. The Bidder's registration must remain active throughout the term of the Contract.

d. The District may require bidders to complete a questionnaire regarding the Bidder's qualifications to complete the work. If such a questionnaire is included with the bid forms, the questionnaire must be fully completed, and the results of the questionnaire will be used in the District's determination of the Bidder's responsibility.

e. The District may also base its determination of responsibility upon interviews with previous public agencies, clients, design professionals, or subcontractors with whom the Bidder has worked.

f. In determining the Bidder's responsibility, the following factors may be considered:

i. Demonstrated financial strength including, but not limited to, resources available, bonding capacity, and available insurance;

ii. Work previously completed by the Bidder and whether the Bidder maintains a permanent place of business;

iii. Bidder has adequate equipment to do the work properly and expeditiously;

iv. Bidder has appropriate technical experience;

v. History of claims, litigation, poor performance, late project completions, warranty issues, failure to pay, and termination or disqualification from projects;

vi. Bidder has successfully completed at least three (3) similar projects in California;

vii. Bidder's present workload allows adequate resources available for this Project.

g. No person, firm or corporation shall be allowed to make, file or be interested in more than one (1) bid for the same project unless such alternate bids are called for. However, a person, firm or corporation who has submitted a sub-proposal to one bidder is not hereby disqualified from submitting a sub-proposal or quoting prices to other bidders.

h. Bidders failing to meet the requirements in this Section 1 will not be considered.

2. Plans and Documents

2.1 Plans can be obtained at https://strawberry.marin.org/about-us/procurement/.

Paper copies of the bid documents and reasonable accommodations for auxiliary aids will be made available upon request by contacting Nancy Shapiro at gm@strawberryrec.org.

2.2 Prior to bidding, Bidder is responsible for examining the job site and bid documents and notifying the District of apparent errors, omissions, and patent ambiguities in the plans, specifications, and Bid Proposal form. Bid submission is your acknowledgment that you have examined the job site and bid documents and are satisfied with:

a. General and local conditions to be encountered

b. Character, quality, and scope of work to be performed

c. Quantities of materials to be furnished

d. Character, quality, and quantity of surface and subsurface materials or obstacles

e. Requirements of the contract

2.3 The bidder is solely responsible for interpretations and conclusions that may be drawn from the supplied data.

2.4 Third-Party Information

The District does not warrant, represent, or guarantee the accuracy, completeness, or adequacy of information provided from any third party source. The District shall not be responsible or liable in any way whatsoever for any loss or damages of whatever kind, nature, or scope, including, but not limited to, time, money or goodwill arising from errors, inaccuracies, or omissions in any documents and/or information provided by any third party source.

3. Addenda

3.1 Every interpretation of the specifications, changes, additions or corrections will be in the form of an addendum to the contract documents, and when issued will be available at https://strawberry.marin.org/about-us/procurement/ at least one (1) business day before bids are opened. Addenda withdrawing the Notice to Bidders or postponing the Bid Deadline may be issued any time prior to the Bid Deadline. However, the date and time of the Bid Deadline shall

be extended by no less than 72 hours if the District issues any material changes, additions, or deletions to the invitation less than 72 hours prior to the bid closing, pursuant to California Public Contract Code section 4104.5.

3.2 All such addenda shall become part of the Contract Documents and all bidders shall be bound by such addenda whether received or not received by the bidders.

3.3 Addenda will be made available on the District's procurement website at https://strawberry.marin.org/about-us/procurement/.

3.4 Each Bidder shall acknowledge receipt of all Addenda on the Bid. Failure to acknowledge receipt of Addenda may render the bid non-responsive.

4. Pre-Bid Conference

A pre-bid conference will be held for this project. The pre-bid conference is not mandatory.

The pre-bid conference will be held on Monday, November 23, 2026 at 11 a.m. at the Strawberry Recreation District office at 118 East Strawberry Drive, Mill Valley, California.

5. Requests for Clarification and Project Communication

In the event the bidder has any questions as to the meaning of any part of the plans and specifications, or if the bidder finds any error, inconsistency, or ambiguity in the Contract Documents, the bidder shall make a written request for clarification prior to submitting its bid. All questions and comments regarding the plans and specifications should be directed to the Project Manager indicated below and will only be responded to if received in writing at least five (5) working days before the bid opening. Questions received after this time and date may not be responded to.

Project Manager: Nancy Shapiro, gm@strawberryrec.org.

6. Bid Security

6.1 All bids must be submitted on the Proposal Form provided with this Notice Inviting Bids and shall be accompanied by a Bid Security of at least ten (10%) of the base bid. Securities shall be in the form of cash, certified or cashier's check, or bidder's bond payable to the Strawberry Recreation District.

6.2 Failure of the successful bidder to execute and return the contract, or to file acceptable bond(s), insurance certificates and endorsements, or any other submittals as required by the Contract Documents, within ten (10) business days from the Notice of Award of the Contract shall be cause for the annulment of the award and forfeiture of the Bid Security.

6.3 The Bid Security of bidders, other than the successful bidder, may be retained by the District for a period of thirty (30) days after award or until fifteen (15) days after the successful bidder executes the contract and furnished bonds and required submittals, whichever occurs first. If a bidder to whom the contract is awarded fails, or refuses, to execute the contract or file required submittals within ten (10) days of notice of award, as herein provided, the District

Board may award to the next lowest bidder and apply the Bid Security of the bidder failing, or refusing, to execute contract and file required submittals as herein required to the difference between the two bids.

7. Bid Guarantee

No bid shall be withdrawn unless the bidder satisfies the requirements of Public Contract Code section 5103, and the bidder shall guarantee the Total Bid Price for a period of sixty (60) calendar days from the date of the bid opening.

8. Bids and Bid Opening

8.1 Bids must be submitted by submitting sealed paper bids to Nancy Shapiro, General Manager, at 118 E. Strawberry Dr., Mill Valley, CA 94941, on or before the date and time noted in the Notice to Bidders, at which time bids will be publicly opened and read aloud at the District's Office at 118 E. Strawberry Dr., Mill Valley, California.

8.2 Only the total bid amount will be read at the bid opening and not specific item unless requested, in writing, at the time of the submission of proposals.

8.3 Bids are required for the entire work described herein, and neither partial nor contingent bids will be considered.

8.4 Any bids received after the time specified on the Notice to Bidders or as extended via Addenda shall be returned unopened.

9. Bid Protests

All bid protests shall be in writing, addressed to the District General Manager, and received no later than 5:00 p.m. on the second (2nd) business day following the determination of the lowest responsible bidder ("Bid Protest Deadline"). Bid protests can be e-mailed directly to GM@strawberryrec.org.

9.1 Eligible Protestors. The party submitting the protest must have submitted a Bid on the Project. A subcontractor of a party filing a Bid on this Project may not submit a Bid Protest. A party may not rely on the Bid Protest submitted by another Bidder, but must timely pursue its own protest.

9.2 Contents of Bid Protest. The Bid Protest must be specific and contain a complete statement of the factual and legal grounds for the protest and include all supporting documentation. Material submitted after the Bid Protest Deadline will not be considered. The Bid Protest must include the name, address, telephone number, and email address of the person representing the protesting party, if different than the protesting party.

9.3 Notification of Bid Protest. By or before the Bid Protest Deadline, the party submitting the Bid Protest must transmit the Bid Protest by email or personal delivery to the protested bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the Bid Protest.

9.4 Responses to Bid Protest. The protested bidder may submit a written response to the Bid Protest. This response must be submitted to the District no later than 5 p.m. on the second (2nd) business day following the Bid Protest Deadline. The response must include all supporting documentation, and any late material will not be considered. The response must include the name, address, telephone number, and email address of the person representing the responding party, if different than the responding party.

9.5 Notification of Response. By or before the deadline for submitting a response to the Bid Protest, the responding party must transmit the response to the Bid Protest by email or personal delivery to the protesting bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the Bid Protest.

9.6 District Decision on Protest. The Board may hear the Bid Protest as part of its consideration of the award of the contract to which the Bid Protest relates or may hear the bid protest as a separate item, provided that the Board shall decide the Bid Protest prior to awarding the contract, unless the Board exercises its discretion to reject all bids.

9.7 Waiver of Irregularities. The District reserves the right, acting at its sole discretion, to waive any bid irregularity not materially affecting the bid, except where such waiver would give the low bidder an advantage or benefit not allowed other bidders.

9.8 Rejection of All Bids. Nothing in this section shall be construed as a waiver of the District Board's right to reject all bids.

9.9 Exclusive Remedy. The procedure and time limits set forth in this Section are mandatory and are the Bidder's sole and exclusive remedy in the event of a Bid Protest. The Bidder's failure to fully comply with these procedures shall constitute a waiver of any right to further pursue the Bid Protest, including filing of a challenge of the award pursuant to the California Public Contract Code, filing of a claim pursuant to the California Government Code, or filing of any other legal proceedings.

10. Time Limit and Liquidated Damages

All work shall be diligently prosecuted to completion before the expiration of 180 days from the date of receipt of the "Notice to Proceed," and the surface work, including retaining wall, concrete work, and surface prep shall be completed by 120 days after receipt of the Notice to Proceed. If the Contractor fails to complete the work within this time limit, the Contractor shall pay liquidated damages to the District, computed at the rate of $500 for each calendar day beyond the specified time limit until the project is completed.

11. Subcontracting

11.1 Bids must be in accordance with the requirements of the Subletting and Subcontracting Fair Practices Act, Public Contract Code section 4100, et seq. Bids must include a completed list of proposed subcontractors on the form attached to the Bid Forms. The subcontractor list must include the name, place of business, California contractor license number, DIR registration number, the portion (type or trade), and dollar amount of work to be subcontracted (including special fabrication and installation of a portion of the work) valued in excess of **one half (½) of one (1) percent** of the total Project bid price, or ten thousand dollars ($10,000), whichever is

greater. DIR registration numbers must be provided for all subcontractors. Bids that fail to include complete lists of proposed subcontractors in accordance with Public Contract Code section 4100 and this provision may be deemed non-responsive.

11.2 For any portion of the Project work with a value of more than one half (½) of one (1) percent of the total bid price for which no subcontractor is listed, Bidders certifies by submitting its bid that it is qualified to perform that portion of the work with its own forces. Bidder may not substitute another subcontractor for a subcontractor listed in its bid except as permitted by the District in accordance with Public Contract Code section 4107, et seq.

11.3 Contractor may not perform work on a public works project with a subcontractor who is ineligible to perform work on the public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code. The Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a subcontractor on a public works project. This list of debarred contractors is available from the Department of Industrial Relations website at https://www.dir.ca.gov/dlse/debar.html.

12. Prevailing Wage and Labor Law Compliance

12.1 The work contemplated by this contract is a public work subject to prevailing wages under Part 7 of Division 2 of the California Labor Code (sections 1720, et seq.).

12.2 In accordance with Labor Code Section 1771, the successful bidder will be required to pay not less than the prevailing rate of per diem wages as determined by the California Department of Industrial Relations (DIR) on the date the work is performed. Copies of the prevailing rate of per diem wages may be obtained from the District at 118 East Strawberry Drive, Mill Valley, California or on DIR's website at http://www.dir.ca.gov/DLSR/PWD/index.htm.

12.3 Contractor and its subcontractors shall maintain and furnish certified payroll records as specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4. If the entire project cost does not exceed $25,000 for construction, alteration, demolition, installation, or repair work or $15,000 for maintenance work ("Small Project Exemption"), the Contractor and subcontractors are not required to furnish their payroll records to the Labor Commissioner, but shall maintain those same records.

12.4 This project is subject to compliance monitoring and enforcement by DIR. No contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. By submitting a bid or proposal to the District, Contractor is certifying that it has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration to the District. If the entire project cost falls under the Small Project Exemption, the Contractor and subcontractors are not subject to these registration requirements.

12.5 A Bidder's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive provided that any of the following

apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered subcontractor pursuant to Public Contract Code section 4107.

12.6 In accordance with California Labor Code section 1777.5, the Contractor, on behalf of the Contractor and any subcontractors engaged in performance of the Work, will be responsible for ensuring compliance with California Labor Code section 1777.5 governing employment and payment of apprentices on public works contracts. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, or from the Division of Apprenticeship Standards and its branch office.

13. Off-Road Regulation Assurances

The work contemplated by this contract is a public work subject to California Air Resources Board (CARB) In-Use Off-Road Diesel-Fueled Regulation, Cal. Code Regs., tit. 13, section 2449.

A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or enter into any contract for public work, unless currently in compliance with the Off-Road Regulation or claiming an exemption with supporting documentation. By submitting a bid or proposal to the District, Bidder is certifying that its own fleet and that of any subcontractor is in compliance with the Off-Road Regulation, and Bidder shall provide valid Certificates of Reported Compliance to the District, unless claiming an exemption from the Regulation accompanied by supporting documentation.

14. Bonds and Insurance

All contractors are required to furnish the District with faithful performance and payment bonds, and insurance, as required in the Contract Documents.

15. Substitution of Securities

Pursuant to California Public Contract Code section 22300, and at the request and expense of the Contractor to whom the Contract is awarded, securities of a value equivalent to the retention amount, in a form approved by the District, shall be permitted in substitution for money withheld by the District to ensure performance under the Contract.

16. Award of Contract

16.1 The District Board reserves the right to reject any or all bids and the right to waive any irregularities.

16.2 The award of contract, if awarded, shall be based on budget requirements and shall be made to the lowest responsible, responsive bidder based on the total base bid.

16.3 The successful Bidder must execute and return the Contract, acceptable bonds, and insurance certificates and endorsements, and any other submittals as required by the Contract Documents, within ten (10) business days from the Notice of Award of the Contract. Failure to

provide these completed documents within this time period shall be cause for the annulment of the award and forfeiture of the Bid Security.

PROPOSAL

Strawberry Recreation Center Playground and Turf Field Site Work

Bidder's Name: _____

TO STRAWBERRY RECREATION DISTRICT (the "DISTRICT"):

In accordance with District's Notice Inviting Bids, the undersigned Bidder hereby proposes to furnish all materials, equipment, tools, labor, and incidentals required for the above stated project as set forth in the Contract Documents, and to perform all work in the manner and time prescribed.

Bidder declares that this proposal is based upon careful examination of the work site, Project Plans, and other Contract Documents, including the Notice Inviting Bids, this Proposal, the Contract, Special Provisions or Conditions, Technical Provisions, General Conditions, Appendices, and Standard Plans & Specifications. If this proposal is accepted for award, Bidder agrees to enter into a contract with the District at the unit and/or lump sum prices set forth in the following Bid Schedule. Bidder understands that failure to enter into a contract in the manner and time prescribed will result in forfeiture to the District of the Bid Security accompanying this proposal.

Bidder understands that a bid is required for the entire work, that the estimated quantities set forth in the Bid Schedules are solely for the purpose of comparing bids, and that final compensation under the contract will be based upon the actual quantities of work satisfactorily completed. It is agreed that the unit and/or lump sum prices bid include all appurtenant expenses, federal, state and local taxes, royalties, and fees. In the case of discrepancies in the amounts bid, unit prices shall govern over extended amounts.

Bidder agrees and acknowledges that it is aware of the provisions of Section 3700 of the Labor Code, which requires 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 that the Bidder will comply with such provisions of that code before commencing the performance of this Contract if awarded it.

Bidder certifies to be properly licensed by the State of California as a contractor to perform work of this specialty. The undersigned agrees to furnish the District satisfactory proof of ability to perform the work, as well as records of performance of similar jobs completed recently, if and when requested to do so by the Project Manager.

Bidder agrees that the applicable insurance and bonding requirements can and will be fulfilled.

Bidder declares that the only persons or parties interested in this proposal as principals are those named herein; that no officer, agent, or employee of the District is personally interested, directly or indirectly, in this proposal; that this proposal is made without connection to any other individual, firm, or corporation making a bid for the same work; and that this proposal is in all respects fair and without collusion or fraud.

Bidder certifies that in all previous contracts or subcontracts, all reports which may have been due under the requirements of any District, State, or Federal equal employment opportunity orders have been satisfactorily filed, and that no such reports are currently outstanding.

Bidder certifies to have verified that it and all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Bidder shall provide proof of registration for both itself and all subcontractors to the District.

Bidder agrees that it and all subcontractors used on the public work project shall furnish payroll records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.

Bidder certifies that it and all subcontractors used on this public work project are in compliance with California Air Resources Board's In-Use Off-Road Diesel-Fueled Fleets Regulations (Cal. Code Regs., title 13, section 2449), and Bidder shall provide a valid Certificate of Reported Compliance for Bidder's own fleet and for any subcontractors' fleet, unless exempt from the regulations.

Bidder shall guarantee all work for a period of one year from project acceptance.

Bidder has carefully checked all of the figures in the Bid Schedule and understands that the District shall not be responsible for any errors or omissions on Bidder's part in making up this bid. Bidder agrees that this bid may not be withdrawn for a period of sixty (60) calendar days from the date of the bid opening and that the District reserves the right to reject any or all bids, waive any informality in bids received, and may at its option make the award that in the judgment of the District is to the best interest of the District.

The following documents have been completed and executed, and are hereby made a part of this Contract by reference:

- ❑ DEPARTMENT OF INDUSTRIAL RELATIONS REGISTRATION
- ❑ DEBARMENT CERTIFICATION
- ❑ OFF ROAD REGULATIONS ASSURANCES
- ❑ BID SCHEDULE
- ❑ ADDENDA ACKNOWLEDGEMENT
- ❑ NON-COLLUSION AFFIDAVIT
- ❑ DESIGNATION OF SUBCONTRACTORS
- ❑ CONTRACTOR LICENSE INFORMATION
- ❑ BIDDER RESPONSIBILITY STATEMENT
- ❑ BIDDER'S SIGNATURE PAGE
- ❑ BIDDER'S BOND
- ❑ PLANS
- ❑ SPECIFICATIONS

DEPARTMENT OF INDUSTRIAL RELATIONS REGISTRATION

The Strawberry Recreation District ("District") has the obligation to report this contract to the Department of Industrial Relations ("DIR") and provide various information including that specified below. For the purposes of this document, you are referred to as "Contractor." In addition to filling out this form for the District, you have the obligation to submit certified payroll records directly to DIR.

Project: **Strawberry Recreation Center Playground and Turf Field Site Work**

Contractor Name:			
Contractor Mailing Address:			
Contractor E-mail Address:			
Contractor Telephone:			
Contractor License Number:			
DIR Registration Number:			
Classification(s) or type(s) of workers that will be employed by the contractor for this project:			
Subcontractors:	License Number:	DIR Number:	Worker Classifications:

I certify that the information set forth above is correct and that I am authorized to provide this information on behalf of the contractor named in the first line above.

(Signature) Date

(Printed Name)

DEBARMENT CERTIFICATION

Strawberry Recreation Center Playground and Turf Field Site Work

By submitting its bid, Bidder certifies, in accordance with California Public Contract Code section 6109, that neither the Bidder nor any subcontractor included on the list of proposed subcontractors submitted with the bid is ineligible to perform work on public works projects pursuant to California Labor Code sections 1777.1 or 1777.7. In accordance with California Public Contract Code section 6109, contractors and subcontractors who are ineligible to perform work on public works projects pursuant to California Labor Code sections 1777.1 or 1777.7 may neither bid on, be awarded, or perform as a subcontractor on public works projects.

CONTRACTOR OFF-ROAD REGULATION ASSURANCES

The Agency requires that all work done on its property or otherwise on behalf of the Agency is performed in accordance with the State's environmental health and safety laws, codes and regulations. To this end, please check the appropriate boxes and provide information as required below related to compliance with California Air Resources Board (CARB) Off-Road Diesel-Fueled Fleets Regulations. The Agency will not approve this Contract until this form has been completed. This form must be updated annually or anytime changes occur. Contractor agrees to provide the Agency with any documents referenced below within one business day of the request. Information on these Regulations is available here: https://ww2.arb.ca.gov/our-work/programs/use-road-diesel-fueled-fleets-regulation

Contractor Name: _____

In the performance of this contract, does Contractor propose to use vehicles subject to 13 CCR 2449, the In-Use Off-Road Diesel-Fueled Fleets Regulation? **YES** ☐ **NO** ☐

If the answer in above is **NO**, Contractor does not need to check any boxes for items 1, 2, and 3 below and no further information is required.

If the answer above is **YES:**

A. Contractor must check YES or N/A, as applicable, for items 1, 2, and 3 below.

B. If no exemption from these Regulation requirements applies, Contractor must provide to the Agency: (1) a valid Certificate of Reported Compliance for its fleet, and (2) valid Certificates of Reported Compliance for fleets of any subcontractors.

C. If an exemption from these Regulation requirements does apply, Contractor must provide the Agency with detailed documentation identifying the exemption and supporting the applicability of the exemption.

D. If Contractor asserts that the emergency operations exemption applies, Contractor must provide: (1) a description of the emergency, (2) the address or description of the specific location where Contractor performed work to address the emergency, (3) the dates on which the emergency work was performed, and (4) an attestation by the Contractor that the vehicles operated on the project were only used to carry out emergency work.

Please respond YES or N/A for each item below.	**YES**	**N/A**	
1. Contractor has provided the Agency with a copy of a valid Certificate of Reported Compliance for Contractor's own fleet.	☐	☐	(check N/A if exemption applies)
2. Contractor has provided the Agency with a copy of a valid Certificate of Reported Compliance for any subcontractors' fleet.	☐	☐	(check N/A if exemption applies or there are no subcontractors)
3. Contractor has provided the Agency with documentation supporting a claimed exemption to the Off-Road Regulation.	☐	☐	(check N/A if no exemption applies)

SCHEDULE OF BID PRICES
Strawberry Recreation Center Playground and Turf Field Site Work

Bid item	Description	Quantity		Unit price	Amount
1	Temporary fence, temporary restroom, mobilization / demobilization & supervision, receive & off-load equipment	1	LS	$	$
2	Nailer Board 2 x 4 composite for Turf Field	270	LF	$	$
3	Concrete Stairs & Hand Railing	1	LS	$	$
4	Concrete Vertical curb 8 x 10”	670	LF	$	$
5	8’ long wall benches, trex boards, brackets & installation	4	EA	$	$
6	Demolition, Excavation, Grade, Compact & Off-Haul PIP, Turf & Concrete Area	1	LS	$	$
7	4” Aggregate Base for Playground & Turf	14,675	SF	$	$
8	Concrete Flatwork and base: walkways & picnic area	1,846	SF	$	$
9	Chain Link Fence, 1” mesh, 8’ fence	720	LF	$	$
10	Chain Link Fence, 2” mesh, 42” fence	220	LF	$	$
11	Double Swing Gates – 5’ wide	2	EA	$	$
12	4’ manual gates w/ panic Hardware & Kick Plates	2	EA	$	$
13	Retaining wall, 8" thick x 6" to 6' high with excavation, pier footings, grade beam & drainage panels	176	LF	$	$
14	2" Type L Copper Water & Irrigation Lines in Sleeves, Incl. Excavation & Backfill	140	LF	$	$
15	Water line for bathroom, 2" & tie-in	27	LF	$	$
16	Sanitary sewer for bathroom & sewer tie-in	114	LF	$	$
17	Storm drainage: 4' French drain with 6" perforated pipe & new drain inlet & tie in	601	LF	$	$
18	Electrical conduit, excavation / backfill, boxes & materials	78	LF	$	$
			TOTAL BID	$	

CONDITIONS FOR SCHEDULE OF BID PRICES

In case of discrepancy between prices and totals, the unit prices will prevail.

It is understood and agreed that the quantities of work under each item are approximate only, being given for a basis of comparison of proposals, and the right is reserved to the District to increase or decrease the amount of work under any item as may be required, in accordance with provisions set forth in the specifications for this project.

It is further understood and agreed that the total amount of money set forth for each item of work or as the total amount bid for the project does not constitute an agreement to pay a lump sum for the work unless it specifically so states.

Bidder acknowledges receipt of the following addenda: _____

_____.

Bidder has reflected any changes in the addenda in this Proposal.

NON-COLLUSION AFFIDAVIT (Public Contract Code sec. 7106)

Strawberry Recreation Center Playground and Turf Field Site Work

To be Executed by Bidder and Submitted with Bid

State of California
County of _____

The undersigned declares:

I am the _____[title] of _____ [bidding entity] , the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that they have full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].

_____
Signature

_____
Name

_____
Title and Company

DESIGNATION OF SUBCONTRACTORS

Strawberry Recreation Center Playground and Turf Field Site Work

The undersigned is required to fill in the following blanks in accordance with the provisions of California Public Contract Code section 4104.

Sub-Contractor Name	License Number	DIR Registration Number	Location of the Place of Business	Specific Description of Subcontract Work	$ Amount of the Sub-Contractor Work

Subcontractors listed herein must be properly licensed under the laws of the State of California for the type of work which they are to perform. Do not list alternate subcontractors for the same work. The undersigned agrees to furnish proof that all contractors and subcontractors performing any work related to this improvement are complying with all the requirements of Social Security Legislation, both State and Federal, and also agrees to conform with the provisions of sections 4100 to 4113, inclusive, of the Public Contract Code, as amended, concerning subcontractors and subcontracts.

CONTRACTOR LICENSE INFORMATION

Strawberry Recreation Center Playground and Turf Field Site Work

The bidder acknowledges that the appropriate license is required for performance of this Work.

The bidder holds the following California Contractors License(s):

1. License No. _____, Class _____, Expiration Date _____
2. License No. _____, Class _____, Expiration Date _____
3. License No. _____, Class _____, Expiration Date _____
4. License No. _____, Class _____, Expiration Date _____
5. License No. _____, Class _____, Expiration Date _____

Bidder's Taxpayer Identification No.

_____

BIDDER'S RESPONSIBILITY STATEMENT
Strawberry Recreation Center Playground and Turf Field Site Work

1. SCOPE OF THIS STATEMENT

To allow the District to evaluate the Bidder's responsibility, the Bidder shall provide the following information as a part of its Bid. The District shall consider the information contained in this Statement as personal and proprietary to the Bidder, and the District shall use the information for the sole purpose of determining the Bidder's responsibility. Unless otherwise compelled by a court order, the District shall not consider this Statement to be a public record; provided, however, that the Bidder shall indemnify, defend, and hold the District harmless from any claim or litigation related to the District's classification of this document as exempt from disclosure under the Public Records Act. If additional pages are required to respond to any of the questions set forth in this Statement, the Bidder shall describe and list the additional pages in Section 7, below.

2. EXPERIENCE

a. How many years has the Bidder been performing work as a contractor under the present business name for the kind of work that is the subject of this contract?

_____ years.

b. Prospective bidders shall demonstrate a minimum of 3 years of experience in constructing projects of a similar size and nature.

c. If any of the experience listed in this document refers to work performed under a different name, list the different business names, and describe the relationship to the present business name on a separate page (list the additional pages in Section 7 below).

3. COMPLETED WORK / REFERENCES

Provide the requested information set forth below for at least two (2) and no more than three (3) most recent projects of similar size and scope completed during the past three (3) years.

a. Project Name: _____

Project Description: _____

_____

Contract Amount: _____

Date Completed: _____

Contact Person: _____

Contact Person's Phone: _____

b. Project Name: _____

Project Description: _____

_____

Contract Amount: _____

Date Completed: _____

Contact Person: _____

Contact Person's Phone: _____

c. Project Name: _____

Project Description: _____

_____

Contract Amount: _____

Date Completed: _____

Contact Person: _____

Contact Person's Phone: _____

4. CLAIMS HISTORY

a. Has any claim (whether mediated, arbitrated, or litigated) been made against your company in the past five years? _____

b. Has your company made any claim (whether mediated, arbitrated, or litigated) against any Public Agency or claim in the past five years? _____

c. If you answered "yes" to subsections 4.a. or 4.b. above, describe the claim(s) using the format below: (use additional sheets if necessary).

Project Name: _____

Claim Amount: _____

Other Party Contact: _____

Name and Phone: _____
Describe the claim(s) on a separate sheet (see Section 8, below).

5. CONTRACT TERMINATION

Has your company ever been terminated by a public agency or client, or rejected from bidding on a public works project in the last five (5) years? _____. If yes, provide an explanation below:

Project Name: _____

Agency/Client Contact
Name and Phone: _____

Date of Termination/Rejection: _____

Explanation: _____

_____

_____

If more than one (1), describe on additional sheet (see Section 7 below).

6. COMPLETION BY SURETY

Has your company every failed to satisfactorily complete a construction contract, or has a surety ever completed any portion of a construction contract of your company within the last five (5) years? _____. If yes, provide an explanation below:

Project Name: _____

Surety Contact
Name and Phone: _____

Date of Surety Took Over: _____

Explanation: _____

_____

_____

If more than one (1), describe on additional sheet (see Section 7, below).

7. ADDITIONAL PAGES

The Bidder declares that the pages listed in this Subsection were added and included with these Bid Documents to accurately respond to the Bidding Requirements.

_____ (List Pages)

8. PENALTY OF PERJURY

Bidder hereby declares and certifies under penalty of perjury that the information contained herein is true, correct, and complete.

IN WITNESS WHEREOF, the undersigned represent and warrant that they have the right, power, legal capacity and authority to sign this document on behalf of the Bidder, and have caused this document to be executed by setting hereto their names, titles, and signatures.

BIDDER: _____
Signature(s)

DATE: _____

_____
(Name and Title of Signatories)

_____
(Legal Name of Bidder)

_____
(Address)

_____
(Phone Number)

BIDDER'S SIGNATURE PAGE

Strawberry Recreation Center Playground and Turf Field Site Work

The undersigned hereby declares that the cost of all necessary items for completion of this project are included in the unit prices quoted, all incidentals have been taken into consideration even though said incidentals are not specifically listed in the specifications or shown on the plans. The undersigned is likewise aware of the fact that distances, quantities, and other estimated figures appearing on the plans or mentioned in the specifications or on the Proposal are only approximate and declares that the unit prices shown above for the various items of work are based on distances and quantities calculated as the result of actual measures performed at the site project.

Respectfully Submitted, Date: _____

Firm Name: _____

Signature: _____

Address: _____

_____

Business Phone: _____

Contractor's License No. _____ Class _____ Expiration Date: _____

Bidder is a* _____ If a partnership, names of partners. If a corporation, names of President or Vice President, and the Secretary or Asst. Secretary.

Name	**Address**

I (we) hereby state and declare, under the penalty of perjury under the laws of California, that the representatives made herein are true and correct.

Executed _____ at _____ California.
Date Location

* By: _____ * By: _____

Title: _____ Title: _____

*Please state whether the bidder is an individual, a partnership, a corporation, or an individual doing business under a fictitious name. If the bidder is a corporation, affix corporate seal.

NOTE: Contractor signatures must be notarized. Attach appropriate notary acknowledgements.

BIDDER'S BOND
Strawberry Recreation Center Playground and Turf Field Site Work

KNOW ALL BY THESE PRESENTS: That

_____

As Principal (herein called "Principal") and

_____

As Surety (herein called "Surety")

are held and firmly bound unto the Strawberry Recreation District (herein called "Obligee"), in just and full sum of _____ **($)** lawful money of the United States of America, (said sum being equal to 10% of the estimated total amount of the bid) of Principal for the herein described work of improvement, for the payment of which, well and truly to be made, we hereby bind ourselves and our, and each of our, heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That

WHEREAS, Principal who is bidding, or is about to bid, for the following described work of improvement, all in accordance with the Notice Inviting Bids, Proposal, Plans, Specifications, and Standard Contractual Requirements of Obligee therefore.

NOW, THEREFORE, if Obligee shall make an award to Principal for said work of improvement according to the terms of such bid, and Principal shall duly execute, or cause to be executed, and delivered to Obligee the Contract, bonds, and evidence of insurance coverage as, and within the time required by the Standard Contractual Requirements, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

No extension of time granted to the Principal and no change or alteration in any of the terms of the bid or the bid requirements, whether made after notice or note, shall release or otherwise affect the obligations of the Surety hereunder, and the Surety waives notice of any such extension, change, or alteration. The Surety, by the execution of this bond, represents and warrants that this bond has also been duly executed by the Principal with proper authority, and the Surety hereby waives any defense which it might have by reason of any failure of the Principal to execute this bond.

In the event suit is brought upon this bond by the Obligee and judgment is recovered by the Obligee, court costs, including reasonable attorney's fees, shall be an additional obligation of this bond for which Principal and Surety shall be liable.

Signed and Sealed this _____ day of _____ 20 .

Contractor as Principal	Surety
(Corp. Seal)	(Corp. Seal)
Company Name	Company Name
Signature	Signature
Print Name	Print Name
Title	Title
Street Address	Street Address
District, State, Zip Code	District, State, Zip Code

Note: Signatures of those executing for Surety must be properly acknowledged. The bond must be accompanied by a power of attorney from the Surety authorizing its agent to bind it to this bond.

STRAWBERRY RECREATION DISTRICT
CONSTRUCTION CONTRACT

THIS CONTRACT is made and entered into on the last date signed below ("Effective Date") by and between the Strawberry Recreation District, hereinafter referred to as "District," and contractor name, a State Name business type, hereinafter referred to as "Contractor," for the work described herein.

WITNESSETH, in this consideration of their covenants, the parties hereto agree as follows:

1. **Contract Award.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct the Project. On date, the District awarded this Contract to Contractor.

2. **Contract Documents.** The Contract Documents for this Contract shall consist of the following:

   - ❑ Notice Inviting Bids & Instructions to Bidders
   - ❑ Contract
   - ❑ General Conditions
   - ❑ Bidder's Proposal Documents
   - ❑ Contract Specifications
   - ❑ Drawings
   - ❑ Notice to Proceed
   - ❑ Bonds
   - ❑ Evidence of Insurance
   - ❑ Any Addenda
   - ❑ Any Change Orders
   - ❑ Additional documents: _____

   All of the provisions of said Contract Documents are made a part hereof as though fully set forth herein.

3. **Contractor's Obligations.** Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, District will pay Contractor amount in words United States Dollars ($amount in numerals) ("Contract Price") for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds, and all overhead costs, in accordance with the payment provisions in the General Conditions.

5. **Bonds and Insurance.** Concurrently with the execution of this Contract, Contractor shall file with the District the bonds and evidence of insurance specified in said General Conditions and subject to adjustment provided therein.

6. **Time for Completion.** Contractor will fully complete the Work for the Project within 180 days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.

7. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, the District will assess liquidated damages in the amount of $500 per day for each day of unexcused delay in completion, and such liquidated damages may be deducted from the District's payments due or to become due to Contractor under this Contract.

8. **Notice.** All notices, requests, and approvals must be sent in writing to the persons below and will be considered effective on the date of personal delivery; the date of delivery confirmed by a reputable overnight delivery service; on the fifth (5th) calendar day after deposit in the United States Mail postage prepaid, registered or certified. The parties shall also provide courtesy notice via email, though notice shall only be effective if given in a manner as provided in the preceding sentence:

   To the District:
   General Manager
   Strawberry Recreation District
   118 East Strawberry Dr.
   Mill Valley, CA 94941

   To the Contractor:
   Contractor Name
   Contractor Address
   Contractor Email

9. **General Provisions.**

   9.1 Assignment and Successors. Contractor may not assign its rights or obligations under this Contract, in part or in whole, without the District's written consent. This Contract is binding on Contractor's and the District's lawful heirs, successors, and permitted assigns.

9.2 Third-Party Beneficiaries. There are no intended third-party beneficiaries to this Contract except as expressly provided in the General Conditions.

9.3 Governing Law and Venue. This Contract will be governed by California law and venue will be in the Superior Court of Marin County, and no other place.

9.4 Amendment. No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

9.5 Integration. This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between the District and Contractor.

9.6 Severability. If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.

9.7 Authorization. Each individual signing below warrants that they are authorized to do so by the party that they represent, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporation Code section 313.

IN WITNESS WHEREOF, the parties hereto have executed this agreement.

Contractor	District
_____ Insert Name, Title Date: _____	_____ Insert Name, Title Date: _____
	APPROVED AS TO FORM: _____ Insert Name, General Counsel Date: _____

STRAWBERRY RECREATION DISTRICT
PUBLIC WORKS CONTRACT
GENERAL CONDITIONS

The following general conditions apply to all work being provided pursuant to this Contract.

1. **Definitions.** The following terms as used in any contract of which these General Conditions are a part are defined as follows:

1.1 Architect or Engineer: The person or persons so specified on the title sheet of the Technical Specifications and/or Project Plans.

1.2 Contract: The agreement between the District and Contractor concerning the Project, as evidenced by and comprised of the Contract Documents.

1.3 Contract Documents: All those documents listed in the Contract as comprising the entire agreement between the District and the Contractor.

1.4 Contract Price**:** The amount the District has agreed to pay and the Contractor has agreed to accept for the Work, as set forth in the Contract.

1.5 Contractor: The successful bidder for the Project and party to the Contract with the District as specified in the Contract.

1.6 Days: Unless otherwise specified in the Contract Documents, days mean Working Days.

1.7 District: The Strawberry Recreation District, a recreation district of the State of California.

1.8 Project: The Project named in the Contract Documents.

1.9 Project Manager: The District's authorized representative for administration and overall management of the Project and Work. The Project Manager is the official point of contact between the District, the Architect and/or Engineer, and the Contractor.

1.10 Project Plans: The primarily graphic detailed requirements concerning the Project and any addenda to the Project Plans signed by authorized District representatives and issued prior to bid opening, Equal Product Proposals accepted by the District and signed by authorized District representatives prior to bid opening, and change orders and other amendments to the Project Plans signed by authorized representatives of the District and the Contractor in accordance with the requirements of the Contract Documents.

1.11 Subcontractor: A person, firm, or corporation that is obligated as a party to a contract with the Contractor to perform part of the Project work. For purposes of these General Conditions, Subcontractors include, but are not limited to, those that are obligated as parties to a contract with the Contractor to specially fabricate and install a portion of the Project Work according to the Technical Specifications and/or Project Plans.

1.12 Technical Specifications: The detailed Project requirements and any addenda to the Technical Specifications signed by authorized District representatives and issued prior to bid opening, Equal Product Proposals accepted by the District and signed by authorized District representatives prior to bid opening, and change orders and other amendments to the Technical Specifications signed by authorized representatives of the District and the Contractor in accordance with the requirements of the Contract Documents.

1.13 Time for Completion**:** The time within which the Work is to be diligently prosecuted to completion after receipt of the Notice of Proceed, as defined in the Instructions to Bidders.

1.14 Work: The furnishing of all equipment, tools, apparatus, facilities, material, labor, and skill necessary to perform and complete in a good and workmanlike manner the Project as shown in the Technical Specifications and Project Plans in accordance with the Contract Documents and applicable law.

1.15 Working Day: A working day is defined as any day, except as follows:

a. Saturdays, Sundays, and "Legal Holidays" ("Legal Holidays" are defined as those holidays observed by the District);

b. Days on which the Contractor is prevented by inclement weather or conditions resulting immediately therefrom adverse to the "current controlling operation or operations," as determined by the Architect/Engineer, from proceeding with at least 75 percent of the normal labor and equipment force engaged on such operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations. The "current controlling operation or operations" are defined to include any feature of the work (e.g., an operation or activity, or a settlement or curing period) considered at the time by the Architect/Engineer, which if delayed or prolonged, will delay the time of completion of the Work.

1.16 Written Notice: Notice provided pursuant to the Contract, Section 8.

2. **Scope of Work.** The Scope of Work is described as follows:

2.1 Documents Furnished by District. The District will furnish to the Contractor, free of charge, five (5) sets of full-size prints of the Project Plans and Technical Specifications for execution of the Work. Throughout the performance of the Work, the Contractor must keep one copy of the Project Plans and Technical Specifications in good order and available for review by the Project Manager, the Engineer, the Architect, and any other District contractors or representatives.

2.2 Ownership of Documents Furnished by District. All documents furnished by the District, including, but not limited to, the Technical Specifications, Project Plans, and any copies, are the property of the District. Documents furnished by the District may not to be used on any other work. All documents furnished by the District must be returned to District upon completion of the Work.

2.3 Technical Specifications and Project Plans.

a. The Technical Specifications and Project Plans are complementary and intended to mutually describe the Work necessary to complete the Project in accordance with the Contract Documents.

b. In general, the Project Plans indicate dimensions, position, and kind of construction, and the Technical Specifications indicate qualities and methods. Any Work indicated on the Project Plans and not mentioned in the Technical Specifications or vice versa must be furnished as though fully set forth in both. Work that is not particularly detailed, marked, or specified shall be the same as similar Work that is detailed, marked, or specified. The Contractor must furnish items necessary for the operation of equipment depicted in the Project Plans or specified in the Technical Specifications that are suitable to allow such equipment to function properly at no extra charge.

c. The Contractor must notify the Project Manager and the Architect/Engineer as soon as possible of any apparent errors or inconsistencies including, but not limited to, typographical or notational errors in the Project Plans, Technical Specifications, and/or in work done by others affecting the Work. The Project Manager will issue instructions concerning any such apparent errors or inconsistencies. If the Contractor proceeds with Work impacted by apparent errors or inconsistencies without instructions from the Project Manager, the Contractor shall do so at its sole risk and shall have all of the obligations and the District shall have all of the rights and remedies specified in Section 11 concerning any resulting damage or defect.

d. The General Conditions apply with equal force to all of the Work, including extra work authorized by the Project Manager in accordance with the Contract Documents. The Contractor must submit any required shop diagrams and/or drawings by the times and in the quantities indicated in the Technical Specifications. Any such shop diagrams and/or drawings must show completely the Work to be done, expanding on the Project Plans concerning details not previously shown, field conditions, and the condition of the Work. Architect or Engineer review of such shop diagrams and/or drawings will concern conformance with the requirements of the Contract Documents only. The Architect or Engineer assumes no responsibility for the correctness or accuracy of the dimensions or any other contents of any shop diagrams and/or drawings submitted by the Contractor. The Contractor must check all dimensions at the Work site. Shop diagrams and/or drawings must be clearly marked with the name of the Project and the name of the Contractor, subcontractor, or supplier making the submittal, and must be stamped and signed by the Contractor and submitted under a signed transmittal letter from the Contractor certifying that all dimensions have been checked at the Work site. These requirements are mandatory. The Architect or Engineer will not review shop diagrams and/or drawings that do not satisfy these requirements. The Contractor will be responsible for any and all discrepancies between dimensions of the actual Project site and/or Work and those shown on shop diagram and/or drawings submitted by the Contractor, and for any other errors contained in or resulting from such shop diagrams and/or drawings including, but not limited to, errors in material and/or equipment quantities and any resulting errors, delays, or additional cost in the performance of the Work. The Contractor will have all of the obligations and the District will have all of the

rights and remedies that are specified in Section 11 concerning any discrepancies or errors in shop diagrams and/or drawings submitted by the Contractor, and concerning any resulting errors, delays, or additional costs in the performance of the Work.

2.4 For Reference Only. Contractor is responsible for the careful review of any document, study, or report appended to the Contract Documents solely for informational purposes and identified as "For Reference Only." Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. However, Contractor is advised that the District or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. Contractor must promptly notify the District of any perceived or actual conflict between the Contract Documents and any document provided For Reference Only.

3. **Control of Work and Material.**

3.1 Project Manager's Status. The Project Manager will administer the Project in accordance with the Contract Documents. After execution of the Contract and issuance of the Notice to Proceed, all correspondence and/or instructions concerning the Project between the Contractor and/or the District shall be forwarded through the Project Manager. Except as otherwise provided in the Contract Documents, the Project Manager will not be responsible for and will not have control or charge of construction means, methods, techniques, or procedures or for safety precautions in connection with the Work. The Project Manager, however, will have authority to reject materials and/or workmanship that do not conform to the requirements of the Contract Documents. The Project Manager will also have the authority to require inspection or testing of the Work.

3.2 Architect's or Engineer's Status. The Architect or Engineer will advise the Project Manager concerning decisions on all claims of the Contractor and all other matters relating to the execution and progress of the Work or the interpretation of the Contract Documents. The Architect or Engineer will also advise the Project Manager concerning Work that does not conform to the Contract Documents. Whenever, in the Architect's or Engineer's opinion, it is necessary or advisable in accordance with the Contract Documents, the Architect or Engineer may recommend to the Project Manager inspection or testing of the Work, whether or not such Work is then fabricated, installed or completed.

3.3 Inspection and Testing of Work and Material.

a. The District, the Project Manager, the Architect, or Engineer and their representatives will have access to the Work at all times wherever it is in preparation or progress. The Contractor must provide proper facilities for such access and for inspection.

b. The Contractor must inspect all materials as delivered and promptly return all defective materials without waiting for their rejection by the Project Manager or Architect or Engineer.

c. If the Project Manager, the Technical Specifications, or any laws, ordinances, or any public authority require any Work to be tested or approved, the Contractor must

give the Project Manager timely notice of the Contractor's readiness for inspection. Inspections will be promptly made, and where practicable, at the source of supply. Any work subject to such testing that is covered up without timely notice to the Project Manager or without the approval or consent of the Project Manager must, if required by the Project Manager, be uncovered for examination at the Contractor's expense. The Contractor will have all of the obligations and the District will have all of the rights and remedies that are specified in Section 11 concerning any work subject to testing that is covered up without timely notice to the Project Manager and that is not uncovered for examination at the Contractor's expense if required by the Project Manager.

d. Tests of materials or qualification tests required by the Contract Documents must be made in accordance with the Technical Specifications and other applicable codes and law. Copies of all testing reports shall be distributed as required in the Technical Specifications.

e. The District or its representatives may order re-examination of questioned Work. If ordered to do so, the Contractor must uncover such Work. If such Work is found to be according to the Contract Documents, the District shall pay the cost of uncovering and restoring the Work, unless such Work was subject to testing and covered up without timely notice to or approval of the Project Manager. If re-examined Work is found not in accordance with the Contract Documents, the Contractor must pay the cost of uncovering and restoring the Work. The Contractor will have all of the obligations and the District will have all of the rights and remedies that are specified in Section 11 concerning any re-examined Work not in accordance with the Contract Documents that the Contractor fails to uncover and restore at the Contractor's expense.

f. The Contractor must replace or correct without charge any material or workmanship found not to conform to the requirements of the Contract Documents, unless the District consents to accept such material or workmanship with an appropriate adjustment in the Contract Price. The Contractor must promptly segregate and remove non-conforming material from the Work site. The Contractor will have all of the obligations and the District will have all of the rights and remedies that are specified in Section 11 concerning any failure by the Contractor to replace or correct without charge any material or workmanship that does not conform to the requirements of the Contract Documents and that the District has not consented to accept.

3.4 Samples Furnished by the Contractor. The Contractor must furnish all samples for approval as directed in sufficient time to permit the Architect or Engineer to examine, approve, and select samples before they are required by the progress of the Work. Portions of the Work for which samples are required and for which the Architect or Engineer has selected samples must be in accordance with such approved samples. Samples must be sent prepaid to the office of the Project Manager or to such place as the Project Manager may direct.

3.5 Materials and Substitutions.

a. *New Materials.* Materials used for the Work must be new and of the quality specified. When not particularly specified, materials must be the best of their class or

kind. The Contractor must, if required, submit satisfactory evidence as to the kind and quality of materials.

b. *Substitutions.* If the Contractor submitted complete information to the District for products proposed as equals in accordance with the Contract Documents, and the District approved such products proposed as equals in writing, the Contractor may either furnish such products approved as equals, or furnish the products listed by manufacturer name, brand, or model number in the Technical Specifications or Project Plans. The District retains the right, in its sole discretion, to accept or reject any other proposed substitution. To be considered, proposals concerning products proposed as equals must include sufficient information to permit the District to determine whether the products proposed as equals will satisfy the same performance requirements as products listed by manufacturer's name, brand, or model number. Such performance requirements may include, but are not limited to, size, strength, function, appearance, ease of maintenance and repair, and useful life requirements. If the District does not accept a proposed substitution, the Contractor must furnish the product specified in the Technical Specifications or Project Plans for the Contract Price, regardless of whether the product is specified by manufacturer's name, brand or model number, or otherwise.

c. *Delivery and Storage.* During the performance of the Work, all materials must be neatly stacked, properly protected from the weather and other adverse impacts, and placed so as to avoid interference with efficient progress of the Work, with other activities of the District, or with the use of existing District facilities by the public. All materials must be delivered so as to ensure efficient and uninterrupted progress of the Work. Materials must be stored so as to cause no obstruction and so as to prevent overloading of any portion of the Work. The Contractor will be responsible for damage or loss of materials delivered to and/or stored at the Work site due to weather or other causes. The Contractor must promptly remove from the Work site all materials rejected by the District or its representatives as failing to conform to the requirements of the Contract Documents, whether such non-conforming materials have been incorporated in the Work or not. If the District or its representatives so direct, the Contractor must promptly replace and re-execute Work performed by the Contractor and order the replacement and re-execution of Work performed by subcontractors using non-conforming materials with materials that satisfy the requirements of the Contract Documents without expense to the District. The Contractor will bear the expense of making good all Work destroyed or damaged by such removal. The Contractor will have all of the obligations and the District will have all of the rights and remedies that are specified in Section 11 concerning any failure by the Contractor to replace or re-execute Work using non-conforming materials, and/or to make good all work destroyed or damaged by such removal and/or execution.

3.6 Audit and Examination of Records.

a. The District may examine and audit at no additional cost to the District all books, estimates, records, contracts, documents, bid documents, bid cost data, subcontract job cost reports and other Project related data of the Contractor, subcontractors engaged in performance of the Work, and suppliers providing supplies, equipment and other materials required for the Work, including computations and

projections related to bidding, negotiating, pricing or performing the Work or contract modifications and other materials concerning the Work, including, but not limited to, Contractor daily logs, in order to evaluate the accuracy, completeness, and currency of cost, pricing, scheduling and any other project related data.

b. The Contractor will make available all such Project related data at all reasonable times for examination, audit, or reproduction at the Contractor's business office at or near the Work site, and at any other location where such Project related data may be kept until three (3) years after final payment under the Contract.

c. Pursuant to California Government Code section 8546.7, if the amount of public funds to be expended is in excess of $10,000, this Contract shall be subject to the examination and audit of the State Auditor, at the request of the District, or as part of any audit of the District, for a period of three (3) years after final payment under the Contract.

d. This Section 3.6 shall survive termination of this Contract.

3.7 Advertising. No advertising signs of any kind may be displayed on the Work site, or on fences, offices, or elsewhere adjacent to the Work site.

3.8 Debris. Contractor shall remove from the project site all debris resulting from performance of the Work no less often than daily. If Contractor fails to do so, District may, after twenty-four (24) hours' notice to Contractor, clean up the site and deduct the cost from the Contract Price.

3.9 Work Hours. Contractor shall perform all work during the hours of 8:00 a.m. – 5:00 p.m., Monday through Friday unless otherwise specified in the Special Provisions or authorized by the District in writing. If the Contractor wishes to work during any other hours or on weekends, written permission must be received from the District. The request must be received at least two (2) working days in advance of any work. No work will be allowed on holidays observed by the District except in the case of an emergency. A listing of holidays observed by District is on file in the District's offices and is available upon request. If Contractor requests overtime work in which the District will incur costs, Contractor shall be responsible for payment of the District's costs incurred in connection with the overtime work. The District will invoice the Contractor at time and one half to cover the costs incurred. If Contractor does not pay the invoice within ten (10) days, the District may deduct the amount billed from other payments due or to become due to Contractor under the Contract.

4. **Changes in Work.**

4.1 District Directed Change Orders. The District may at any time during the progress of the Work direct any amendments to the Work or any of the Contract Documents, including, but not limited to the Technical Specifications, or Project Plans. Such amendments will in no way void the Contract, but will be applied to amend the Contract Price, if such amendments affect the Contract Price, the Project schedule, or any other provision of the Contract Documents based on a fair and reasonable valuation of the amendment, and based upon the actual costs of the change order, in accordance with this Section 4.

4.2 Writing Requirement. Change orders and other amendments to the Technical Specifications, the Project Plans, or other Contract Documents may be made only by a writing executed by authorized representatives of the District and the Contractor.

4.3 Contractor Proposed Change Orders. Unless the Construction Manager otherwise authorizes or the District and the Contractor otherwise agree, change order proposals submitted by the Contractor must be submitted to the Construction Manager no later than the time of the proposed change.

4.4 All Change Orders. All change order proposals must be submitted on completed Change Order forms provided by the District. All such change order proposals must itemize all cost impacts of the proposed change order and include a total price for that change order and the amended Contract Price that would become effective upon execution of the change order. All change order proposals must specify any change in the Project schedule, or in any project milestone including, but not limited to, the Time for Completion, under the change order. It is understood that change orders that do not specify a change in any milestone, including, but not limited to, the Time for Completion, may be accomplished by the Time for Completion then in effect. Contractor shall maintain accurate daily records of actual costs incurred whether by Contractor or any subcontractor, in accordance with Section 3.6.

4.5 Change Order Pricing. Payment for authorized change orders shall be based upon actual costs incurred by Contractor. In no event shall Contractor be permitted to rely upon cost estimates submitted with a change order proposal as a basis for compensation. Change order pricing will be governed by the following:

a. Where the work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities involved in the changed Work;

b. By mutual agreement upon new unit prices and related quantities for the changed Work;

c. By a combination of existing and mutually agreed upon new unit prices and related quantities for the changed Work; or

d. By mutual agreement to a lump sum.

4.6 Liability Under Unapproved Change Orders. The Contractor shall be solely responsible for any and all losses, costs, or liabilities of any kind incurred by the Contractor, any subcontractor engaged in the performance of the Work, any party supplying material or equipment for the Work or any third party that are incurred pursuant to Contractor-proposed change orders prior to issuance of an approved change order executed in accordance with this Section 4. The Contractor will have all of the obligations and the District will have all of the rights and remedies that are specified in Section 11 concerning any work or resulting losses, costs, or liabilities pursuant to a Contractor proposed change order before issuance of an approved change order executed in accordance with this Section 4.

4.7 Changes Subject to Contract Documents. Any changes in the Work and/or the Contract Documents pursuant to change orders and any other amendments issued in accordance with the Contract Documents, including this Section 4, will in all respects be subject to all provisions

of the Contract Documents, including, but not limited to, the Technical Specifications and the Project Plans, except as modified by such change orders or amendments.

4.8 Change Order Disputes.

a. *Disputed District Directed Change Orders.* If the Contractor disputes an District directed change order following a reasonable effort by the District and the Contractor to resolve the dispute including, at a minimum, a meeting between appropriate representatives of the Contractor and the District, the Contractor must commence performing the Work consistent with the disputed change order within five (5) working days of the last meeting between representatives of the Contractor and the District to resolve the dispute, or within the time specified in the disputed District directed change order, whichever is later. In performing Work consistent with a disputed District-directed change order pursuant to this provision the Contractor will have all of the Contractor's rights concerning claims pursuant to the Contract Documents and applicable law.

b. *Disputed Contractor Proposed Change Orders.* If the District disputes a Contractor proposed change order, the District and the Contractor will use reasonable efforts to resolve the dispute including, at a minimum, holding a meeting between appropriate representatives of the Contractor and the District. Regardless of and throughout any such efforts to resolve the dispute the Contractor must continue performing the Work irrespective of and unmodified by the disputed change order. In continuing to perform the Work, the Contractor will retain all of the Contractor's rights under contract or law pertaining to resolution of disputes and protests between contracting parties. Disputes between the District and the Contractor concerning any Contractor-proposed change order or other amendment do not excuse the Contractor's obligation to perform the Work in accordance with the Contract Documents excluding such Contractor-proposed change order or other amendment by the Time for Completion or waive any other Project milestone or other requirement of the Contract Documents.

5. **Trenching and Utilities.**

5.1 Excavation More Than Four Feet Deep (Public Contract Code section 7104).

a. If the Work involves excavation more than four feet deep the Contractor must promptly notify the District in writing before disturbing:

i. Material that the Contractor believes may be hazardous waste, as defined in Health and Safety Code section 25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;

ii. Subsurface or latent physical conditions at the Work site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids; or

iii. Unknown physical conditions at the Work site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

b. The District will promptly investigate any such conditions for which notice is given. If the District finds that the conditions do materially differ, or involve hazardous waste, and would cause a decrease or increase in the cost or time of performance of the Work, the District will issue a change order pursuant to Section 4.

c. If a dispute arises between the District and the Contractor concerning whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the cost or time of performance, the Contractor will not be excused from any completion date provided in the Contract Documents, but shall proceed with all Work to be performed. The Contractor will retain all rights under contract or law pertaining to resolution of disputes and protests between contracting parties.

5.2 Excavation of Five Feet or More (Labor Code section 6705). Contractor must prepare and submit for the District's acceptance, prior to excavation of five feet or more in depth, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during excavation. The shoring system plan must be prepared and stamped by a registered civil or structural engineer.

5.3 Underground Infrastructure.

a. Before starting work that could damage or interfere with underground infrastructure, Contractor shall locate the infrastructure described in the Contract Documents, including laterals and other appurtenances, and determine the presence of other underground infrastructure inferred from visible facilities, such as buildings, meters, and junction boxes.

b. Contractor acknowledges that underground infrastructure described in the Contract Documents may be in different locations from those described, and additional infrastructure may exist.

i. Upon discovering an underground main or trunk line not described in the Contract Documents, Contractor shall immediately notify the Engineer and the infrastructure owner. The Engineer will order the locating and protecting of the infrastructure. The locating and protected is change order work.

ii. Contractor shall immediately notify the Engineer of a delay due to the presence of main-line underground infrastructure not described in the Contract Documents or in a substantially different location.

iii. Contractor shall notify the Engineer if the infrastructure described in the Contract Documents cannot be found. If after giving the notice, Contractor finds the infrastructure in a substantially different location from that described, finding the infrastructure is change order work.

c. Contractor is responsible for contacting USA North 811 and following the procedures specified in its Excavation Handbook: https://usanorth811.org/images/2020CAHandbook.pdf.

d. Contractor is responsible for protecting underground infrastructure in compliance with Government Code sections 4216 through 4216.24.

e. In accordance with Government Code section 4215, the District assumes the responsibility for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Work site if such utilities are not identified by the District in the Technical Specifications and/or Project Plans. The District will compensate the Contractor for the costs of locating, repairing damage not due to the Contractor's failure to exercise reasonable care, and removing or relocating existing main or trunk line utility facilities located at the Work site and not identified with reasonable accuracy in the Technical Specifications and/or Project Plans. The District will also compensate the Contractor for the cost of equipment on the Project necessarily idled during such work. The Contractor will not be assessed liquidated damages for Work completion delays caused by the District's failure to provide for removal or relocation of such main or trunk line utility facilities.

f. Nothing in this Section 5.3 or the Contract Documents will be deemed to require the District to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Work site can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the Work site; provided, however, that nothing in this provision or the Contract Documents shall relieve the District from identifying main or trunk lines in the Technical Specifications and/or Project Plans.

g. Nothing in this Section 5.3 or the Contract Documents will preclude the District from pursuing any appropriate remedy against the utility for delays which are the responsibility of the utility.

h. Nothing in this Section 5.3 or the Contract Documents will be construed to relieve a utility from any obligation as required either by law or by contract to pay the cost of removal or relocation of existing utility facilities.

i. If the Contractor while performing the Work discovers utility facilities not identified by the District in the Technical Specifications and/or Project Plans, the Contractor must immediately notify the District and utility in writing.

j. Either the District or the utility, whichever owns existing main or trunk line utility facilities located on the Work site, shall have sole discretion to effect repairs or relocation work or to permit the Contractor to perform such repairs or relocation work at an agreed-upon price.

k. If ordered by the District, the Contractor will repair infrastructure damage. If the infrastructure damage is caused by Contractor's negligence, Contractor shall bear the cost of repair. Otherwise, the repair is change order work.

6. **Project Facilities.**

6.1 Work Site Offices.

a. Any Work site office facilities used by the Contractor and/or its privities must conform to all applicable codes, ordinances, and regulations. The cost of such Work site office facilities shall be included in the Contract Price unless specifically included as a bid item.

b. The District and its authorized representatives will at all reasonable times while such office facilities are located at the Work site (including, at a minimum, all times during which the Work is performed), have access to any such Work site office facilities used by the Contractor and/or its privities. With respect to the right of access of the District and its authorized representatives, neither the Contractor nor its privities shall have a reasonable expectation of privacy pursuant to the Fourth Amendment to the Unites States Constitution or other applicable law concerning such Work site office facilities used by the Contractor and/or its privities. Without exception, any and all Project related materials located at such Work site facilities will be subject to inspection and copying by the District and its authorized representatives at all reasonable times while such facilities are located at the Work site (including, at a minimum, all times during which the Work is performed). Any interference by the Contractor or its privities with the District's rights of access and pursuant to this Section 6 will constitute a material breach of the Contract subject to any and all remedies available pursuant to the Contract Documents and at law and equity.

6.2 Sanitary Facilities. Contractor shall provide all necessary sanitary disposal (toilet) accommodations for the use of all workers on the job site and shall maintain the same in a clean and sanitary condition. The cost of such sanitary facilities shall be included in the Contract Price unless specifically included as a bid item.

7. **Prosecution and Progress.**

7.1 No Damage for Delay Beyond District and Contractor Control.

a. The Contractor will not be held responsible for delays in performance of the Work caused by delay beyond the control of both District and Contractor, such as by strikes, lockouts, or labor disturbances that are not within the control of the Contractor to resolve, lack or failure of transportation, or acts of other government entities. This provision will not apply where the delay would not have occurred but for a previous Contractor-caused delay in the prosecution of the Work.

b. The District will not be liable to the Contractor, any subcontractor or other entity engaged in the performance of the Work, any supplier, or any other person or organization, or to any surety or employee or agent of any of them, for damages arising out of or resulting from (i) delays beyond the control of the District and the Contractor including but not limited to fires, floods, epidemics, abnormal weather conditions, earthquakes, and acts of God or acts or neglect by utility owners or other contractors performing other work, or (ii) delays caused by the District, its officials, officers, employees, agents, or volunteers, or delays caused by the Project Manager or the

Architect or Engineer, which delays are reasonable under the circumstances involved and/or are within the contemplation of the District and the Contractor. An extension of the Time for Performance in an amount equal to the time loss due to such delay(s) will be the Contractor's sole and exclusive remedy for such delay(s).

7.2 No Damage for Contractor-Caused Delay. Contractor shall not be entitled to additional compensation for extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs, or other impacts for any delays to the extent such delays are caused by the failure of the Contractor or any subcontractor or other entity engaged in performance of the Work to perform the Work in accordance with the Contract Documents. Contractor may be eligible for additional compensation in excess of the Contract Price for delays caused by the District and/or its privities, as provided in Section 7.4.

7.3 No Damage for Other Delay. Contractor will not be entitled to damages for delay to the Work caused by the following, which the District and Contractor agree will be deemed for purposes of Public Contract Code section 7102 either not caused by the District, and/or within the contemplation of the District and the Contractor, and/or reasonable under the circumstances:

a. Exercise of the District's right to sequence the Work in a manner that would avoid disruption to the District and other contractors based on: the failure of the Contractor or any subcontractor or other entity engaged in the performance of the Work to perform the Work in accordance with the Contract Documents, enforcement by the District or any other governmental District of competent jurisdiction of any government act or regulation, or enforcement by the District of any provisions of the Contract.

b. Requests for clarification or information concerning the Contract Documents or proposed change orders or modifications to the Contract Documents, including extensive and/or numerous such requests for clarification or information or proposed change orders or modifications, provided such clarifications or information or proposed change orders or modifications are processed by the District or its representatives in a reasonable time in accordance with the Contract Documents.

7.4 Delays Caused by the District and/or Its Privities. Either the District or the Contractor may propose a change in the Time for Completion for delays that are purported to be caused by the District and/or its privities and that are not reasonable under the circumstances involved and/or that are not within the contemplation of the District and the Contractor. Such proposed changes in the Time for Completion will constitute change order proposals subject to Section 4. In accordance with Section 4, the District and the Contractor may agree upon pricing for the cost impacts, if any, resulting from such delays. If such pricing is in anticipation of cost impacts that may, but have not yet occurred, the District will be obligated to pay the Contractor for such anticipated impacts in accordance with the Contract and any applicable, approved change orders only to the extent the Contractor actually incurs the anticipated cost impacts. Notwithstanding anything to the contrary in Section 4.5(b), the District and the Contractor may agree to a daily rate or cap or lump sum that will apply to the cost impacts, if any, resulting from delay purportedly caused by the District and/or its privities subject to this provision. However, if such daily rate or cap or lump sum is in anticipation of cost impacts that have not yet occurred,

the District will be obligated to pay such daily rate or cap or lump sum only to the extent the Contractor actually incurs such cost impacts.

7.5 Weather Delays. When determined by the Project Manager, extensions of the Time for Completion will be allowed for weather conditions that prevent the Contractor from proceeding with the current controlling operation or operations with at least seventy-five percent (75%) of the normal labor and equipment force engaged on that operation or operations for at least sixty percent (60%) of the total daily time being currently spent on the controlling operation or operations. The current controlling operation or operations is to be construed to include any feature of the work (e.g., an operation or activity, or a settlement or curing period) considered at the time by the Inspector and the Contractor, which, if delayed or prolonged, will delay the time of completion of the contract. The Project Manager will provide the Contractor with a weekly statement of working days.

7.6 Delay Claims. Whenever the Contractor claims a delay for which the Time for Completion may be extended, the Contractor must request an extension of time within five (5) days of the start of the delay. The request must be in writing and describe in detail the cause for the delay, and, if possible, the foreseeable extent of the delay.

7.7 Contractor Coordination of the Work.

a. The District reserves the right to do other work in connection with or in the vicinity of the Project by contract or otherwise, and Contractor shall at all times conduct the Work so as to impose no hardship on the District, others engaged in the Work, or other contractors working at the Work site. The Contractor will adjust, correct, and coordinate the Work with the work of others so that no delays result in the Work or other work at or near the Work site.

b. If any part of the Work depends for proper execution or results upon the work of the District or any other contractor, the Contractor will, before proceeding with such Work, promptly report to the District any apparent discrepancies or defects in such other Work. Failure of the Contractor to promptly report any apparent discrepancy or defect will be deemed an acceptance of the District's or other contractor's Work as fit and proper.

c. The Contractor will anticipate the relations of the various trades to the progress of the Work and will ensure that required anchorage or blocking is furnished and set at proper times. Anchorage and blocking necessary for each trade shall be part of the Work except where stated otherwise.

d. The Contractor will provide proper facilities at all times for access of the District, the Project Manager, Architect, or Engineer, and other authorized District representatives to conveniently examine and inspect the Work.

7.8 Liquidated Damages. Time is of the essence in the Contract. The District and the Contractor agree that it will be difficult and/or impossible to determine the actual damage that the District would sustain in the event of the Contractor's failure to fully perform the Work or to fully perform all of the Contractor's obligations that have accrued pursuant to the Contract by the Time for Completion. Accordingly, the District and the Contractor agree in accordance with

Government Code section 53069.85 that the Contractor will forfeit and pay to the District liquidated damages in the amount indicated in the Contract Documents for each and every calendar day completion of the Work and/or performance of all of the Contractor's obligations that have accrued pursuant to the Contract is delayed beyond the Time for Completion. The District and the Contractor further agree in accordance with Government Code section 53069.85 that the liquidated damages sum specified in this Contract is not manifestly unreasonable under the circumstances existing at the time the Contract was made, and that the District may deduct liquidated damages sums in accordance with this provision from any payments due or that may become due the Contractor under the Contract.

8. **Contractor Responsibilities.**

8.1 Eligibility. By executing the Contract, the Contractor certifies that the Contractor is not ineligible to perform work on public works projects pursuant to California Labor Code sections 1777.1 or 1777.7. In accordance with Public Contract Code section 6109(a), contractors who are ineligible to perform work on public works projects pursuant to Labor Code sections 1777.1 or 1777.7 may neither bid on, be awarded or perform the Work. The Contractor shall hold harmless and indemnify the District from and against any and all damages, costs, and liability arising from or as a consequence of any violation of Public Contract Code section 6109.

8.2 DIR Registration. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations ("DIR"). No contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. By submitting a bid or proposal to the District, Contractor is certifying that it has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration to the District. If the entire project cost does not exceed $25,000 for construction, alteration, demolition, installation, or repair work or $15,000 for maintenance work ("Small Project Exemption"), the Contractor and subcontractors are not subject to these registration requirements.

8.3 Supervision of the Work. The Contractor will be solely responsible for the performance of the Work, including portions of the Work to be performed by subcontractors. The Contractor is charged with ensuring that all orders or instructions from the District, Project Manager, or Architect/Engineer are disseminated to and followed by all subcontractors engaged in performance of the Work. The Contractor will supervise the Work using the Contractor's best skill and attention. At any time during the progress of the Work, the District, the Project Manager, or the Architect/Engineer may require the Contractor and/or subcontractors engaged in performance of the Work to attend a project meeting and the Contractor will attend, and ensure the attendance of any subcontractors whose attendance is required by the District and/or advisable in light of the matters to be addressed at the meeting.

8.4 Contractor's Superintendent. The Contractor will keep on the Work, throughout its progress, a competent superintendent and any necessary assistants, all satisfactory to the District. The superintendent may not be changed without the consent of the District. The superintendent will represent the Contractor and all directions given by the District to the

superintendent will bind the Contractor in accordance with the Contract. Superintendent time included in Contractor's completed bid schedule and/or in approved change orders, if any, must be included in Contractor's approved overhead rate and may not be charged as a direct cost.

8.5 Competent Employees. The Contractor must at all times enforce strict discipline and good order among the Contractor's employees and may not employ on the Work any unfit person or anyone not skilled in the Work assigned, or anyone incompetent or unfit for the duties of that person. When the District determines that a Contractor employee does not satisfy the requirements of this provision, upon notice from the District, the Contractor must ensure that employee performs no further Work and is no longer present at the Work site. Any such Contractor employee may not again be employed on the Work without District approval.

8.6 Drug-Free Workplace. Contractor shall maintain a drug-free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code Section 812, including marijuana, heroin, cocaine, and amphetamines, at any facility, premises or work-site used in any manner in connection with performing services pursuant to this Contract. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at such a facility, premises, or work-site, the Contractor, within five (5) days thereafter, shall notify the District. Failure to comply with this section shall constitute a material breach of this Contract.

8.7 Items Necessary for Proper Completion of the Work. Except as otherwise noted in the Contract Documents, the Contractor will provide and pay for all labor, materials, equipment, permits, fees, licenses, facilities, and services necessary for the proper execution and timely completion of the Work in accordance with the Contract Documents.

8.8 Construction Reports. For projects scheduled to require more than three (3) days to complete, Contractor shall prepare and submit a written daily activity report to District for each day on which work is performed, including weekends and holidays when worked, and submit the reports to the District no later than the next day that the District is open for business. The daily reports shall, at a minimum, include the following information: construction activities and locations, start or completion of activities, progress on construction activities (including units or portions of work completed), tests or inspections performed, deliveries of material or equipment, delays or potential delays, visitors to the site, weather conditions, construction equipment used, and personal injuries or damage to property.

8.9 Subcontracting.

a. By executing the Contract, the Contractor certifies that no subcontractor included on the list of proposed subcontractors submitted with the Contractor's bid is ineligible to perform work on public works projects pursuant to Labor Code sections 1777.1 or 1777.7. In accordance with Public Contract Code Section 6109(a), subcontractors who are ineligible to perform work on public works projects pursuant to California Labor Code sections 1777.1 or 1777.7 may neither bid on, be awarded or perform as a subcontractor on the Work. In accordance with Public Contract Code section 6109(b), any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. The Contractor will

ensure that no debarred subcontractor receives any public money for performing the Work, and any public money that may have been paid to a debarred subcontractor for the Work is returned to the District. The Contractor will be responsible for payment of wages to workers of a debarred subcontractor who has been allowed to perform the Work.

b. The Contract and the performance of the Work are subject to the requirements of the Subletting and Subcontracting Fair Practices Act codified at Public Contract Code Section 4100 and following. If the Contractor fails to specify a subcontractor or specifies more than one subcontractor for the same portion of the Work in excess of one-half of one (0.5) percent of the Contractor's total bid, the Contractor agrees that the Contractor is fully qualified to perform that portion of the Work with the Contractor's own forces, and that the Contractor will perform that portion of the Work with the Contractor's own forces. If after award of the Contract the Contractor subcontracts, except as provided for in Public Contract Code sections 4107 or 4109, any such portion of the Work, the Contractor will be subject to the penalties set forth in Public Contract Code sections 4110 and 4111, including cancellation of the Contract, assessment of a penalty of up to ten percent (10%) of the amount of the subcontract, and disciplinary action by the Contractors State License Board.

c. No contractual relationship exists between the District and any subcontractor engaged in performance of the Work.

d. *Incorporation of Contract Documents.* The Contractor must incorporate the Contract Documents in each contract with a subcontractor engaged in the performance of the Work and require that all subcontractors comply with the terms of this Contract including but not limited to Insurance and Indemnity requirements. The Contractor shall be solely responsible for any delay or additional costs incurred as a result of its failure to provide adequate or accurate project information to a subcontractor that results in improper submittals and/or work, or time or other impacts is the sole responsibility of the Contractor. The Contractor will have all of the obligations and the District will have all of the remedies that are specified in Section 11.

e. *Coordination of Subcontract Work.* The Contractor is responsible for scheduling the Work of subcontractors so as to avoid delay or injury to either Work or materials.

8.10 Insurance.

a. During the life of this Contract, Contractor and all subcontractors shall maintain the following minimum insurance:

i. *Comprehensive general liability insurance:* Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis including products and completed operations, personal & advertising injury liability, blanket contractual liability, and broad-form property damage liability coverage. The combined single limit for bodily injury and property damage shall be at least $2,000,000. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

ii. *Automobile Liability:* ISO Form Number CA 00 01 covering any auto (Code 1), bodily injury and property damage liability insurance covering owned, non-owned (Code 9), rented, and hired (Code 8) cars. The combined single limit for bodily injury and property damage shall at least $2,000,000.

iii. *Statutory workers' compensation and employer's liability insurance* as required by state law with a limit of at least $1,000,000 per accident for bodily injury or disease. Neither Contractor nor its carrier shall be entitled to recover any costs, settlements, or expenses of workers' compensation claims arising out of this agreement. The Employer's Liability policy shall be endorsed to waive any right of subrogation against the District, its employees or agents.

iv. *Builder's Risk insurance* utilizing an "all risk" (special perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the District as a loss payee as their interest may appear.

b. Contractor shall submit to District certificates of insurance and endorsements for the policies listed above. All endorsements shall be signed by a person authorized by that insurer to bind coverage on its behalf. District has the right to require Contractor's insurer to provide complete, certified copies of all required insurance policies. Contractor shall not cancel, assign, or change any policy of insurance required by this agreement or engage in any act or omission that will cause its insurer to cancel any insurance policy required by this agreement except after providing thirty (30) days prior written notice to District. If an insurance policy required by this agreement is unilaterally cancelled or changed by the insurer, the Contractor shall immediately provide written notice to the District and obtain substitute insurance meeting the requirements of this agreement. Nothing in this subsection relieves Contractor of its obligation to maintain all insurance required by this Contract at all times during the term of the Contract.

c. As to all of the policies of insurance listed above, the following shall apply:

i. *Deductibles and Self-Insured Retentions.* Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials and employees; or (2) the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

ii. *District as Additional Insured.* The District, its officers, officials, employees, agents and volunteers are to be covered as insureds with the same coverage and limits available to the named insured regarding: liability arising out of activities performed by or on behalf of the Contractor; premises owned, occupied or used by the Contractor, or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of the protection afforded to the District, its officers, officials, employees, agents or volunteers. Any available insurance proceeds broader

than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured; the additional insured coverage and limits shall be (1) the minimum coverage and limits specified in this Contract; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater. This provision does not apply to the worker's compensation policy.

iii. *Coverage Primary.* For any claims related to this Work, the Contractor's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. Coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 38 04), or as a separate owner's policy, or on the District's own form.

iv. *Other Insurance Provisions.* The policies are to contain, or be endorsed to contain, the following provisions:

(1) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the District, its officers, officials, employees or volunteers.

(2) The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

v. *Acceptability of Insurers.* Insurance is to be placed with insurers licensed in the State of California and with an A.M. Bess rating of no less than A:VII.

vi. *Umbrella/Excess Insurance*. The limits of insurance required in this Contract may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of District (if agreed to in a written contract or agreement) before the District's own Insurance or self-insurance shall be called upon to protect it as a named insured.

vii. *Subcontractors.* All subcontractors shall provide Contractor with valid certificates of insurance and the required endorsements included in this Contract prior to commencement of any work, and Contractor will provide proof of compliance to the District upon request.

d. Contractor hereby grants to District a waiver of any right to subrogation which any insurer of Contractor may acquire against District by virtue of the payment of any

loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether District has received a waiver of subrogation endorsement from the insurer.

e. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Contract, Contractor shall immediately notify District by telephone. Contractor shall promptly submit to District a written report, in such form as may be required by District of all accidents which occur in connection with this Contract. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) names and address of Contractor's subcontractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed description of accident and whether any of District's equipment, tools, materials or staff were involved. Failure to comply with this section shall constitute a material breach of this Contract.

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

8.11 Indemnification.

a. The District and all officers, employees, and agents thereof connected with the Work, shall not be answerable or accountable in any manner for any loss or damage that may happen to the Work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Work; for injury to or death of any person; or for damage to property from any cause except losses due to sole or active negligence, or sole willful misconduct, of the District's officers or employees.

b. To the fullest extent permitted by law, the Contractor will indemnify, defend (with counsel approved by District), and hold harmless the District, its officials, officers, employees, agents, volunteers, and consultants ("indemnified parties") from and against any or all loss, liability, expense, claims, penalties, costs (including costs, attorneys' fees and expert fees of defense), suits, and damages of every kind, nature, and description directly or indirectly arising from or in any way connected to the performance of the Work ("Claims"), regardless of Contractor's fault or negligence, including any of the same resulting from the alleged or actual negligent act or omission of an indemnified party; except that said indemnity shall not be applicable to Claims arising from the sole negligence, active negligence, or sole willful misconduct of an indemnified party. In instances where the active negligence of an indemnified party accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion of the percentage of liability not attributable to the active negligence of the indemnified party.

c. The Contractor will indemnify, defend, and hold harmless the District, the District's officials, officers, employees, volunteers, agents, and the Construction

Manager and Engineer/Architect for all liability on account of any patent rights, copyrights, trade names, or other intellectual property rights that may apply to the Contractor's performance of the Work. The Contractor will pay all royalties or other charges as a result of intellectual property rights that may apply to methods, types of construction, processes, materials, or equipment used in the performance of the Work, and will furnish written assurance satisfactory to the District that any such charges have been paid.

d. Approval of the Contractor's certificates of insurance and/or endorsements does not relieve the Contractor of liability under this Section 8.11. The Contractor will defend, with legal counsel reasonably acceptable to the District, any action or actions filed in connection with any Claims and will pay all related costs and expenses, including attorneys' fees incurred. The Contractor will promptly pay any judgment rendered against the District, its officials, officers, employees, agents, volunteers, or consultants for any Claims. In the event the District, its officials, officers, employees, agents, volunteers, or consultants is made a party to any action or proceeding filed or prosecuted against Contractor for any Claims, Contractor agrees to pay the District, its officials, officers, employees, agents, volunteers, and consultants any and all costs and expenses incurred in such action or proceeding, including but not limited to, reasonable attorneys' fees.

e. In accordance with Civil Code section 2782(a), nothing in the Contract will be construed to indemnify the District for defects in design furnished by District.

f. This indemnification and duty to defend shall extend to Claims asserted after termination of this Contract for whatever reason.

g. The District and Contractor shall timely notify each other of the receipt of any third-party claim relating to the contract. The District shall be entitled to recover its reasonable costs incurred in providing such notification.

8.12 Licenses/Permits. The Contractor must, without additional expense to the District, obtain all licenses, permits, and other approvals required for the performance of the Work. Contractor's attention is directed to Business and Professions Code sections 7000, et seq. concerning the licensing of contractors. At the time Contractor submits its bid to the District and all times Contractor is performing the Work, Contractor shall have a valid license issued by the Contractors' State License Board. Contractor and all subcontractors shall be licensed in accordance with the laws of this State and any contractor or subcontractor not so licensed is subject to penalties imposed by such laws.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD, WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR (4) YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN TEN (10) YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE

REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.

8.13 California Labor Code Requirements.

a. In accordance with Labor Code section 1810, eight (8) hours of labor in performance of the Work shall constitute a legal day's work under the Contract.

b. In accordance with Labor Code section 1811, the time of service of any worker employed in performance of the Work is limited to eight (8) hours during any one (1) calendar day, and forty (40) hours during any one (1) calendar week, except in accordance with Labor Code section 1815, which provides that work in excess of eight (8) hours during any one (1) calendar day and forty (40) hours during any one (1) calendar week is permitted upon compensation for all hours worked in excess of eight (8) hours during any one (1) calendar day and forty (40) hours during any one calendar week at not less than one-and-one-half (1.5) times the basic rate of pay.

c. The Contractor and its subcontractors will forfeit as a penalty to the District twenty-five U.S. Dollars ($25) for each worker employed in the performance of the Work for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one (1) calendar day, or more than forty (40) hours in any one (1) calendar week, in violation of the provisions of Labor Code section 1810, et seq.

d. In accordance with Labor Code section 1773.2, the District has determined the general prevailing wages in the locality in which the Work is to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file at the District's offices and shall be made available on request. The Contractor and subcontractors engaged in the performance of the Work shall pay no less than these rates to all persons engaged in performance of the Work.

e. In accordance with Labor Code section 1775, the Contractor and any subcontractors engaged in performance of the Work must comply Labor Code section 1775 which establishes a penalty of up to $200 per day for each worker engaged in the performance of the Work that the Contractor or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner. The Contractor or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the Work is not paid the general prevailing per diem wages by the subcontractor, the Contractor is not liable for any penalties therefore unless the Contractor had knowledge of that failure or unless the Contractor fails to comply with all of the following requirements:

i. The contract executed between the Contractor and the subcontractor for the performance of part of the Work must include a copy of the provisions of Labor Code sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

ii. The Contractor must monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.

iii. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Contractor must diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the Work.

iv. Prior to making final payment to the subcontractor, the Contractor must obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages employees engaged in the performance of the Work and any amounts due pursuant to Labor Code section 1813.

f. In accordance with Labor Code section 1776, the Contractor and each subcontractor engaged in performance of the Work, must keep accurate payroll records showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating that the information contained in the payroll record is true and correct and that the employer has complied with the requirements of Labor Code sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project. The payroll records required pursuant to Labor Code section 1776 must be certified and must be available for inspection by the District and its authorized representatives, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations and must otherwise be available for inspection in accordance with Labor Code section 1776.

Contractor and their subcontractors shall furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.

If the entire project cost does not exceed $25,000 for construction, alteration, demolition, installation, or repair work or $15,000 for maintenance work ("Small Project Exemption"), the contractor and subcontractors are not required to furnish their payroll records to the Labor Commissioner, but shall maintain those same records.

g. In accordance with Labor Code section 1777.5, the Contractor, on behalf of the Contractor and any subcontractors engaged in performance of the Work, will be responsible for ensuring compliance with Labor Code section 1777.5 governing employment and payment of apprentices on public works contracts. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

h. In case it becomes necessary for the Contractor or any subcontractor engaged in performance of the Work to employ on the Work any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor must pay the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by that person. The minimum rate thus furnished will be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

i. Contractor shall post at the job site the determination of the director of the prevailing rate of per diem wages together with all job site notices that are required by regulations of the Department of Industrial Relations.

8.14 Laws and Ordinances. The Contractor and all subcontractors engaged in the performance of the Work must conform to the following specific rules and regulations as well as all other laws, ordinances, rules, and regulations that apply to the Work. Nothing in the Technical Specifications or Project Plans is to be construed to permit Work not conforming to these codes:

National Electrical Safety Code, U. S. Department of Commerce

National Board of Fire Underwriters' Regulations

California Building Standards Code as adopted by the District

Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America

Industrial Accident Commission's Safety Orders, State of California

Regulations of the State Fire Marshall (Title 19, California Code of Regulation) and Applicable Local Fire Safety Codes

Labor Code of the State of California - Division 2, Part 7, Public Works and Public Agencies.

8.15 Guarantee.

a. Unless otherwise required by the Contract Documents, the Contractor guarantees all of the Work for one (1) year from the date the District accepts the Work.

b. Upon receiving Written Notice of a need for repairs which are directly attributable to defective materials or workmanship, the Contractor must make good any defects arising or discovered in any part of the Work by diligently commencing the necessary repairs within ten (10) calendar days from the date of notice from the District. If the Contractor fails to make good any defects in the Work in accordance with this provision, in addition to any other available remedy under the Contract or at law or equity, the District may make good or have made good such defects in the Work and

deduct the cost from amounts that may be due or become due the Contractor. The Contractor shall remain responsible for repairing any Work found to be defective regardless of when such defect is discovered by the District.

8.16 Safety.

a. In accordance with generally accepted construction practices and applicable law, the Contractor will be solely and completely responsible for conditions of the Work site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours. For purposes of Labor Code section 6400 and related provisions of law the Contractor and the Contractor's privities and any other entities engaged in the performance of the Work will be "employers" responsible for furnishing employment and a place of employment that is safe and healthful for the employees, if any, of such entities engaged in the performance of the Work. Neither the District nor its officials, officers, employees, agents, volunteers, or consultants will be "employers" pursuant to Labor Code section 6400 and related provisions of law with respect to the Contractor, the Contractor's privities, or other entities engaged in the performance of the Work.

b. Review and inspection by the District, the Project Manager, the Architect, or Engineer, and/or other representatives of the District of the Contractor's performance of the Work will not constitute review of the adequacy of the Contractor's safety measures in, on, or near the Work site. Such reviews and inspections do not relieve the Contractor of any of the Contractor's obligations under the Contract Documents and applicable law to ensure that the Work site is maintained and the Work is performed in a safe manner.

c. The Contractor will be solely responsible for the implementation and maintenance of safety programs to ensure that the Work site is maintained and the Work is performed in a safe manner in accordance with the Contract Documents and applicable law.

d. Within ten (10) working days following notice of award, the Contractor must submit to the District a copy of the Contractor's Safety Plan.

e. The Contractor must furnish and place proper guards and systems for the prevention of accidents, including, but not limited to, those systems required pursuant to Title 8, Section 1670 and following of the California Code of Regulations concerning safety belts and nets. The Contractor must provide and maintain any other necessary systems or devices required to secure safety of life or property at the Work site in accordance with accepted standards of the industry and applicable law. The Contractor must maintain during all night hours sufficient lights to prevent accident or damage to life or property.

8.17 Assignment of Unfair Business Practice Claims. In accordance with Public Contract Code section 7103.5, the Contractor and any subcontractors offer and agree to assign to the District all rights, title, and interest in and to all causes of action the Contractor or any subcontractors may have under section 4 of the Clayton Act (15 U.S. Code section 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and

Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor, without further acknowledgement by the parties.

8.18 Contractor No Agent. Except as District may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of District in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Contract to bind District to any obligation whatsoever.

8.19 Nondiscrimination.

a. In connection with the performance of the Work under this Contract, Contractor will not because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, refuse to hire or employ the person or refuse to select the person for a training program leading to employment, or bar or discharge the person from employment or from a training program leading to employment, or discriminate against the person in compensation or in terms, conditions, or privileges of employment, unless based upon a bona fide occupational qualification or applicable security regulations established by the United States or the State of California, or as otherwise provided in section 12940 of the Government Code.

b. As provided in Labor Code section 1735, a violation of this provision is subject to all penalties imposed for a violation of Division, 2, Part 7, Chapter 1 of the Labor Code.

8.20 Benefits and Taxes. Contractor is solely responsible for the payment of employment taxes incurred under this Contract and any similar federal or state taxes. Contractor and any of its employees, agents, and subcontractors shall not have any claim under this Contract or otherwise against District for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Contractor shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Contractor's business including, but not limited to, federal and state income taxes. District shall have no obligation whatsoever to pay or withhold any taxes or benefits on behalf of Contractor. Should any court, arbitrator, or administrative authority, including but not limited to the California Public Employees Retirement System (PERS), the Internal Revenue Service or the State Employment Development Division, determine that Contractor, or any of its employees, agents, or subcontractors, is an employee for any purpose, then Contractor agrees to a reduction in amounts payable under this Contract, or to promptly remint to District any payments due by the District as a result of such determination, so that the District's total expenses under this Contract are not greater than they would have been had the determination not been made.

8.21 Conflicts of Interest.

a. Contractor shall comply with the conflict of interest provisions of Government Code section 1090 and the Political Reform Act (Government Code Section 81000, et seq.). Contractor understands that in carrying out this Contract, its professional

responsibility is solely to the District. Contractor represents and warrants that it presently has no interest, and will not acquire any direct or indirect interest, that would conflict with its performance of this Contract. Contractor shall not employ or subcontract with a person having such an interest in the performance of this agreement.

b. *Subsequent Conflict of Interest.* Contractor agrees that if an actual or potential conflict of interest on the part of Contractor is discovered after award, the Contractor will make a full disclosure in writing to the District. This disclosure shall include a description of actions, which the Contractor has taken or proposes to take, after consultation with the District to avoid, mitigate, or neutralize the actual or potential conflict. Within forty-five (45) days, the Contractor shall have taken all necessary steps to avoid, mitigate, or neutralize the conflict of interest to the satisfaction of the District.

c. *Interests of District Officers and Staff.* No officer, member or employee of District and no member of the District Board shall have any pecuniary interest, direct or indirect, in this Contract or the proceeds thereof. Neither Contractor nor any member of any Contractor's family shall serve on any District board or committee or hold any such position which either by rule, practice, or action nominates, recommends, or supervises Contractor's performance of the Scope of Work or authorizes funding to Contractor.

9. **Measurement and Payment.**

9.1 F.O.B. All shipments must be F.O.B. ("Free on Board") destination to the Work site and/or other sites indicated in the Contract Documents (meaning the seller of the goods bears risk of loss until delivery at the Work site or other indicated site). The Contract Price is all-inclusive (including sales tax). The District will not pay additional compensation for containers, packing, unpacking, drayage, or insurance.

9.2 Progress Payments.

Commented [LB1]: Review to ensure this is acceptable and fits with District payment practices.

a. On or about the first day of each calendar month, the Contractor will submit to the Construction Manager a verified application for payment and schedule of values supported by a statement showing all materials actually installed during the preceding month and the cost of labor actually expended in the performance of the Work. Unless otherwise provided in the Contract Documents, no allowances or payments will be made for material or equipment not placed at the Work site.

b. To be eligible for payment, the Contractor's applications for payment must include certified payroll reports prepared in accordance with Labor Code section 1776 and the Contract for each employee of the Contractor and any subcontractors engaged in the performance of the Work during the preceding months. Applications for payment will not be processed without certified payroll reports.

c. In accordance with Public Contract Code section 20104.50, the District will review applications for payment as soon as practicable after receipt. Any application or part of an application that is determined to be improper will be returned to the Contractor as soon as practicable, but no later than seven (7) days after receipt by the District, along with a written description of the reasons why the application is improper.

d. Unless the Contractor has elected to post securities in lieu of retention in accordance with Public Contract Code section 22300 and the Contract, and the Contractor and the District have executed an escrow agreement in accordance with the Public Contract Code and the Contract, the District will make progress payments to the Contractor in accordance with applicable law in the amount of ninety-five percent (95%) of the value of the labor actually performed and the material incorporated in the Work as specified in Contractor's verified application for payment upon approval by the District's authorized representative(s). Payment of progress payments will not be construed as acceptance of the Work performed. If the Contractor has elected to post securities in lieu of retention in accordance with Public Contract Code section 22300 and the Contract, and the Contractor and the District have executed an escrow agreement in accordance with the Public Contract Code and the Contract, the District will make payments to the Contractor or the Contractor's escrow agent in accordance with such escrow agreement.

e. In accordance with Public Contract Code section 20104.50, if the District fails to make a progress payment within thirty (30) days of receipt of an undisputed, properly submitted application for payment, the District will pay the Contractor interest equivalent to the legal rate set forth in Code of Civil Procedure section 685.010(a). The number of days available to the District to make a payment without incurring an interest obligation pursuant to this provision and Public Contract Code section 20104.50 will be reduced by the number of days, if any, by which the District has delayed return of an application for payment beyond the seven (7) day return requirement set forth in Section 9.2(c).

9.3 Final Payment. The District will pay the Contractor's final invoice in accordance with applicable law and this Section 9 following acceptance of the Work provided that:

a. The Contractor has furnished evidence satisfactory to the District that all claims for labor and material have been paid, or the time for filing valid stop notices has passed and no stop notices have been filed, or all stop notices filed have been released by valid release or release bond acceptable to the District.

b. No claim has been presented to the District by any person based upon any acts or omissions of the Contractor or any subcontractor engaged in the performance of the Work.

c. No other claim or dispute exists under the Contract or applicable law concerning payment of the Contractor's final invoice and/or release of the Contract retention.

d. The Contractor's application for final payment contains a written waiver of all claims against the District of which the Contractor may not yet asserted at the time of the submission of the application for final payment.

9.4 Non-Allowable Direct Charges. The following costs are not allowable direct charges under the Contract. The following costs may only be paid under the Contract, if at all, as part of any allowance for contractor overhead and/or profit established under the Contract.

a. Labor costs in excess of applicable prevailing wages pursuant to the Contract and applicable law, liability and workers compensation insurance, social security, retirement and unemployment insurance, and other employee compensation and benefits pursuant to bona fide compensation plans in effect at the time specified for the opening of Project bids for contractor and subcontractor employees engaged in the performance of the Work. However, in no event will allowable direct labor charges under the agreement include employee bonuses, employee vehicles or vehicle allowances, employee telephones or telephone allowances, or employee housing or housing allowances, whether or not such benefits are part of a bona fide compensation plan in effect at the time specified for the opening of Project bids.

b. Superintendent labor and clerical labor.

c. Bond premiums.

d. Insurance in excess of that required under Section 8.8.

e. Utility costs.

f. Work Site office expenses.

g. Home office expenses.

9.5 Retention. The District or its agent may, in accordance with the Contract Documents and applicable law, withhold any payment of monies due or that may become due the Contractor because of:

a. Defective work not remedied or uncompleted work.

b. Claims filed or reasonable evidence indicating probable filing of claims.

c. Failure to properly pay subcontractors or to pay for material or labor.

d. Reasonable doubt that the Work can be completed for the balance then unpaid.

e. Damage to another contractor.

f. Damage to the District.

g. Damage to a third party.

h. Delay in the progress of the Work, which, in the District's judgment, is due to the failure of the Contractor to properly expedite the Work.

i. Liquidated damages or other charges that apply to the Contractor under the Contract.

j. Any other lawful basis for withholding payment under the contract.

9.6 Securities in Lieu of Retention.

a. In accordance with Public Contract Code section 22300, except where federal regulations or polices do not permit substitution of securities, the Contractor may substitute securities for any moneys withheld by the District to ensure performance of the Work. At the Contractor's request and expense, securities equivalent to the amount withheld will be deposited with the District, or with a state or federally chartered bank in California as the escrow agent, who will then pay those moneys to the Contractor under the terms of an Escrow for Security Deposit agreement, in the form required by Public Contract Code section 22300(g). Upon satisfactory completion of the Work, the securities will be returned to the Contractor.

b. Alternatively, at the Contractor's request and expense, the District will pay retentions earned directly to the escrow agent. At the Contractor's expense, the Contractor may direct investment of the payments into securities. Upon satisfactory completion of the Work, the Contractor will receive from the escrow agent all securities, interest, and payments received by the escrow agent from the District pursuant to this provision and the terms of the Escrow for Security Deposit agreement. The Contractor will, within twenty (20) days of receipt of payment, pay to each subcontractor the respective amount of interest earned, less costs of retention withheld from each Subcontractor, on monies withheld to ensure the Contractor's performance of the Work.

c. Securities eligible for investment in accordance with this provision include those listed in Government Code section 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the District.

d. The Contractor will be the beneficial owner of any securities substituted for moneys withheld and will receive any interest thereon.

10. **Project Acceptance and Cost.**

10.1 Occupancy. The District reserves the right to occupy or use any part or parts or the entire of the Work before the Work is fully performed. Subject to applicable law, exercising this right will in no way constitute acceptance of any part of the Work so occupied or used or acceptance of the entire Work, nor will such occupancy or use in any way affect the times when payments will become due the Contractor, nor will such occupancy or use in any way prejudice the District's rights under the Contract, any Contract bonds, or at law or equity. Occupancy or use shall not waive the District's rights to assess liquidated damages in accordance with Section 7.8 after the date of such occupancy or use.

10.2 Work Completion and Final Inspection.

a. *Final Cleanup.* Prior to final inspection, as part of the Work, Contractor shall leave the job site neat and presentable and dispose of all rubbish, excess materials, falsework, temporary structures, and equipment. Full compensation for cleanup work

will be considered as included in the Contract Price and no separate payment will be made therefor.

b. *Work Completion.* When the Contractor considers the Work is completed, the Contractor will submit written certification to the Project Manager specifying that: the Contract Documents have been reviewed; the Work has been inspected for compliance with the Contract Documents; the Work has been completed in accordance with the Contract Documents; and that equipment and systems have been tested in the presence of the District's representative and are operational. The District and/or the District's authorized representatives will make an inspection to verify that the Work is complete and will notify the Contractor in writing of any incomplete or deficient Work. The Contractor will take immediate steps to remedy the stated deficiencies and give notice of correction to the Project Manager. Upon receiving a notice of correction, the District or the District's authorized representatives will re-inspect the Work. The Contractor must correct all punch list items within fifteen (15) working days after the issuance of the punch list. Before acceptance of the Work, the Contractor must submit: one set of "camera ready" red-lined Project Record Drawings (As-Builts), and any equipment operating and maintenance instructions and data, warranties.

10.3 Work Acceptance.

a. All finished Work will be subject to inspection and acceptance or rejection by the District, the Project Manager, and the Architect or Engineer and other government agencies having jurisdiction over the Work. Final acceptance of the Work will be at the discretion of the District.

b. The District will accept the Work in writing only when the Work has been completed to the District's reasonable satisfaction. Progress payments will in no way be construed as acceptance of any part of the Work.

c. In evaluating the Work, no allowance will be made for deviations from the Technical Specifications, Project Plans, or other Contract Documents unless previously approved in writing in accordance with the requirements of Section 4, above.

d. The fact that the Work and materials have been inspected from time to time and that progress payments have been made does not relieve the Contractor of the responsibility of replacing and making good any defective or omitted work or materials in accordance with the requirements of the Contract Documents.

11. **Remedies and Disputes.**

11.1 Failure to Correct Work. Within ten (10) working days of receiving Written Notice from the District describing Work that is defective or that is otherwise not in accordance with the requirements of the Contract and/or applicable law and directing that such Work be corrected, the Contractor and/or the Contractor's sureties must give the District Written Notice of the intent of the Contractor and/or the Contractor's sureties to correct such Work and commence correction of such Work in accordance with the District's notice and the Contract. If the Contractor and/or the Contractor's sureties do not give the District Written Notice of intent to correct such Work and commence correction of such Work within ten (10) working days of

receipt of the District's notice, then the District may correct such work and/or have such work corrected for the account and at the expense of the Contractor and/or its sureties, and the Contractor and/or its sureties will be liable to the District for any resulting excess cost. The District may, in addition to all other remedies that the District may have under the Contract and at law or equity, deduct any such excess cost of completing the Work from amounts that are due or that may become due the contractor.

11.2 Termination.

a. In accordance with Public Contract Code section 7105, in addition to all other available remedies that the District may have under the Contract, and at law or equity, the District may terminate the Contractor's control of the Work:

i. If the Contractor or any of its subcontractors engaged in the performance of the Work fails to timely perform the Work and/or any of the Contractor's material obligations under the Contract Documents, including but not limited to submission of an acceptable schedule, that have accrued except due to reasons beyond the control of the Contractor pursuant to the Contract Documents.

ii. If the Contractor is adjudged bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of its creditors.

iii. If the Contractor or any of the subcontractors engaged in the performance of the Work persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials for the timely completion of the Work.

iv. If the Contractor fails to make prompt payment to subcontractors engaged in the performance of the Work or for material or labor used in the performance of the Work in accordance with the Contract Documents and applicable law.

v. If the Contractor or any subcontractors engaged in the performance of the Work persistently disregards laws or ordinances applicable to the performance of the Work, or the instructions of the District, the Construction Manager, the Architect, or other authorized representatives of the District.

vi. For any reason or for no reason, at the District's sole discretion.

b. If the District intends to terminate the Contractor's control of the Work for any of the reasons specified in Sections 11.2(a)(i) through 11.2(a)(vi), above, the District will immediately serve Written Notice to the Contractor and its sureties in accordance with the Contract Documents. Notice of the District's intent to terminate the Contractor's control of the Work will be given by registered or certified mail, and via email as a courtesy only, and specify the grounds for termination, the required cure, and the time by which the cure must be effected. Upon receipt of notice of the District's intent to terminate the Contractor's control of the Work for any of the reasons specified in

Sections 11.2(a)(i) through 11.2(a)(vi), above, the Contractor will have ten (10) days from receipt of the notice or a longer time specified in the notice to cure its default. If the Contractor does not effect the required cure by the time specified in the notice, the District will issue a Written Notice of termination to the Contractor and its sureties by registered or certified mail, and via email as a courtesy only. The notice of termination will specify: that upon receipt of the notice, the Contractor's right to perform or complete the Work, including on behalf of the Contractor's sureties, is terminated; that the Contractor's sureties will have the right to take over and complete the Work and perform all of the Contractor's remaining obligations that have accrued under the Contract; and that if the Contractor's sureties do not both give the District Written Notice of their intention to take over and perform the Contract and commence completion of the Work and performance of all of the Contractor's remaining obligations that have accrued under the Contract within ten (10) days after receipt of notice of termination, that the District may declare the Contractor's sureties in default and take over the completion of the Work or have the Work completed for the account and at the expense of the Contractor and its sureties, and the Contractor and its sureties will be liable to the District for any resulting excess cost. The District may, in addition to all other available remedies that the District may have under the Contract Documents and at law or equity, deduct any such excess cost of completing the Work from amounts that are due or that may become due the Contactor.

c. Upon termination of the Contractor's control of the Work for any of the reasons specified in Sections 11.2(a)(i) through 11.2(a)(vi), the Contractor will, if so directed by the District, immediately remove from the Work site any and all materials and personal property belonging to the Contractor which have not been incorporated in the Work, and the Contractor and its sureties will be liable upon their bond for all damages caused to the District by reason of the Contractor's failure to complete the Work.

d. Upon termination of the Contractor's control of the Work for any of the reasons specified in Sections 11.2(a)(i) through 11.2(a)(vi), above, the District reserves the right to refuse tender of the Contractor by any surety to complete the Work.

e. If the District completes or has completed any portion of, or the whole of the Work, following termination of the Contractor's control of the Work for any of the reasons specified in Sections 11.2(a)(i) through 11.2(a)(vi), above, the District will neither be liable for nor account to the Contractor or the Contractor's sureties in any way for the time within which, or the manner in which such Work is performed, or for any changes made in such Work or for the money expended in satisfying claims and/or suits and/or other obligations in connection with completing the Work. If, following termination of the Contractor's control of the Work for any of the reasons specified in Sections 11.2(a)(i) through 11.2(a)(vi), above, the unpaid balance of the Contract Price exceeds the expense of completing the Work, including compensation for additional legal, managerial, and administrative services and all other amounts due for the completion of the Work and/or satisfaction of claims of the District and/or others arising out of the Contract and any other charges that apply to the Contractor under the Contract, the difference will be paid to the Contractor. If such expenses of completing the Work exceed the unpaid balance of the Contract Price, the Contractor or its sureties will pay the difference to the District.

f. If the Contract or Contractor's control of the Work is terminated for any reason, no allowances or compensation will be granted for the loss of any anticipated profit by the Contractor.

g. In accordance with Government Code section 4410, in the event a national emergency occurs, and public work being performed by contract is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the District and the Contractor may, by written agreement, terminate the Contract. In accordance with Government Code section 4411, such a termination agreement will include the terms and conditions of the termination of the Contract and provision for the payment of compensation or money, if any, which either party will pay to the other or any other person, under the facts and circumstances in the case. Compensation to the Contractor will be determined on the basis of the reasonable value of the work done, including preparatory work. As an exception to the foregoing, in the case of any fully completed separate item or portion of the Work for which there is a separate contract price, the contract price shall control. The parties may in any other case adopt the contract price as the reasonable value of the work or any portion of the work done.

11.3 Disputes.

a. *Claims.* In general, any claim by a contractor in connection with a public works project must adhere to the following procedural requirements pursuant to California Public Contract Code section 9204:

i. All claims submitted shall be submitted in writing and include reasonable documentation from the Contractor to support the claim.

ii. Once the District has received a claim pursuant to Section 9204, the District shall conduct a reasonable review of the claim. Within forty-five (45) days of receipt of the claim, the District shall provide the Contractor with a written statement identifying which portion of the claim is undisputed and which portion is disputed.

(1) The District and Contractor may mutually agree to extend the 45-day period.

(2) If the District needs approval from District Council in order to provide the claimant with the written statement described above, and District Council does not meet within the 45-day period or within the mutually agreed extended time period, then the District has up to three days following the next duly publicly noticed meeting after the 45-day period (or extension) to provide the written statement.

iii. For any undisputed portion of a claim, the District must process and make any payment due within sixty (60) days of the District's issuance of its written statement.

(1) If the District fails to issue its written statement, Section 11.3(a)(v) shall apply.

iv. If the Contractor disputes the District's written statement, or if the District fails to respond within the 45-day period or the mutually agreed extended time, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of the written demand sent by registered mail or certified mail, return receipt request, the District shall hold the meet and confer conference within thirty (30) days of the demand.

(1) Within ten (10) working days following the meet and confer conference, the District must provide the Contractor a written statement identifying any portion of the claim that remains in dispute.

(2) Any payment due on undisputed portions of the claim must be made within sixty (60) days of the meet and confer conference.

(3) Any disputed portion of the claim after the meet and confer conference shall be submitted to nonbinding mediation, with the District and the Contractor sharing costs equally. The District and the Contractor shall mutually agree to a mediator within ten (10) working days after the District issues the written statement identifying the portion of the claim that remains in dispute. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate. Each party shall bear the fees and costs charged by its respective mediator in connection with this selection process. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside Public Contract Code section 9204.

v. If the District fails to respond to a claim within the time periods described herein, or to otherwise meet the time requirements, then the claim will be deemed rejected in its entirety.

vi. Any amounts not paid in a timely manner shall bear interest at seven percent (7%) per year.

vii. For subcontractors or lower tier subcontractors that lack legal standing to assert a claim against the District because privity of contract does not exist, the Contractor may present to the District a claim on behalf of the subcontractor. The subcontractor may request in writing that the Contractor present a claim for work which was performed by the subcontractor, and shall provide reasonable documentation to support the claim. Within forty-five (45) days of receiving this written request, the Contractor shall notify the

subcontractor in writing as to whether the Contractor has presented the claim to the District, or provide the subcontractor with a statement of the reasons for having not done so.

b. *Claims for $375,000 and Less*. In accordance with Public Contract Code section 20104.2, the following procedures apply to submitting claims of $375,000 or less between the Contractor and the District:

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

ii. For claims of less than $50,000, the District shall respond in writing within forty-five (45) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the District may have against the Contractor.

(1) If additional information is thereafter required, it shall be requested and provided pursuant to this Section 11.3(b), upon mutual agreement of the District and the Contractor.

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

iii. For claims of over $50,000 and less than or equal to $375,000, the District shall respond in writing to all written claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the District may have against the Contractor.

(1) If additional information is thereafter required, it shall be requested and provided pursuant to this Section 11.3(b), upon mutual agreement of the District and the Contractor.

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

iv. If the Contractor disputes the District's written response, or the District fails to respond within the time prescribed, the Contractor may so notify the

District, in writing, either within fifteen (15) days of receipt of the District's response or within fifteen (15) days of the District's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the District shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

v. Following the meet and confer conference, if a claim under this section or any portion remains in dispute, the Contractor may file a claim for money or damages as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to this Section 11.3(b) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

vi. This Section 11.3(b) does not apply to tort claims and nothing in this Section 11.3(b) is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

c. *Civil Actions for $375,000 and Less.* In accordance with Public Contract Code section 20104.4, the following procedures apply to civil actions to resolve claims of $375,000 or less between the District and the Contractor:

i. Pursuant to Public Contract Code section 9204(d)(2)(C), unless otherwise agreed to by the District and the Contractor in writing, the mediation conducted pursuant to Section 11.3(a)(iv)(3) shall excuse any further obligation to mediate after litigation has commenced.

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

ii. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of

that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

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

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

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

d. *Undisputed Amounts.* In accordance with Public Contract Code Section 20104.6, the District shall not fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the Contract.

e. *Interest.* In any suit filed under Public Contract Code Section 20104.4 concerning this contract, the District shall pay interest at the legal rate on any arbitration award or judgment. Such interest shall accrue from date the suit was filed.

f. *Claim for money or damages required.* For any claims not otherwise covered by the procedures set forth in this Section 11.3, Contractor shall file a claim for money or damages as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code, prior to filing a civil action to resolve the claim. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to this Section 11.3 until the time that claim is denied by the District, including any period of time utilized by the meet and confer process.

12. **Order of Precedence.** In the event of any inconsistency between the sections, attachment, specifications, or provisions which constitute the Contract Documents, the following order of precedence shall apply:

1. Any modifications or amendments to the Contract, in reverse chronological order, and in the same order as the specific portions of the Contract Documents they modify or amend.

2. The Contract.

3. Special Conditions or Provisions.

4. General Conditions.

5. The Notice Inviting Bids, Instructions to Bidders, and Proposal Documents.

6. Technical Specifications.

7. Project Plans and Drawings.

Any conflict between the Project Plans and Drawings and the Technical Specifications will be resolved in favor of the document with the latest date (e.g., the more recent document). If the dates are not determinable, the conflict will be resolved in favor of the Technical Specifications.

13. **Miscellaneous.**

13.1 Notice of Non-Renewal. Contractor understands and agrees that there is no representation, implication, or understanding that the District will request that work product provided by Contractor under this Contract be supplemented or continued by Contractor under a new agreement following expiration or termination of this Contract. Contractor waives all rights or claims to notice or hearing respecting any failure by District to continue to request or retain all or any portion of the work product from Contractor following the expiration or termination of this Contract.

13.2 Waiver. Neither the acceptance of work or payment for work pursuant to this Contract shall constitute a waiver of any rights or obligations arising under this Contract. The failure by the District to enforce any of Contractor's obligations or to exercise District's rights shall in no event be deemed a waiver of the right to do so thereafter.

CONTRACTOR'S PAYMENT BOND -- PUBLIC CONTRACT

KNOW ALL BY THESE PRESENTS:

That _____

As Principal (herein called "Principal") and

_____

As Surety (herein called "Surety")

are held and firmly bound unto the Strawberry Recreation District (herein called "Obligee"), in just and full sum of **($)** lawful money of the United States of America, (said sum being equal to 100% of the estimated amount payable by the terms hereinafter described Contract) for the payment of which, well and truly to be made, we hereby bind ourselves and our, and each of our, heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That

WHEREAS, Principal has been awarded a Contract for the following described work of improvement and is required by Obligee to give this bond in connection with the execution of the written Contract therefore:

_____

NOW, THEREFORE, if Principal or its subcontractors shall fail to pay for any materials, provisions, provender or other supplies, or teams, used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, the Surety will pay for the same, in an amount not exceeding the sum specified above, and also in case suit is brought upon this bond, a reasonable attorney's fee to be fixed by the court. This bond shall insure to the benefit of any and all persons entitled to file claims under the Civil Code so as to give a right of action to them or their assigns in any suit brought upon the bond.

No extension of time granted to the Principal and no change or alteration in any of the terms of the Contract or the Contract documents or the work to be performed hereunder, whether made after notice of not, shall release or otherwise affect the obligations of the Surety hereunder, and the Surety waives notice of any such extension, change, or alteration. The Surety, by the execution of this bond, represents and warrants that this bond has also been duly executed by the Principal with proper authority, and the Surety hereby waives any defense which it might have by reason of any failure of the Principal to execute or properly execute this bond.

In the event suit is brought upon this bond by the Obligee and judgment is recovered by the Obligee, court costs, including reasonable attorney's fees, shall be an additional obligation of this bond for which Principal and Surety shall be liable.

Signed and Sealed this _____ day of _____ 20 .

Contractor as Principal	Surety
(Corp. Seal)	(Corp. Seal)
Company Name	Company Name
Signature	Signature
Print Name	Print Name
Title	Title
Street Address	Street Address
City, State, Zip Code	City, State, Zip Code

Note: Signatures of those executing for Surety must be properly acknowledged. The bond must be accompanied by a power of attorney from the Surety authorizing its agent to bind it to this bond.

PERFORMANCE BOND – PUBLIC CONTRACT

KNOW ALL BY THESE PRESENTS:

That _____

As Principal (herein called "Principal") and

_____

As Surety (herein called "Surety")

are held and firmly bound unto the Strawberry Recreation District (herein called "Obligee"), in just and full sum of **($)** lawful money of the United States of America, (said sum being equal to 100% of the estimated amount payable by the terms of the hereinafter described Contract) for the payment of which, well and truly to be made, we hereby bind ourselves and our, and each of our, heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That

WHEREAS, Principal has been awarded a Contract for the following described work of improvement and is required by Obligee to give this bond in connection with the execution of the written Contract therefore:

_____

NOW, THEREFORE, if Principal shall well and truly do and perform each and all of the covenants, conditions, and agreements of said Contract on the Principal's part to be done and performed, and any and all alterations thereof made herein provided, at the time and in the manner therein specified, and shall indemnify and save harmless the Obligee, its officers, agents, and employees, as therein stipulated, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

No extension of time granted to the Principal and no change or alteration in any of the terms of the Contract or the Contract Documents or the work to be performed thereunder, whether made after notice or not, shall release or otherwise affect the obligation of the Surety hereunder, and the Surety waives notice of any such extension, change, or alteration. The Surety, by the execution of this bond, represents and warrants that this bond has also been duly executed by the Principal with proper authority, and the Surety hereby waives any defense which it might have by reason of any failure of the Principal to execute or properly execute this bond.

In the event suit is brought upon this bond by the Obligee and judgment is recovered by the Obligee, court costs, including reasonable attorney's fees, shall be an additional obligation of this bond for which Principal and Surety shall be liable.

Signed and Sealed this _____ day of _____ 20 .

Contractor as Principal	Surety
(Corp. Seal)	(Corp. Seal)
Company Name	Company Name
Signature	Signature
Print Name	Print Name
Title	Title
Street Address	Street Address
City, State, Zip Code	City, State, Zip Code

Note: Signatures of those executing for Surety must be properly acknowledged. The bond must be accompanied by a power of attorney from the Surety authorizing its agent to bind it to this bond.

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