

74 West Sixth Street #A
Gilroy, CA 95020
408.842-3838
www.sscvMemorialDistrict.org



NOTICE TO BIDDERS
South Santa Clara Valley Memorial District
Invitation to Bid

PROJECT TITLE: Gilroy Veterans Hall Kitchen Remodel

LOCATION: Veterans Memorial Hall, 74 West 6th Street, Gilroy, CA 95020

DESCRIPTION: Remodel kitchen to bring facilities up to date.
• Prevailing wages required to be paid on this project

OWNER: South Santa Clara Valley Memorial District
ARCHITECT: Davco Associates

BID NOTICE ISSUED: January 10, 2025

QUESTIONS DUE BY: January 15, 2025, Submit to ed@sscvmemorialdistrict.org

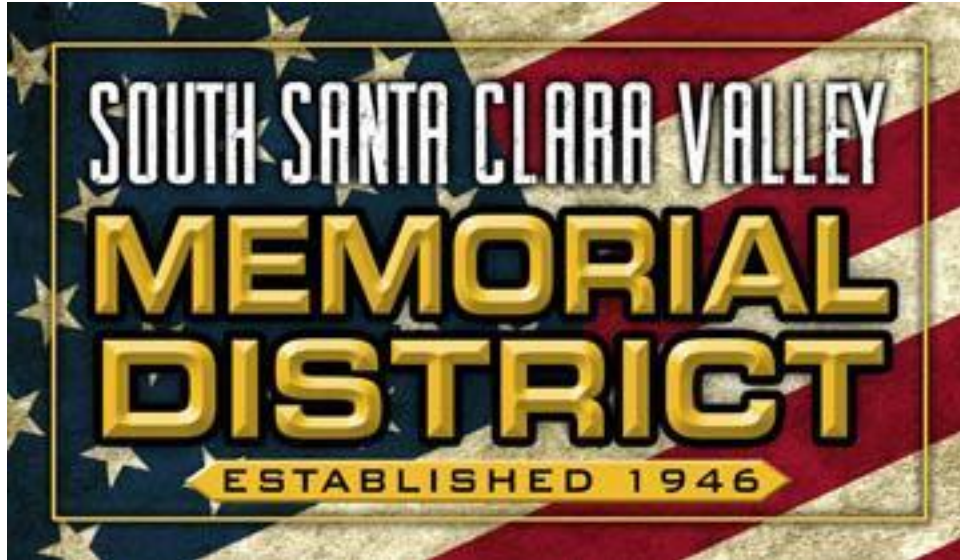
BID DUE DATE: February 7, 2025 by 4pm.

SUBMIT BID: Via Email to ed@sscvmemorialdistrict.org

BID OPENING: **January 23, 2025 at 4:30pm on site**

DIRECT ALL INQUIRES TO: Ellen Herrera, Executive Director
408/842-3838 or ed@sscvmemorialdistrict.org

COMPLETE DETAILS ARE AVAILABLE AT: <http://sscvMemorialDistrict.org/the-district> (Bottom of the page)
Builders Exchange of Santa Clara County <http://www.bxscco.com/>



South Santa Clara Valley Memorial District

74 West 6th St. Suite A

Gilroy, CA 95020

408.842.3838

Email: ED@sscvmemorialdistrict.org

REQUEST FOR PROPOSALS
Proposal #2025-01

For
Kitchen Remodel at Veterans Memorial Hall

Issued on: January 10, 2025

Due Date: February 7, 2025 by 4:00 PM

Administered by: Ellen Herrera, Executive Director

Notice to Contractors

PUBLIC NOTICE
South Santa Clara Valley Memorial District
Request for Proposal

RFP TITLE: Kitchen Remodel

LOCATION: Veterans Memorial Hall
74 West 6th Street, Gilroy, CA 95020

PURPOSE: Remodel the kitchen and storage areas, along with upgrading electrical and plumbing systems for the building, so facilities will meet applicable state codes.

DEADLINE FOR BID SUBMISSIONS: February 7, 2025 by 4:00 PM

SUBMIT BID TO THIS ADDRESS: South Santa Clara Valley Memorial District
Veterans Memorial Hall
Attn: Ellen Herrera, Executive Director
74 West 6th Street, Suite A
Gilroy, CA 95020

REQUIRED BID COPIES: Bidders must submit one (1) original and one (1) copy

MANDATORY BIDDER'S CONFERENCE: January 23, 2025 on site at 4:30 PM

PLEASE DIRECT ALL INQUIRES TO: Ellen Herrera
Executive Director
408/842-3838
ED@sscvmemorialdistrict.org

COMPLETE RFP DETAILS ARE AVAILABLE AT: <http://sscvmemorialdistrict.org/the-district>

DATE BID NOTICE ISSUED: January 10, 2025

Request for Proposal #2025-01 Kitchen Remodel

The South Santa Clara Valley Memorial District (the “District”) plans to remodel the existing kitchen and storage area. This includes modification of existing plumbing and existing electrical at the Veterans Memorial Hall located at 74 West 6th Street, Gilroy, CA 95020. All proposals submitted must meet or exceed the time frame and product specifications as outlined in this REQUEST FOR PROPOSAL.

Submission of any proposal signifies the Contractor’s agreement that its proposal and the content thereof are valid for 120 calendar days following the submission deadline and will become part of the contract that is negotiated between the District and the successful Contractor.

All proposals are confidential and will not become public knowledge until awarded. The District reserves the right to award and/or reject all proposals and waive any technicalities or irregularities.

Intent of this RFP

The purpose and intent of this RFP is to award a contract for the remodel of the existing kitchen and storage area. This includes modification of existing plumbing and existing electrical systems. It is the full responsibility of the Contractor to thoroughly investigate the needs/requirements of the District, not necessarily specified in this RFP, including the demolition as needed, and disposal of construction waste.

Important Dates

Issue Date: January 10, 2025

Mandatory Pre-Proposal Meeting: January 23, 2025 on site at 4:30 pm

Final Date for Written Questions: January 15, 2025 by 4:00 PM, Submit to ed@sscvmemorialdistrict.org

Final Date for Addenda Posting: January 17, 2025

Deadline for Submitting Proposals: February 7, 2025 by 4:00 PM

Anticipated Award Date (tentative): February 17, 2025

Pre-Proposal Meeting

A pre-proposal meeting will be held on site at 74 West 6th Street, Gilroy, CA 95020 at 4:30 PM on Thursday, January 23, 2025.

All questions or requests for clarification or additional information must be made at the pre-proposal meeting or submitted in writing no later than 4:30 PM on January 17, 2025. These written questions or requests must be submitted to Ellen Herrera, Executive Director, via email. Any questions the District feels are pertinent to all interested bidders

will be posted on the District web site, www.sscvMemorialDistrict.org, as addenda to this RFP.

Submission of Proposals

Contractors must submit one (1) original and one (1) complete copy of their proposal in a sealed envelope no later than 4:00 PM on February 7, 2025 to:

South Santa Clara Valley Memorial District
Veterans Memorial Hall
Attn: Ellen Herrera, Executive Director
74 West 6th Street, Suite A
Gilroy, CA 95020

References

At least three (3) recent business references are required. The Contractor shall provide the date and product(s) and services provided each business reference. Include reference name, address, contact person, telephone number, email address and any other information that may be deemed important and that will assist the District in contacting the reference. The District may request additional evidence of experience, qualifications, ability, products, service facilities and financial standing for which the Contractor shall be prepared to provide to the District, if required.

Evaluation Criteria

Contracts shall be awarded by the District to the lowest responsible, responsive bidder. Local firms may be allowed a 5% preference margin where items or services are available from multiple sources. Local is defined as a vendor whose business is within the District's service area. Veteran-owned businesses may be allowed a 5% preference margin where items or services are available from multiple sources. Veterans must provide proof of military service, such as a DD214. Contracts shall be awarded by the District based the Contractor's ability to adhere to all conditions and requirements of the specifications outlined in this RFP and to the lowest responsible, responsive bidder.

Prevailing Wage

Contractor agrees, in accordance with Section 1771.1 of the California Labor Code, that Contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to California Labor Code section 1725.5. Contractor agrees, in accordance with Section 1771.4 of the California Labor Code, this Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. SB 854 also requires the contractor submit certified payroll records directly to the Department of Industrial Relations.

SPECIFICATIONS

General

The specifications for the project are outlined in the drawings and specification sheets provided by DAVCO Associates. These are available for viewing either at the Bidders Conference, the City of Gilroy's Planning Department or by downloading the PDF files at <http://sscvMemorialDistrict.org/the-district> (Bottom of the page).

The Contractor shall meet all code requirements and shall be responsible for and obtain all required State and/or local permits and inspections, including any Title 24 requirements deemed necessary.

The entire kitchen facility and storage areas must be fully operational upon completion and with appropriate warranties.



SOUTH SANTA CLARA VALLEY MEMORIAL DISTRICT

STANDARD SPECIFICATIONS

January 2025 Version

TABLE OF CONTENTS

PART 1

STANDARD SPECIFICATIONS

<u>Paragraph</u>		<u>Page</u>
SECTION 1	DEFINITIONS AND TERMS	5
SECTION 2	PROPOSAL REQUIREMENTS AND CONDITIONS	
2.01	Obtaining Plans and Specifications.....	9
2.02	Contents of Proposal Forms.....	9
2.03	Estimated Quantities.....	9
2.04	Examination of Drawings, Specifications, and Site of Work.....	9
2.05	Proposal Form.....	10
2.06	Queries on Bidding.....	10
2.07	Rejection of Proposals.....	10
2.08	REMOVED.....	10
2.09	Withdrawal of Proposals.....	11
2.10	Public Opening of Proposals.....	11
2.11	Joint Proposals.....	11
2.12	Disqualification of Bidders.....	11
2.13	Addendum.....	11
2.14	List of Subcontractors.....	11
2.15	Competency of Bidder.....	12
2.16	Relief of Bidders.....	12
2.17	Bid Protests.....	12
SECTION 3.	AWARD AND EXECUTION OF CONTRACT	
3.01	Consideration of Proposals.....	14
3.02	Award of Contract.....	14
3.03	REMOVED.....	14
3.04	Contract Bonds.....	14
3.05	Execution of Contract.....	15
3.06	Failure to Execute Contract.....	15
3.07	Contractor's Insurance.....	15
SECTION 4.	SCOPE OF WORK	
4.01	Work to be Done.....	17
4.02	Maintenance and Clean up.....	17
4.03	Changes & Change Orders.....	17
4.04	Protests	18
4.05	Dust Control.....	18

<u>Paragraph</u>		<u>Page</u>
SECTION 5. CONTROL OF WORK		
5.01	Authority of Director	19
5.02	Drawings to be Furnished by the Contractor.....	19
5.03	Drawings and Data to be Furnished by the District.....	19
5.04	Conformity with Drawings and Allowable Deviations.....	20
5.05	Maintenance and Operation Manuals.....	20
5.06	Superintendence.....	20
5.07	Inspection	21
5.08	Removal of Defective and Unauthorized Works.....	21
5.10	Construction Equipment and Plant.....	21
5.11	Alternative Construction Equipment.....	21
5.12	Use of Completed Portions.....	22
5.13	Legal Address of the Contractor.....	22
5.14	Final Inspection.....	22
5.15	Acceptance of Contract.....	22
5.16	Coordination of Specifications and Drawings.....	23
5.17	Interpretation of Specifications and Drawings	23
5.18	State Specifications.....	23
5.19	Reasonableness of Interpretations.....	24
5.20	Potential Claims and Dispute Resolution.....	24
SECTION 6. CONTROL OF MATERIALS AND INSTALLED EQUIPMENT		
6.01	Furnishing and Quality of Materials and Equipment	27
6.02	Source of Material and Equipment.....	27
6.03	Storage of Materials and Equipment.....	28
6.04	Defective Materials.....	28
6.05	Trade Names and Alternatives	28
6.06	Testing Materials.....	28
6.07	Plant Inspection.....	29
6.08	District Furnished Materials	29
SECTION 7. LEGAL RELATIONS AND RESPONSIBILITY		
7.01	Laws to be Observed.....	30
7.02	Labor Discrimination.....	30
7.03	REMOVED.....	30
7.04	Prevailing Wages, Apprenticeship, Payroll Records.....	30
7.05	Hours of Labor.....	32

<u>Paragraph</u>		<u>Page</u>
7.06	Apprentices	32
7.07	Permits and Licenses.....	33
7.08	Patents and Copyrights	33
7.09	Sanitary Facilities.....	33
7.10	Public Safety.....	33
7.11	Accident Prevention.....	34
7.12	Explosives and Stream Pollution.....	34
7.13	Fires.....	34
7.14	Interference with Fire Hydrants, Highways and Fences	34
7.15	Preservation of Property.....	35
7.16	Public Convenience.....	35
7.17	Contractor's Responsibility for Work.....	36
7.18	Responsibility for Damages; Indemnification.....	36
7.19	Payment of Taxes.....	37
7.20	Cooperation Between Contractors	37
7.21	Property Rights in Materials.....	38
7.22	Rights in Land and Improvements.....	39
7.23	Title to Materials Found on the Work.....	38
7.24	Personal Liability.....	38
7.25	Trespassing.....	38
7.26	Subcontracting.....	38
7.27	Assignment of Unfair Business Practices Claims.....	39
7.28	Third Party Claims.....	39
SECTION 8. PROSECUTION AND PROGRESS OF WORK		
8.01	Assignment.....	40
8.02	Commencement of Work.....	40
8.03	Work Progress Schedule.....	40
8.04	Temporary Suspension of Work.....	40
8.05	Temporary Suspension of Work for the Convenience and Benefit of the District	40
8.06	Suspension of Work because of Conditions Beyond Control of District or Contractor	40
8.07	Termination of Unsatisfactory Subcontracts	41
8.08	Character of Workers.....	41
8.09	Time of Completion and Liquidated Damages.....	41
8.10	Termination of Contract.....	41
8.11	Right-of-Way Delays.....	42

<u>Paragraph</u>		<u>Page</u>
8.12	Contractor's Cost Data.....	42
8.13	Coordination with Utilities.....	42
8.14	Responsibility for Accuracy.....	43
8.15	Temporary Facilities and Services.....	43
8.16	Weekend, Holiday and Night Work.....	43
 SECTION 9. MEASUREMENT AND PAYMENT		
9.01	Work to be Done Without Direct Payment.....	44
9.02	Measurement of Quantities.....	44
9.03	REMOVED.....	44
9.04	Force Account Work.....	44
9.05	Retention.....	46
9.06	Partial Payment	47
9.07	Final Estimate and Payment.....	47
9.08	Scope of Payment.....	48
9.09	Guarantee.....	48

PART 1: STANDARD PROVISIONS

SECTION 1

DEFINITIONS AND TERMS

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

ABBREVIATIONS

ACI	American Concrete Institute
AGMA	American Gear Manufacturers Association
AIEE	American Institute of Electrical Engineers
AISI	American Iron and Steel Institute
AISC	American Institute of Steel Construction
ANSI	American National Standards Institute
ASA	American Standards Association (United States of America Standards Instruction)
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigerating and Air Conditions Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society of Testing Materials
AWS	American Welding Society
DIR	Department of Industrial Relations
FS	Federal Specification
IEEE	Institute of Electrical and Electronic Engineers
NBFU	National Board of Fire Underwriters
NEMA	National Electrical Manufacturers Association
SSPWC	Standard Specifications for Public Works Construction
UL	Underwriters Laboratories

All references to specifications, standards, or other publications of any of the above are understood to refer to the current issue as revised or amended at the date of receipt of bids/Contract.

- 1.01 Acceptance** - The formal written acceptance by the Board of Directors of the Contract which has been completed in all respects in accordance with the Drawings and Specifications and any modifications thereof previously approved.
- 1.02 Addendum** - A change in the Specifications or Drawings issued prior to the opening of Proposals.
- 1.03 Approved, Directed, Ordered, or Required** - Whenever these words or their derivatives are used, it is the intent, unless otherwise clearly stated, that approval or direction by the Engineer is indicated
- 1.04 Article** - A numbered portion of a title Section of the Specifications
- 1.05 Bidder** - Any individual, firm, partnership, corporation or combination thereof, submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.
- 1.06 District** - The South Santa Clara Valley Memorial District.
- 1.07 Contract/Contract Documents** - The written agreement covering the performance of the work and the furnishing of labor; materials, tools, and equipment in the construction of the work. The Contract shall include the Notice to Contractors, Proposal, Drawings, District Standard Specifications, Addenda, and Contract Bonds; also, any and all supplemental agreements amending or extending the work in a substantial and acceptable manner. Supplemental agreements are written agreements signed by both parties covering alterations, amendments, or extensions to the Contract and include Contract change orders.
- 1.08 Contractor** - The person or persons, firm, partnership, corporation, or combination thereof, private or municipal, who is the successful bidder and has entered into a contract with the District.
- 1.09 Board of Directors** - The Board of Directors of the South Santa Clara Valley Memorial District.
- 1.10 Days** - Working days, unless otherwise designated.
- 1.11 Director** - The Executive Director of the South Santa Clara Valley Memorial District.
- 1.12 Drawings** - The official drawings, working drawings, detail drawings, and supplemental drawings, or reproductions thereof, which show the location, character, dimensions, and details of the work to be done, and which are to be considered as part of the Contract.
- 1.13 Liquidated Damages** - The amount prescribed in the specifications, pursuant to the authority of Government Code Section 53069.85, to be paid to the District or to be deducted from any payments due or to become due the Contractor for each day's delay in completing the whole or any specified portions of the work beyond the time allowed in the Specifications.
- 1.14 Plans, Construction Plans** - The Drawings which are a part of the Contract.
- 1.15 Project** - The project, works of improvement, or other work identified in the Contract Documents.
- 1.16 Proposal** - The offer of the Bidder for the work when made out and submitted on the prescribed Proposal Form, properly signed and guaranteed if required.

1.17 Special Provisions - The special provisions are specific clauses setting forth conditions or requirements peculiar to the work and supplementary to the Standard Provisions and Technical Provisions.

1.18 Specifications - The directions, provisions and requirements contained in the District's Standard Specifications, including the Standard Provisions, Technical Provisions, and Special Provisions, and those incorporated by reference.

1.19 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.

1.20 Work - All the work specified, indicated, shown or contemplated in the Contract to construct the improvements, including all alterations, amendments or extensions thereto made by supplemental agreements or written orders of the Director.

SECTION 2

PROPOSAL REQUIREMENTS AND CONDITIONS

2.01 OBTAINING PLANS AND SPECIFICATIONS – The District’s Standard Specifications, Plans, and Drawings may be obtained at the location indicated on the Notice to Bidders.

2.02 CONTENTS OF PROPOSAL FORMS – Prospective bidders will be furnished proposal forms which describe the contemplated construction and, where appropriate, show the approximate estimate of the quantities of the various kinds of work to be performed or materials to be furnished, with a schedule of items for which bid prices are asked. The unit prices or lump sum amounts bid shall include full compensation for furnishing all labor, materials, tools, and equipment and doing all work complete in place as shown on the Drawings or stipulated in the Specifications for that particular item of work.

2.03 ESTIMATED QUANTITIES – The quantities given in the Proposal are approximate only, being given as a basis for the comparison of Proposals, and the District does not, expressly or by implication, agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the work, or to omit portions of the work, as may be deemed necessary or advisable. No allowance will be made for anticipated profit on work which is deleted or decreased.

2.04 EXAMINATION OF DRAWINGS, SPECIFICATIONS, AND SITE OF WORK – The Bidder shall examine carefully the site of the work contemplated and the Proposal, Drawings, and Specifications therefor. The submission of a Proposal will be conclusive evidence that the bidder has investigated and is fully aware of the conditions and difficulties to be encountered, of the character, quality and quantities of work to be performed and materials to be furnished, and of the requirements of the Proposal, Drawings, and Specifications; as to the nature and location of the work, the general and local conditions, particularly those bearing upon transportation, disposal, handling and storage of material, availability of labor, water, electric power, roads and uncertainties of weather, or similar physical conditions at the site; the conformation and conditions of the ground, the character and quality and quantity of surface and subsurface materials, including groundwater, to be encountered; the character of equipment and facilities needed preliminary to, and during the, prosecution of the work; and all other matters which can in any way affect the work or the cost thereof under this Contract. Any failure by the Contractor to acquaint themselves with all available information concerning these conditions will not relieve him/her from responsibility for estimating properly the difficulty or cost of successfully performing the work.

If there is any doubt as to the true meaning of any part of the Plans, Specifications, or other Contract Documents, or if discrepancies in, or omissions from, the Drawings or Specifications are found, a request should be made to the Director for an interpretation or correction thereof, which will be given in the form of addenda to all bidders, if time permits. Otherwise, in figuring the work, bidders shall consider that any discrepancies or conflict between Drawings and Specifications shall be governed by Article 5.17 of these Specifications.

No payment shall subsequently be made to the Contractor because of error on his/her part or of negligence or failure to acquaint himself/herself with the existing conditions, limitations, or features of the site or requirements of the contract documents; or by reason of any estimate, tests, or representations of any officer, employee or agent of the District.

Where investigation of subsurface conditions has been made by the District in respect to foundation or other design, bidders may inspect the records of the District as to such investigation, including

examination of samples and drill cores, if any. When logs of test borings showing a record of the data obtained by the District's investigation of subsurface conditions are made available, said logs represent only the opinion of the District as to the character of materials encountered in its test borings and are made available only for the convenience of bidders.

Investigations of subsurface conditions are made for the purpose of design, and the District assumes no responsibility whatever in respect to the sufficiency of test borings or accuracy of the log of test borings, of other preliminary investigations, or of the interpretation thereof. There is no guarantee expressed or implied that the conditions indicated are representative of those existing throughout the work, or any part of it, or that unforeseen developments may not occur.

Making such information available to bidders is not to be construed in any way as a waiver of the provisions of the first paragraph of this Article and bidders must satisfy themselves through their own investigations as to conditions to be encountered.

No information derived from such inspection of records or preliminary investigation made by the District, or from the Director, or from his/her assistants, or from the maps, Specifications, profiles, or Drawings will in any way relieve the Contractor from any risk or from properly fulfilling all the terms of the Contract. Records of such preliminary investigations as may have been made by the District may be inspected at the office of the Executive Director, 74 W. 6th Street, Gilroy, California 95020, or at such other locations as may be stated in the Notice to Contractors.

2.05 PROPOSAL FORM – The Proposal forms furnished by the District or its representatives, when filled out by the bidder and executed, shall be submitted as his/her Proposal. Neither the Proposal form nor any other portion of the Contract Documents or Specifications shall be detached therefrom. Proposals submitted on forms detached shall be disregarded. All Proposals should give the prices proposed, both in writing and in figures in the respective spaces provided, and shall be signed by the bidder, who should fill out all blanks in the Proposal form as therein required. In the event of a discrepancy between writing and figures, the writing shall prevail over the figures.

A copy of each addendum to the Specifications or Drawings shall be attached securely to the Specifications containing the Proposal (refer to Article 2.13).

2.06 QUERIES ON BIDDING – Questions regarding the Specifications or Drawings or any other portion of the Contract or any addenda thereto shall be directed to the Director, via email at sscvmd@gmail.com. No interpretation of the meaning of the Specifications, Drawings, or other pre-bid documents will be made to any bidder orally.

2.07 REJECTION OF PROPOSALS – Proposals may be rejected if they show any alterations of form, additions not called for, conditional bids, incomplete bids, erasures, or irregularities of any kind. Proposals in which the prices, in the opinion of the District, are unbalanced, may be rejected. When Proposals are signed by an agent, other than the officer or officers of a corporation authorized to sign contracts on its behalf, or a member of a partnership, a written authorization or Power of Attorney should be on file with the District prior to opening Proposals or submitted with the Proposal; otherwise, the Proposal may be rejected as irregular and unauthorized.

2.08 REMOVED

2.09 WITHDRAWAL OF PROPOSALS – Any Proposal may be withdrawn at any time prior to the time fixed in the Notice to Contractors for the opening of Proposals only by written request for the withdrawal of the Proposal filed with the Director. The request shall be executed by the bidder or his/her

duly authorized representative. The withdrawal of a Proposal does not prejudice the right of the bidder to file a new Proposal. This article does not authorize the withdrawal of any Proposal after the time fixed in the Notice to Contractors for the opening of Proposals.

2.10 PUBLIC OPENING OF PROPOSALS – Proposals will be opened and read publicly at the time and place indicated in the Notice to Contractors.

2.11 JOINT PROPOSALS – If two or more bidders desire to bid jointly on a single project or desire to combine their assets for so doing, they shall file an affidavit of joint venture with the District in the form approved by the District Attorney and such affidavit of joint venture will be valid only for the specified project for which it is filed. If such affidavit of joint venture is not filed as aforesaid and approved by the District prior to the time for opening Proposals on the specified project for which it is submitted, a joint proposal submitted by the same bidders may be disregarded.

2.12 DISQUALIFICATION OF BIDDERS – More than one Proposal form from an individual, firm, partnership, corporation, or a combination thereof under the same or different names will not be considered. If there is reason for believing that collusion exists among the bidders, none of the participants in such collusion will be considered for award for this Contract.

Contractors or subcontractors who are ineligible under Labor Code sections 1777.1 and 1777.7 are prohibited from working on the Project.

2.13 ADDENDUM – Addenda may be issued prior to opening of Proposals and shall become a part of the original Specifications and Drawings. The additions or changes contained in such addenda shall be considered by the bidder in preparation of his/her Proposal. These addenda will be sent to each prospective bidder at the address indicated in his/her application for a Proposal form. A copy of each addendum so issued shall be attached to the Specifications containing the Proposal submitted by the bidder to the District Clerk.

2.14 LIST OF SUBCONTRACTORS – The Contractor shall perform with his/her own organization and with workers under his/her immediate supervision work of a value not less than fifty percent (50%) of the value of all work embraced in the contract, except when certain items may be exempted by the Special Provisions from said fifty percent requirement.

In accordance with Public Contract Code sections 4100 *et seq.*, the Subletting and Subcontracting Fair Practices Act, each proposal shall have listed on the form provided with the Proposal, (a) the name, the location of the place of business, the California contractor license number, and public works contractor registration number issued pursuant to California Labor Code Section 1725.5 of each subcontractor who will perform work or labor or render service to the general contractor in or about the construction of the work or improvement in an amount in excess of one-half of one percent (0.5%) of the general contractor's total bid or \$10,000.00, whichever is greater, and, (b) the portion of the work which will be done by each such subcontractor.

If a Contractor fails to specify a subcontractor for any portion of the work to be performed under this contract in excess of one-half of one percent of the total bid, s/he agrees to perform that portion him/herself.

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 he or she has verified that all subcontractors used on this 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 as part of the Proposal.

A Contractor'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.

2.15 COMPETENCY OF BIDDER – The bidder shall be licensed under the applicable provisions of the Business and Professions Code of the State of California to do the type of work contemplated in the project, and shall be skilled and regularly engaged in the general class or type of work called for under this contract.

It is the intention to award a contract only to a bidder who furnishes satisfactory evidence that s/he has the requisite experience and ability and that s/he has sufficient capital, facilities, and plans to enable him/her to prosecute the work successfully and promptly, and to complete it within the time stated in the contract.

To determine the degree of responsibility to be credited to a bidder, any relevant evidence will be considered that the bidder, or personnel guaranteed to be employed in responsible charge of the work, has satisfactorily performed other contracts of like nature and magnitude or comparable difficulty at similar rates of progress.

2.16 RELIEF OF BIDDERS – Attention is directed to the provisions of Public Contract Code sections 5100 *et seq.*, which sections are incorporated herein by this reference, concerning relief of bidders and in particular to the requirement therein that if the bidder claims a mistake was made in his/her bid, the bidder shall give the District written notice within five (5) days after the opening of the bids of the alleged mistake, specifying in the notice in detail how the mistake occurred.

2.17 BID PROTESTS – Any contractor who unsuccessfully bids on a District contract, or any trade association representing workers who would have potentially been employed by such a contractor, may file a bid protest.

The bid protest shall be in writing and filed with the Director within five (5) days of the date of the District's written Notice of Intention to Award the bid. The Board of Directors shall hear the bid protest prior to award of the contract. The protesting party may protest the bid award for the District's or successful bidder's failure to comply with the requirements of the bid documents, or any provision of State law. The bid protest shall clearly set forth the basis for the bid protest.

Grounds not set forth in the written protest may not be considered by the Board of Directors at the bid protest hearing. The Board of Directors shall sustain a bid protest if the protesting party demonstrates by clear and convincing evidence that, as specified above, the District would act improperly in awarding the bid. The decision of the Board of Directors shall be final.

SECTION 3

AWARD AND EXECUTION OF CONTRACT

3.01 CONSIDERATION OF PROPOSALS – After the proposals have been opened and read, they will be checked for accuracy and compliance with these Specifications. If the unit price and the total amount named for any item do not agree, the unit price will be considered as representing the Bidder’s intention.

The right is reserved to reject any or all proposals; to waive an irregularity in a bid or bidding procedure; and to accept one schedule of a proposal and reject another, unless the bidder specifically stipulates to the contrary.

3.02 AWARD OF CONTRACT – The award of the Contract, if it is awarded, will be to the lowest responsible bidder whose Proposal complies with the requirements prescribed and who is appropriately licensed in accordance with law. Such award, if made, will be made within 30 days after the opening of the Proposals or as specified in the Proposal or Special Provisions. If the lowest responsible bidder refuses or fails to execute the Contract, the Board of Directors may award the Contract to the second lowest responsible bidder. Such award, if made, will be made within 45 days after the opening of the Proposals. If the second lowest responsible bidder refuses or fails to execute the Contract, the Board of Directors may award the Contract to the third lowest responsible bidder. Such award, if made, will be made within 60 days after the opening of the Proposals. The periods of time specified above within which the award of contract may be made shall be subject to extension for such further period as may be agreed upon in writing between the District and the bidder concerned.

All proposals will be compared on the basis of the District’s estimate of the quantities of work to be done.

3.03 REMOVED

3.04 CONTRACT BONDS – Prior to the execution of the Contract, the Contractor shall file with the District one or more surety bonds in the amounts and for the purpose noted below, duly executed by a solvent surety company satisfactory to the District, and (s)he shall pay all premiums and costs thereof and incidental thereto. The bonds shall contain a provision that the surety thereon waives the provisions of Section 2819 of the Civil Code of the State of California. Contractor and Surety shall warrant to the District that the Surety is licensed by the California Secretary of State to conduct business in the State of California and Surety shall provide proof of its authorization to conduct business in the State of California.

Each bond must be signed by both the Contractor and the Sureties.

The “**Bond for Labor and Material**” shall be in an amount of 100 percent of the contract price as determined from the prices in the Proposal form, and shall inure to the benefit of persons performing labor or furnishings materials in connection with the work of the proposed contract. This bond shall be maintained in full force and effect until all work under the Contract is completed and accepted by the District, and until all claims for materials and labor have been paid.

The “**Bond for Faithful Performance**” shall be in an amount of 100 percent of the contract price as determined from the prices in the Proposal form, and shall be so conditioned as to insure the faithful

performance by the Contractor of all work under the Contract. It shall also ensure the replacing of, or making acceptable, any defective materials or faulty work.

The Bond for Faithful Performance shall remain in effect to guarantee the repair and replacement of defective equipment, materials and work, discovered within one (1) year, after final payment has been accepted by the Contractor and the payment to the District of all damages sustained by it on account of such defects, discovered within one (1) year, or in lieu thereof, a bond equal to ten (10) percent of the full amount of the contract, may be substituted for the faithful performance bond upon completion and final acceptance and final payment for the work performed under the contract, which shall remain in effect for a period of one (1) year to guarantee the repair and replacement and payment of damage. In all respects, the substitute bond shall satisfy the requirements and conditions of the original Faithful Performance Bond.

Should any surety or sureties be deemed unsatisfactory at any time by the District, notice will be given the Contractor to that effect, and s(he) shall forthwith substitute a new surety or sureties satisfactory to the District. No further payment shall be deemed due or will be made under this Contract until the new sureties shall qualify and be accepted by the District.

All alterations, extensions of time, extra and additional work, and other changes authorized by these Specifications or any part of the Contract may be made without securing the consent of the surety or sureties on the contract bonds.

3.05 EXECUTION OF CONTRACT – The Contract shall be signed by the successful bidder and returned, together with the contract bonds, within twenty days, not including Sundays and legal holidays, after the bidder has received the Contract for execution or as specified in the proposal or Special Provisions.

3.06 FAILURE TO EXECUTE CONTRACT – Failure of the lowest responsible bidder, the second lowest responsible bidder, or the third lowest responsible bidder to execute the Contract and file acceptable bonds as provided herein within twenty days or as specified in the Proposal form or Special Provisions, not including Sundays and legal holidays, after such bidder has received the Contract for execution shall be just cause for the annulment of the award and forfeiture of the proposed guarantee.

3.07 CONTRACTOR'S INSURANCE

3.07.01 General - Without limiting the responsibility of the Contractor for damages as set forth in Article 7.18, the Contractor must obtain all insurance required under this Article, in a form approved by the District, and Contractor must not allow any Subcontractor to commence work on any Subcontract until all insurance required of Contractor has been likewise obtained by the Subcontractor, and such insurance is approved by the District. Approval of the insurance by District shall not relieve or decrease the liability of Contractor hereunder. Contractor shall procure and maintain for the duration of the Contract, and at least 5 years thereafter, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

3.07.02 Minimum Scope and Limit of Insurance - Without limiting any of the other obligations or liability of Contractor, Contractor shall provide and maintain, until the work is completed and accepted by the District, the following minimum insurance coverages, unless otherwise specified in the particular specifications.

- a. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Such CGL shall include, or be endorsed to include, the following:
 - i. Cross Liability Coverage
 - ii. Blanket Contractual Liability Coverage
 - iii. Contractor's Protective Liability Coverage
 - iv. Products and Completed Operations Coverage
 - v. Broad Form Property Damage Coverage
 - vi. Explosion, Collapse and Underground Property Damage Liability Coverage
- b. **Workers' Compensation Insurance** as required by the State of California, with Statutory Limits. The Contractor and any subcontractors engaged in performance of the Work must secure payment of workers compensation in accordance with California Labor Code Section 3700 and other applicable law. The Contractor must verify that all Subcontractors comply with this requirement.
- c. **Employers' Liability Insurance** with a limit of no less than \$1,000,000 per accident for bodily injury or disease.
- d. **Automobile Liability Insurance** coverage all automobiles, trucks, tractors, trailers, motorcycles, or other automotive equipment, whether owned or rented by Contractor or owned by employees of Contractor. Such insurance shall be on Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than \$1,000,000 per accident for bodily injury and property damage.
- e. **Professional Liability** (Error's & Omissions), with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.
- f. **Contractors Pollution Legal Liability and/or Asbestos Legal Liability** with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

3.07.03

Insurance Provisions - The insurance provided by the above insurance policies shall name as additional insured the District, its officer, agents, and employees and shall be primary insurance to the full limits of liability stated above to said additional insured. If said additional insured have other insurance against the loss covered by said policy, that other insurance shall be excess insurance only. The comprehensive general liability policy shall be endorsed to provide insurance to said additional insured with respect to omissions and supervisory acts or omissions, including passive negligence with respect to said work, and shall not be subject to reduction or cancellation without thirty (30) days prior written notice to the District.

SECTION 4
SCOPE OF WORK

4.01 WORK TO BE DONE – The work to be done consists of furnishing all labor, methods or processes, implements, tools, machinery, construction equipment, materials of any kind, and installed manufactured equipment, except as otherwise specified herein to be furnished by the District or from sources provided by the District, which are required to construct in a good and professional manner all the work herein provided for.

4.02 MAINTENANCE AND CLEAN-UP – Throughout the construction period, the Contractor shall keep the site of the work in a neat and clean condition, shall dispose of any surplus materials in an approved manner off the site, keep debris out of District facilities and surrounding areas, and maintain proper housekeeping practices to the satisfaction of the Director.

Upon completion of the work, and prior to requesting final inspection, the Contractor shall thoroughly clean the site of the work of all rubbish, excess materials, falsework, temporary structures, and equipment, and all portions of the work shall be left in a neat and orderly condition. The final inspection, acceptance, and final payment will not be made until this has been accomplished.

4.03 CHANGES & CHANGE ORDERS – The District may increase or decrease quantities of work to be done under the Contract, make revisions to the Drawings or Specifications, or require the performance of extra work and furnishing of materials therefor by the Contractor as the District requires for the proper completion or construction of the whole work contemplated. The District, at its option, may furnish said materials.

When alterations in quantities of work for which unit prices are shown in the proposal are ordered and performed, the adjustment in the contract amount shall be determined on the basis of such unit prices for the actual quantities of work done. Adjustments, if any, in the amount to be paid the Contractor by reason of any other modifications of the work as set forth in a contract change order, shall be determined by one or more of the following methods:

- a. **Lump Sum Price**. By an acceptable lump-sum proposal from the Contractor. Said proposal shall be based on a cost estimate as to materials, equipment, and labor, to which total may be added a maximum of 15 percent for overhead, profit, and all other expenses; this 15 percent limitation shall apply for work done directly by the Contractor's organization or by his/her subcontractors, and shall be added only once.
- b. **Unit Prices**. By unit prices fixed by agreement between the District and the Contractor.
- c. **Force Account**. By ordering the Contractor to proceed with the work and to keep and present in such form as the Director may order, a correct account of the cost of the change, together with all vouchers therefor.

The changes will be set forth in written Contract Change Orders which specify the work to be done in connection with the changes, the basis of compensation for the work, and any adjustments of contract time. Such Change Orders shall be approved by the Director.

Upon receipt of an approved Contract Change Order, or of a written authorization from the Director setting forth a description of the change and agreed upon changes in contract price, the Contractor shall

proceed with the work so ordered. The Contractor may request the issuance of Change Orders. In the absence of an approved Contract Change Order or written authorization, the Contractor shall not be entitled to payment for any changed or extra work or any adjustment of Contract time.

When the changes increase or decrease the cost of the work, an adjustment of the Contract price will be made as set forth in the Change Order. At the option of the District, the work which is changed may be paid for on the basis of force account.

New and unforeseen items of work will be classed as extra work when the item cannot be covered by any of the various items or combination of items for which there is a bid price. The Contractor shall do such work and furnish such materials and equipment as may be required in writing by Director, but shall do no extra work except upon written order from the Director, and in the absence of such written order, (s)he shall not be entitled to payment for such extra work. All bills for extra work done in any month shall be filed in writing with the Director before the fifteenth of the following month. For such extra work, the Contractor shall receive compensation at the prices previously agreed upon in writing, or upon a failure to agree upon prices, (s)he shall be paid on force account.

If the work is done on force account, compensation shall be in accordance with Article 9.04 of these Specifications. The District reserves the right to furnish any material deemed expedient and the Contractor shall have no claim for profit on the cost of such materials. All Contractors shall have no claim for profit on the cost of such materials. All extra work shall be adjusted daily upon report sheets furnished to the Director by the Contractor and signed by both parties, which daily reports shall thereafter be considered the true record of extra work done.

4.04 PROTESTS – If the Contractor considers any work demanded of him/her to be outside of the requirements of the Contract, or considers any record or ruling or act or omissions of the Director to be unfair, s/he shall immediately, upon such work being demanded, or such record or ruling being made, ask in writing for written instructions or decision, whereupon (s)he shall proceed without delay to perform the work or to conform to the record or ruling, within 30 days after the date of receipt of the written instruction or decision, (s)he shall file a written protest with the Director stating clearly and in detail the basis of his/her protest. Except for such protests as are made of record in the manner herein specified and within the time limit stated, the records, rulings, instructions, decisions, and acts or omissions of the Director shall be final and conclusive. Instructions and decisions of the Director contained in letters transmitting Drawings to the Contractor shall be considered as written instructions and decisions subject to protest in the manner herein described.

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

Full payment for dust control shall be included in the unit price bid for other items of work and no additional allowance or direct payment will be made therefor.

SECTION 5

CONTROL OF WORK

5.01 AUTHORITY OF DIRECTOR – The Director shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate or progress of the work; all questions which may arise as to the interpretation of the Drawings and Specifications; and all questions as to the acceptable fulfillment of the Contract on the part of the Contractor. His/her decision shall be final and s/he shall have authority to enforce and make effective such decision and orders which the Contractor fails to carry out promptly.

5.02 DRAWINGS TO BE FURNISHED BY THE CONTRACTOR – The Drawings listed in the Specifications shall be supplemented by the Contractor with such working drawings as may be required for the prosecution of the work and approval of equipment. Such data may include shop detail drawings, reinforcing steel details, fabrication drawings, falsework and formwork drawings, pipe layouts and similar classes of drawings, which shall be favorably reviewed by the Director before any work involving these drawings is performed. No change shall be made by the Contractor in any working drawing after it has been favorably reviewed by the Director. Drawings shall contain all required detailed information of reasonable scale with enough views to clearly show the work to be done or the item to be furnished and shall be properly checked.

Working drawings will be subject to approval insofar as the details affect the character of the finished work, but details of design will be left to the Contractor who shall be responsible for successful construction of the work and operation of the equipment.

It is expressly understood, however, that approval of the Contractor's working drawing shall not relieve the Contractor of any responsibility for accuracy of dimensions and details, or for mutual agreement of dimensions and details. It is mutually agreed, that the Contractor shall be responsible for agreement and conformity of his/her working Drawings and Specifications.

The sequence of submission of working drawings shall be such that all information is available to the Director for review of each drawing as it is received. A minimum of five prints of each working drawing shall be submitted. Three prints will be retained and the balance returned within 20 calendar days with the Director's action indicated thereon. The Contractor shall make any necessary corrections and revisions to returned Drawings and shall resubmit the Drawings in the same routine as before within 20 calendar days after receipt.

Responsibility will be upon the Contractor to furnish Drawings in sufficient time for approval action including resubmittal, without delaying construction.

The cost of furnishing all working Drawings shall be included in the Contract prices for work to which the Drawings are appurtenant.

5.03 DRAWINGS AND DATA TO BE FURNISHED BY THE DISTRICT – The District may issue supplemental Drawings for the construction work under the Contract. These drawings will show additional details as required for construction purposes. Installation instructions for District furnished materials will be furnished if required.

5.04 CONFORMITY WITH DRAWINGS AND ALLOWABLE DEVIATIONS – Finished work in all cases shall conform with the lines, grades, cross sections, and dimensions shown on the approved

Drawings furnished by the District. Deviations from the drawings as may be required by the exigencies of construction will be determined by the Director.

5.05 MAINTENANCE & OPERATION MANUALS – For use in the subsequent operation, the Contractor shall furnish two copies of maintenance and operation instructions supplied by the manufacturer for all equipment items. They shall be bound and suitably indexed in heavy, loose leaf binders.

5.06 SUPERINTENDENCE – The Contractor shall designate in writing before starting work, an authorized representative who shall have complete authority to represent and act for the Contractor. Where the Contractor is comprised of two or more persons, partnerships or corporations, functioning on a joint venture basis, said Contractor shall designate in writing to the Director the name of their authorized representative who shall have full authority to direct the work and to whom orders will be given by the Director, to be received and obeyed by the Contractor. Said authorized representative of the Contractor shall normally be present at the site of the work at all time while work is suspended, arrangements acceptable to the Director shall be made for any emergency work which may be required.

Whenever the Contractor or his/her authorized representative is not present on any part of the work where it may be desired to give direction, orders will be given by the Director, which shall be received and obeyed by the Superintendent or foreman or authorized representative who may have charge of the particular work in reference to which the orders are given. Any order given by the Director, which shall be received and obeyed by the Superintendent or foreman or authorized representative who may have charge of the particular work in reference to which the orders are given. Any order given by the director, not otherwise required by the Specifications to be in writing, will, on request of the Contractor, be given or confirmed by the Director in writing.

5.07 INSPECTION – The Director and his/her representatives shall at all times have access to the work during its construction, and shall be furnished with every reasonable facility for ascertaining that the materials and the work are in accordance with the requirements and intentions of the Drawings and Specifications. All work done and all materials furnished shall be subject to his inspection and approval. In addition, Contractor shall arrange for any and all inspections required by the City of Gilroy.

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

The day-to-day inspection performed by the various inspectors employed by the District shall not constitute approval or ratification of work improperly done by the Contractor. The Director is the only person authorized to recommend acceptance or rejection of work and materials.

The presence or absence of an inspector during performance of the work shall not relieve the Contractor of any of his/her obligations to fulfill his/her Contract as prescribed. It shall be the duty of the Contractor to see that the provisions of these Specifications are complied with in detail, irrespective of the inspection given the work during its progress by the Director or his representatives. Any plan or method suggested to the Contractor by the Director or an inspector, but not specified or required, if adopted or followed in whole or in part, shall be used at the risk and responsibility of the Contractor; and the District and the Director will assume no responsibility therefor.

Defective work shall be made good, and unsuitable materials may be rejected notwithstanding that such defective work or unsuitable materials have been previously inspected by the Director or that payment therefor has been included in the progress estimate.

Projects financed in whole or part with Federal or State funds shall be subject to inspection at all times by the Federal or State Agency involved.

5.08 REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORKS – All work which has been rejected shall be remedied, or removed and replaced by the Contractor in an acceptable manner at no additional cost to the District. Any work done beyond the lines and grades shown on the Drawings or established by the District, or any extra work done without written authority, will be considered as unauthorized and will not be paid for. Work so done may be ordered, remedied, removed, or replaced, in the District's sole discretion.

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

If any portion of the work done or materials furnished under the contract shall prove defective or not in accordance with the specifications and contract drawings, and if the imperfection in the same shall not be of sufficient magnitude or importance to make the work dangerous or undesirable, the Director shall have the right and authority to retain the work instead of requiring it to be removed and reconstructed, but s/he shall make such deductions therefore in the payment due or to become due the Contractor as may be just and reasonable.

5.09 CONSTRUCTION EQUIPMENT AND PLANTS – Only equipment and plants suited to produce the quality of work required will be permitted to operate on the work. Plants shall be designed and constructed in accordance with general practice for such equipment and shall be of sufficient capacity and of such character to ensure the production of sufficient material to carry the work to completion within the time limit.

The Contractor shall provide adequate and suitable equipment and plants to meet the above requirements; and, when ordered by the Director, shall remove unsuitable equipment from the work and discontinue the operation of unsatisfactory plant.

Each machine or unit of equipment shall be operated by a person experienced in handling the particular make of machine or unit of equipment in use, and shall not be operated at a speed or rate of production in excess of that recommended by the manufacturer.

The Contractor shall identify each piece of equipment, other than hand tools, by means of an identifying number plainly stenciled or stamped on the equipment at a conspicuous location. In addition, the make, model number and empty gross weight of each unit of compacting equipment shall be plainly stamped or stenciled in a conspicuous place on the unit. The gross weight shall be either the manufacturer's rated weight or the scale weight.

5.10 ALTERNATIVE CONSTRUCTION EQUIPMENT – While certain of these Specifications may provide that equipment of a particular size and type is to be used to perform portions of the work, it is to be understood that the development and use of new or improved equipment is to be encouraged.

The Contractor may request, in writing, permission from the Director to use equipment of a different size or type in place of the equipment specified.

The Director, before considering or granting such request, may require the Contractor to furnish, at their expense, evidence satisfactory to the Director that the equipment proposed for use by the Contractor is capable of producing work equal to, or better than, that which can be produced by the equipment specified.

If such permission is granted by the Director, it shall be understood that such permission is granted for the purpose of testing the quality of work actually produced by such equipment and is subject to continuous attainment of results which, in the opinion of the Director, are equal to, or better than that which can be obtained with the equipment specified. The Director shall have the right to withdraw such permission at any time the Director determines that the alternative equipment is not producing work that is equal, in all respects, to that which can be produced by the equipment specified. Upon withdrawal of such permission by the Director, the Contractor will be required to use the equipment originally specified and shall, in accordance with the direction of the Director, remove and dispose of or otherwise remedy, at his/her expense, any defective or unsatisfactory work produced with the alternative equipment.

Neither the District nor the Contractor shall have any claim against the other for either the withholding or the granting of permission to use alternative equipment, or for the withdrawal of such permission.

Permission to use alternative equipment in place of equipment specified will only be granted where such equipment is new or improved and its use is deemed by the Director to be in furtherance of the purposes of this Article. The approval for use of particular equipment on any project shall in no way be considered as an approval of the use of such equipment on any other project.

Nothing in this Article shall relieve the Contractor of his/her responsibility for furnishing materials or producing finished work of the quality specified in these Specifications.

5.11 USE OF COMPLETED PORTIONS – The District shall have the right at any time during the progress of the work, to take over and place in service any completed or partially completed portions of the work, notwithstanding the fact that time for completion of the entire work or such portions may not have expired; but such taking possessions thereof shall not be deemed an acceptance of any other portions of the work, nor work on those portions not completed in accordance with the contract documents.

5.12 LEGAL ADDRESS OF THE CONTRACTOR – Both the address given in the proposal and Contractor’s office in the vicinity of the work are hereby designated as places to either of which drawings, letters, notices, or other articles of communication to the Contractor may be mailed or delivered. The mailing or delivery at either of these places shall be deemed sufficient notice thereof upon the Contractor. Nothing herein contained shall be deemed to preclude the service of any drawing, letter, notice, article or communication to or upon the Contractor or his/her representative personally. The address named in the proposal may be changed at any time by written notice, from the Contractor to the District.

5.13 FINAL INSPECTION – When the work authorized by the Contract has been completed, the Director will make the final inspection.

5.14 ACCEPTANCE OF CONTRACT – When the Director has made the final inspection in accordance with these Specifications and determines that the Contract has been completed in all respects in accordance with the Drawings and Specifications, the Director will recommend that the Board of Directors formally accept the Work of Improvement.

5.15 COORDINATION OF SPECIFICATIONS AND DRAWINGS – The Standard Provisions, Technical Provisions, Special Provisions, Drawings, Contract Change Orders, and all supplementary documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of conflict, the following shall be the rules of interpretation:

Drawings shall govern over the Standard Provisions; the Technical Provisions shall govern over both the Standard Provisions and the Drawings; the Special Provisions shall govern over the Technical Provisions, the Standard Provisions and the Drawings.

Detail Drawings shall govern over general Drawings. Figures written on Drawings shall govern over the drawings themselves.

5.16 INTERPRETATION OF SPECIFICATIONS AND DRAWINGS – The work herein provided for is to be done in accordance with the Specifications and Drawings on file in the Director’s office. All corrections of readily apparent errors or omissions in Specifications or Drawings may be made by the Director when such corrections are necessary for the proper fulfillment of their intention as construed by him/her. The misplacement, addition or omission of any work, letter, figure or punctuation mark which has no substantive legal effect will in no way change the due spirit, intent, or meaning of these Specifications.

Any part of the work which is not mentioned in these Specifications but is shown on the Drawings, or any part of the work not shown on the Drawings but described in these Specifications, or any part not shown on the Drawings or described in these Specifications but which is reasonably or ordinarily implied by either, shall be furnished and installed by the Contractor as if fully described in these Specifications and shown upon the Drawings.

Should it appear that the work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Specifications or on the Drawings, or if the Contractor discovers any discrepancies during the course of the work between the Contract Drawings and conditions in the field, or any errors or omissions in the Contract Drawings, the Specifications, or in the layout given by stakes, points, or instructions, the bidder or Contractor shall apply in writing to the Director for such further explanations as may be necessary and shall conform to them as part of the Contract. In the event of any doubt or questions arising respecting the true meaning of the Specifications or Drawings, reference shall be made in writing to the Director, whose decision thereon shall be final. Any work done after such discovery until authorized by the Director, will be done at the Contractor’s risk.

5.17 STATE SPECIFICATIONS – Where specifically required and referenced, the work set forth in these Specifications shall be accomplished in accordance with appropriate provisions of the State Specifications with most recent revisions insofar as they apply. Said Specifications are herein referred to as the “State Specifications” and are, by reference, made a part of these Specifications the same as though as set out in full. In the event of conflict between the State Specifications and the Standard, Special, or Technical Provisions of the District’s Specifications or the Drawings, the District’s Specifications and Drawings shall apply.

5.18 REASONABLENESS OF INTERPRETATIONS – All interpretations of these Specifications and the Drawings by the District and decisions made thereon by the Director will not be arbitrary, capricious, or unreasonable.

5.19 POTENTIAL CLAIMS AND DISPUTE RESOLUTION – No claims for extra work, materials, labor, equipment, or costs shall be considered or permitted if Contractor fails to timely notify the District

of the claim and thereafter diligently pursue and exhaust all the administrative remedies and processes set forth in the Contract Documents and State Specifications, including but not limited to Change Orders, Differing Site Conditions, Initial Potential Claim Records, Supplemental Potential Claim Records, and Full and Final Potential Claims Records. Contractor must exhaust all such processes in order to preserve and pursue any claim, and failure to do so shall be deemed a waiver of the claim.

A. In accordance with California Public Contract Code Section 20104.2, presuming Contractor has diligently pursued and exhausted the administrative procedures of the Contract, the following procedures apply to claims of \$375,000 or less between the Contractor and the District:

1. The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.
2. For claims of less than fifty thousand dollars (\$50,000), the District shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the District may have against the Contractor.
 - i. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the District and the Contractor.
 - ii. The District's written response to the claim, as further documented, shall be submitted to the Contractor within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater.
3. For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the District shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the District may have against the Contractor.
 - i. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the District and the Contractor.
 - ii. The District's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

4. If the Contractor disputes the District's written response, or the District fails to respond within the time prescribed, the Contractor may so notify the District, in writing, either within 15 days of receipt of the District's response or within 15 days of the District's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the District shall schedule a meet and confer conference within 30 days for settlement of the dispute.
 5. Following the meet and confer conference, if the claim or any portion remains in dispute, the 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 disputed 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 subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.
 6. This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by 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.
- B. In accordance with California 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:
1. Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court 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.
 2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.
 - i. 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.

- ii. 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.

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

C. In accordance with California Public Contract Code Section 20104.6:

1. 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.
2. 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.

D. Claim for money or damages required. For any all claim not covered the procedures set forth in Article 5.20, 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 subdivision (a) until the time that claim is denied by the District, including any period of time utilized by the meet and confer process.

SECTION 6

CONTROL OF MATERIALS AND INSTALLED EQUIPMENT

6.01 FURNISHING AND QUALITY OF MATERIALS & EQUIPMENT – The Contractor shall furnish all materials and equipment required to complete the work, except materials or equipment that are designated in the Special Provisions to be furnished by the District or materials furnished by the District in accordance with Article 4.03.

Notwithstanding any prior inspection or approval, only materials and equipment conforming to the requirements of the Specifications shall be incorporated in the work.

The materials and equipment furnished and used shall be new and unused and of the highest commercial quality currently available. The materials and equipment shall be manufactured, handled, and used in a workmanlike manner to ensure completed work in accordance with the Drawings and Specifications.

The Contractor shall be required to furnish a written guaranty covering certain items of material and equipment for varying periods of time from the date of acceptance of the Work of Improvement. The material and equipment to be guaranteed, the form of guaranty, and the time limit of the guaranty are as specified in Article 9.09. Said guaranty shall be signed and delivered to the Director before Acceptance of the Project. Upon completion of the Work of Improvement, the amounts of the Contract bonds required in Article 3.04 may be reduced to conform to the total amount of the Contract bid prices for the items to be guaranteed and this amount shall continue in full force and effect for the duration of the guaranty period.

6.02 SOURCE OF MATERIAL AND EQUIPMENT - The Contractor shall furnish a list of his/her sources of materials and equipment to the Director. The list shall be furnished on a District form and shall be furnished to the Director in sufficient time to permit proper inspection and testing of materials and equipment to be furnished from such listed sources in advance of their use. The Contractor shall furnish without charge such samples as may be required. Inspection and tests will be made and reports rendered, but it is understood that such inspection and tests shall not be considered as a guarantee of acceptance of any material or equipment which may be delivered later for incorporation in the work. No equipment or materials which, after approval, have in any way become unfit for use, shall be used in the work.

The Contractor shall submit a copy of approval data for the mechanical and electrical materials, and equipment proposed for installation. The data shall be submitted in the same routine as prescribed for working drawings in Article 5.02. Approval data shall consist of complete material and equipment lists accompanied by catalog data sheets, cuts, performance curves, diagrams or similar descriptive material. Material and equipment lists shall give, in each case, the name of the manufacturer, trade name, catalog reference, size, finish, and all other pertinent data. It is intended that approval data should not include such materials as small pipe and small pipe fittings, conduit and conduit fittings, or tubing. Data submitted as specified herein for each major subdivision of mechanical and electrical work shall be bound together under a hard cover, provided with a complete index, and properly identified on the cover. Individual sheets shall be easily removable without tearing or other damage. The Contractor shall furnish operation and maintenance manuals or instructions if required by the Technical Provisions.

At the option of the Director, the source of supply of each of the materials shall be approved by him/her before the delivery is started. All materials proposed for use may be inspected or tested at any time

during their preparation and use. After trial, if it is found that sources of supply which appeared satisfactory do not furnish a uniform product, or if the product from any source proves unacceptable at any time, the Contractor shall furnish approved material from other sources.

6.03 STORAGE OF MATERIALS AND EQUIPMENT - Materials and equipment shall be so stored as to ensure the preservation of their quality and fitness for the work. They shall be placed under cover when directed and shall be sorted in a manner that will facilitate prompt inspection. Unless specifically authorized by the Director, no materials shall be stored overnight upon any public right of way within the District.

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

6.05 TRADE NAMES AND ALTERNATIVES - For convenience in designation on the Drawings or in the Specifications, certain equipment or materials to be incorporated in the work may be designated under a trade name or the name of a manufacturer and his/her catalog information. The use of alternative equipment or material which is of equal quality and of the required characteristics for the purpose intended will be permitted, subject to the following requirements:

The burden of proof as to the comparative quality and suitability of alternative equipment or materials shall be upon the Contractor and s/he shall furnish, at their own expense, six copies of complete description, information and performance data showing the quality of the materials or equipment offered to those specified, and such other necessary or related information as may be required by the Director. The Director will be the sole judge as to the comparative quality and suitability of alternative equipment or materials and this decision shall be final. The Contractor, pursuant to Public Contract Code, Section 3400 et seq., shall have at least 35 days after award of the Contract for submission of data substantiating a request for a substitution of "or equal" item.

6.06 TESTING MATERIALS - Unless otherwise specified in the Special Provisions or Technical Provisions called for on the drawings, all tests of materials and work, for determining compliance with requirement, shall be performed in accordance with the methods in use by the laboratory of the State Department of Transportation or by nationally recognized testing organizations, at a laboratory approved by the Director.

Whenever a reference is made to a specification or test method either of the American Society of Testing Materials, the American Water Works Association, or any other authority, and the number accompanying the specification or test method representing the year of its acceptance is omitted, the reference shall mean the specification or test method in effect on the date of the Notice to Contractors.

Whenever a specification or test method of the American Society for Testing Materials, the American Water Works Association, or any other authority, includes a test procedure or test requirements, the Contractor shall submit two copies of certified test results, unless the requirement therefore is waived. No material will be accepted until these data have been passed upon by the Director and accepted.

Samples of all materials entering into the work shall be furnished by the Contractor without charge, when requested by the Director.

Materials may be tested at any time during progress of the work.

6.07 PLANT INSPECTION - Materials and equipment which become a part of the completed work will be subject to inspection at the place of production or manufacture, at the shipping point, or at the site of the work. Materials and equipment requiring inspection at the place of production or manufacture will be designated by the Director. Where plant inspection is so designated, the Director shall be given 14 days advance notice of the start of manufacture or production. The Contractor's purchase orders for materials and equipment for which plant inspection has been designated by the Director shall bear a suitable notation advising suppliers and subcontractors of inspection requirements.

The Director or an authorized representative shall have free entry at all times to such parts of the plant as concerns the manufacture or production of materials and equipment for the District. Adequate facilities shall be furnished free of charge to make the necessary inspection.

The District assumes no obligation to inspect material or equipment at the place of manufacture or production, or at the shipping point.

6.08 DISTRICT FURNISHED MATERIALS - Materials furnished by the District will be available at locations designated in the Special Provisions. They shall be loaded, unloaded and hauled to the site of the work by the Contractor at his\her expense. The Contractor shall be held responsible for all materials furnished to him\her, and s\he shall pay all demurrage and storage charges. The cost of handling and placing District furnished material shall be considered as included in the price paid for the Contract item involving such District furnished material.

SECTION 7

LEGAL RELATIONS AND RESPONSIBILITY

7.01 LAWS TO BE OBSERVED – The Contractor shall remain fully informed of all existing and future State and Federal laws and County and Municipal ordinances and regulations which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. S\he shall at all times observe and comply with, and shall cause all his/her agents and employees to observe and comply with, all such applicable existing and future laws, ordinances, regulations, orders and decrees of bodies or tribunals having any jurisdiction of authority over the work; and shall protect and indemnify the District, the Board of Directors, the Director and Consulting Engineer, if any, and all of its and their officers and agents and servants against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by him or herself or his/her employees. If any discrepancy or inconsistency is discovered in the Drawings, Specifications, or Contract for the work in relation to any such law, ordinance, regulation order, or decree, the Contractor shall forthwith report the same to the Director in writing.

7.02 LABOR DISCRIMINATION – Attention is directed to the following sections of the Labor Code:

1735. No discrimination shall be made in the employment of persons upon Public Works because of race, color, national origin or ancestry, or religion of such persons and every Contractor for Public Works violating this section is subject to all the penalties imposed for a violation of this chapter.

1420. It shall be unlawful employment practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, or ancestry of any person, to refuse to hire or employ him/her or to bar or to discharge from employment such person, or to discriminate against such person in compensation or in terms, conditions or privileges of employment.

Contractor agrees to abide by all of the foregoing statutes, regulations, ordinances and resolutions.

7.03 REMOVED.

7.04 PREVAILING WAGES, APPRENTICESHIP, PAYROLL RECORDS – In accordance with California 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 in the Public Works Department and shall be made available on request. The Contractor shall cause a copy of these wage rates to be posted at each job site. 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. These rates are set forth in the Notice to Contractors and excludes contracts for projects of \$25,000 or less for construction work, or projects of \$15,000 or less for alteration, demolition, repair, or maintenance work.

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.

In accordance with California Labor Code Section 1775, the Contractor and any Subcontractors engaged in performance of the Work shall forfeit 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:

1. 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 California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
2. 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.
3. 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.
4. 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 California Labor Code Section 1813.

In accordance with California 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 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 California 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 California Labor Code Section 1776. Contractor and their subcontractors shall furnish the payroll records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.

The work of installing, assembling, repairing or reconditioning, or other work of any nature on machinery, equipment, or tools used in or upon the work shall be considered a part of the work to be performed

under the Contract any laborers, workers, or mechanics working on such machinery, equipment, or tools, shall be subject to all of the requirements relating to labor set forth in the Contract.

The construction, erection, and operation of material production, proportioning, or mixing plants from which material is used wholly on the Contract or on contracts under the supervision of the District, shall be considered a part of the work to be performed under the Contract and any laborers, workers, or mechanics working on such plants shall be subject to all of the requirements relating to labor set forth in the Contract.

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.

7.05 HOURS OF LABOR – Eight hours labor constitutes a legal day's work. The Contractor shall forfeit as a penalty to the District up to \$25 for each worker employed in the execution of the Contract by the Contractor or by any subcontractor for each day during which such worker is required or permitted to labor more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of Labor Code Sections 1810 to 1815, inclusive, except as provided for under Labor Code Section 1815.

7.06 APPRENTICES – The Contractor's attention is directed to the provisions of 1770 *et seq.* of the Labor Code concerning the employment of apprentices by the Contractor or any Subcontractor under him\her.

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

- A. When unemployment in the area of coverage by the Joint Apprenticeship committee has exceeded an average of 15 percent in the 3 months prior to the request for certificate,
- B. When the number of apprentices in training in the area exceeds a ratio of one to five,
- C. When the trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis statewide or locally, or
- D. When assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if (s)he employs registered apprentices or journeymen in any apprenticeship trade on such contracts and if other Contractors on the Public Works site are making such contributions.

The Contractor and any subcontractor under him/her shall comply with the requirements of Sections 1777.5 and 1777.6 in the employment of apprentices.

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.

7.07 PERMITS AND LICENSES – The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work, except as specifically provided otherwise in the Special Provisions or Technical Provisions.

7.08 PATENTS AND COPYRIGHTS – The Contractor shall assume all costs arising from the use of, and shall indemnify, defend, hold harmless, and save the District and the Council, its officers, agents, and employees, harmless from liability of any nature and kind, including costs and expenses, for or on account of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article, equipment, device, or appliance manufactured, furnished, or used by him/her in the performance of the Contract, including their use by the District, unless otherwise specifically stipulated in the Specifications.

7.09 SANITARY FACILITIES – The Contractor shall conform to the rules and regulations pertaining to sanitary provisions as established by the State of California, the County of Santa Clara and the District, as may be applicable.

7.10 PUBLIC SAFETY – 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 California 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 California 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.

Furthermore, the Contractor shall, at his/her own expense, furnish, erect and maintain such fences, barriers, lights, bridges, and signs and provide such flaggers and guards as are necessary to give adequate warning to the public of the construction and of any dangerous conditions to be encountered as a result thereof.

No material or equipment shall be stored where it will interfere with the safe passage of public traffic, and at the end of each day's work and at other times when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the roadway open for use by public traffic. Spillage resulting from hauling operations along or across any public traveled way shall be removed promptly.

Whenever the Contractor's operations require one-way traffic or creates a condition hazardous to the public traffic, s\he shall provide and station competent flaggers whose sole duties shall consist of directing the movement of public traffic through or around the work.

7.11 ACCIDENT PREVENTION – The Contractor shall comply with all pertinent safety orders of the State of California, Department of Industrial Relations, Division of Industrial Safety, and U.S. Department of Labor, OSHA, and will also take or cause to be taken such additional measures as may be necessary for the prevention of accidents.

Prior to commencement of work, the Contractor shall (1) submit in writing the proposals for effectuating his/her provisions for accident prevention, and (2) meet in conference with the Director to discuss and develop mutual understandings relative to administration of an overall safety program.

During the performance of work under the Contract, the Contractor shall institute controls and procedures for the control and safety of persons visiting the job site.

The Contractor shall maintain an accurate record of, and shall report to, the Director in writing, exposure data and all accidents resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies or equipment incident to work performed under the Contract.

The Director will notify the Contractor of any noncompliance with the foregoing provisions. The Contractor shall after receipt of such notice, immediately take corrective action. If the Contractor fails or refuses to comply immediately, the matter will be referred to the proper authority. No part of the time lost due to any stop order issued by proper authority shall be made the subject or claim for extension of time for extra costs or damages by the Contractor.

Compliance with the provisions of this Article by subcontractors will be the responsibility of the Contractor.

No direct payment will be made by reason of the provisions of this Article and all costs in connection therewith shall be included in the prices paid for various contract items of work.

7.12 EXPLOSIVES AND STREAM POLLUTION – When the use of explosives is necessary for the prosecution of work, the Contractor shall not endanger life or property, and will be required to obtain a permit for use of explosives within District limits. All explosives shall be stored in accordance with the provisions of Division XI of the Health and Safety Code, and any applicable County or local ordinances.

Attention is called to the necessity of obtaining a permit from the Department of Fish and Wildlife of the State of California in advance of use of underwater explosives. Attention is directed to the Fish and Game Code relating to stream pollution, particularly, Section 5650.

7.13 FIRES – The Contractor shall obtain any necessary fire permits from the properly constituted authority and comply with all regulations of the County in which the work is to be performed.

7.14 INTERFERENCE WITH FIRE HYDRANTS, HIGHWAYS, AND FENCES – The Contractor shall so conduct his/her operations so as not to close or obstruct any portion of any highway, road, or street, or prevent in any way free access to fire hydrants until s\he has obtained permits therefor from the proper authorities. If any highway required to be kept open shall be rendered unsafe by the Contractor's operation s\he shall make such repairs or provide such temporary guards as shall be acceptable to the authorities having jurisdiction and to the Director. Any highway or street maintenance or repair work required by local authorities in connection with necessary operations under the Contract shall be

performed by the Contractor at his/her own cost and expense. Fences subject to interference shall be maintained as effective barriers consistent with the original intent, but upon approval of the Director, they may be moved or rearranged to facilitate prosecution of the work until the work is finished, after which they shall be restored to their original or better condition.

7.15 PRESERVATION OF PROPERTY – Due care shall be exercised to avoid damage to existing improvements, utility facilities, and adjacent property. The fact that any pipe or underground facility is not shown on the drawings shall not relieve the Contractor of responsibility or ascertaining the existence of any underground improvements or facilities which may be subject to damage by reason of the operation.

Any obstruction along the line of work, such as mail-boxes or paper-boxes, posts, fences, culverts, improvements, etc., which interferes with the Contractor's operation shall be carefully removed and replaced by the Contractor as soon as possible in a satisfactory condition. Trees and shrubbery that are not to be removed, and pole lines, fences, signs, survey markers and monuments, buildings and structures, conduits, under- or above-ground pipelines, and any other improvements and facilities adjacent to the work shall be protected from injury or damage, and if ordered by the Director, the Contractor shall provide and install suitable safeguards to protect such objects from injury or damage.

If such objects are injured or damaged by reason of the Contractor's operations they shall be replaced or restored at the Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor entered upon the work, or as good as required by the Specifications accompanying the work being performed under the Contract. When it becomes necessary for the Contractor to remove an existing fence as an obstruction to the work, the Contractor shall provide the necessary temporary fencing to be functionally as effective as the original for protection of livestock, equipment, or property.

Only those trees specifically designated for removal on the contract drawings shall be removed except with specific approval of the Director. Tree branches that extend over the work and must be removed, shall be cut off at the bole in a competent manner. The Contractor shall then remove other branches so that the tree will present a balanced appearance. Scars resulting from the removal of branches shall be treated with a heavy coat of an approved tree seal. The Director may make or cause to be made such temporary repairs as are necessary to restore to service any damaged facility.

The cost of such repairs shall be borne by the Contractor and may be deducted from any monies due or to become due the Contractor under the Contract.

No direct payment will be made by reason of the provisions of this article and all costs in connection therewith shall be included in the prices paid for the various contract items of work.

The Contractor, employee, and agents, shall at all times observe and comply with all conditions imposed by any instrument granting the right to enter upon property for the purpose of performing the work provided for herein, including, but not limited to, all conditions relative to the prevention and suppression of fires.

7.16 PUBLIC CONVENIENCE – Unless otherwise provided in the Special Provisions, all public traffic shall be permitted to pass through the work, and the Contractor shall so conduct operations as to offer the least possible obstruction and inconvenience to the public. The Contractor shall have under construction not greater length or amount of work than can be prosecuted properly with due regard to the rights of the public, and the Director shall be the sole judge of the length or amount of work which will afford proper convenience to the public.

In addition to the requirements for furnishing facilities for public safety as specified in Article 7.10, the Contractor shall erect such warning and directional signs as may be necessary, for expediting the passage of public traffic through or around the work and the approaches thereto. All such signs and traffic maintenance shall be subject to the approval of the Director, and (s)he shall be notified 24 hours in advance of any disturbance of existing traffic patterns. No changes shall be made until approved by the Director.

Traffic signs, existing within the limits of the project, such as STOP signs, shall be maintained in an upright secure position, and located so as to properly control traffic, whenever it is necessary to remove them from their permanent location due to construction of the work, and shall be reinstalled in their permanent location at the earliest possible time.

Where pipelines are to be installed under the contract across certain designated streets or highways, as noted on the plans, the Contractor will only be permitted to open the trench one-half the width of the pavement at any one time so that one-way traffic can be maintained.

Construction operations shall also be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners. Water or dust palliative shall be applied if ordered by the Director for the alleviation or prevention of dust nuisance caused by the Contractor's operations. Convenient access to driveways, houses, and buildings along the line of work shall be maintained fully by the Contractor, and temporary approaches to crossings or intersecting roads or streets shall be provided and kept in good condition. When traffic control signals are shut down as provided in Section 86-1.05 of the State Specifications, the Contractor shall control traffic by use of flaggers, as directed by the Director, at those locations set forth in the Special Provisions. No STOP signs will be permitted at these locations. The flaggers required for this operation shall be paid for by the Contractor.

All of the foregoing requirements shall apply on weekends and holidays, if considered necessary by the Director. The Director may take action as necessary to provide for public convenience and charge the cost thereof to the Contractor if no representative of the Contractor is available to do same.

7.17 CONTRACTOR'S RESPONSIBILITY FOR WORK – Until the formal acceptance of the work, the Contractor shall have the charge and care of the work and of the materials to be used therein, and shall bear the risk of injury, loss, or damage, to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work. The materials to be used in the work include both those furnished by the District and those furnished by the Contractor, including materials for which the Contractor has received partial payment as provided in Article 9.06.

7.18 RESPONSIBILITY FOR DAMAGES; INDEMNIFICATION – The District, the Board of Directors, and all officers and employees of the District shall not be answerable or accountable in any manner, for any loss or damage that may occur to the work or any part thereof; or for any of the materials or other things used or employed in performing the work; or for injury to any person or persons, either workers or the public; for damage to property from any cause which might have been prevented by the Contractor or his/her workers, or anyone employed by his/her; against all of which injuries or damages to persons and property the Contractor having control over such work must properly guard.

The Contractor shall be responsible for any damage to any person or property resulting from defects or obstructions or from any cause whatsoever during the progress of work or at any time before its completion and final acceptance and during the period of the project guarantee. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the District and its Directors,

officers, officials, members, managers, departments, divisions, agents, representatives, volunteers, and employees (collectively “Indemnitee(s)”), from and against any and all claims, suits, actions, legal or administrative proceedings, judgments, debts, demands, injuries (including, without limitation, injury or death to any person or persons), damages (including, without limitation, damage to any property including loss of use resulting therefrom, and incidental and consequential damages), liabilities, losses, debts, interest, penalties, costs, attorneys' fees, and expenses of whatsoever kind of nature (collectively “Loss(es)”), whether arising before, during, or after commencement or completion of this Contract, which in any manner, directly or indirectly, in whole or in part, result from, relate to, or arise from (or are claimed to result from, relate to, or arise from) the work called for by this Contract, or any act, omission, fault, recklessness, negligence (whether active or passive), or willful misconduct of Contractor or any of his/her/its subcontractors, or any of their respective officers, directors, agents, employees, or anyone acting under their direction, authority, control, or on their behalf or for whose acts or omissions either of them may be liable (collectively “Contractor Agent(s)”), or the condition of the premises while in the control of the Contractor or any Contractor Agent, even though the same may have resulted from the joint, concurrent, or contributory negligence, or from the passive negligence of an Indemnitee or any other person or persons. Except as provided in Section 3.07, this provision shall not be deemed to require the Contractor to indemnify the District or other Indemnitee for any Loss proximately caused by the sole negligence of an Indemnitee, or to the extent such Loss is proximately caused by the active negligence or willful misconduct of an Indemnitee. Notwithstanding anything to the contrary contained herein, Contractor’s indemnification obligations shall not apply to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of the Contract.

Contractor specifically acknowledges and agrees that he/she/it has an immediate and independent obligation to defend the District and the other Indemnitees from any Loss that falls within the scope of this Section 7.18 (Responsibility for Damages; Indemnification), which obligation arises at the time such Loss is tendered to Contractor by the Indemnitee and continues at all times until finally resolved.

Contractor’s obligations under this Section 7.18 will survive the termination of the Contract.

7.19 PAYMENT OF TAXES – The Contract prices paid for the work shall include full compensation for all taxes which the Contractor is required to pay, whether imposed by the Federal, State or local government.

7.20 COOPERATION BETWEEN CONTRACTORS – Should construction be underway by other forces or by other Contractors within or adjacent to the limits of the work specified or should work of any other nature be underway by other forces within or adjacent to said limits, the Contractor shall cooperate with all such other Contractors or other forces to the end that any unnecessary delay or hindrance to their work will be avoided. The right is reserved to perform other or additional work at or near the site (including designated material sources) at any time by the use of other forces.

When two or more Contractors are employed on related or adjacent work, or are to obtain materials from the same designated material source, each shall conduct his/her operations in such a manner as not to cause any unnecessary delay or hindrance to the other. Each Contractor shall be responsible to the other for all damage to work, to person or property caused to the other by his/her operations, and for loss caused the other due to his/her unnecessary delays or failure to finish the work within the time specified for completion.

7.21 PROPERTY RIGHTS IN MATERIAL – Nothing in the contract shall be construed as vesting in the Contractor any right of property in the materials used after they have been attached or affixed to the work or the soil, or after payment has been made for 80 percent of the value of materials delivered to

the site of the work, whether or not they have been so attached or affixed. All such materials shall become the property of the District upon being so attached or affixed upon payment of such 80 percent of the value of materials delivered by the Contractor on the ground and not used, as provided in Article 9.06.

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

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

7.24 PERSONAL LIABILITY – Neither the members of the Board of Directors, the Director, the Consulting Engineer, nor any other officer or employee of the District shall be personally responsible for any liability arising under the Contract.

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

7.26 SUBCONTRACTING – The Contractor shall comply with Public Contract Code Sections 4100 *et seq*, inclusive, relating to subletting and subcontracting.

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 he or she 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.

Space is provided in the Proposal for listing subcontractors, and their DIR registration information, to be employed on the Project.

In no case shall the use of subcontractors in any way alter the position of the Contractor or his/her sureties with relation to this Contract. When a subcontractor is used, the responsibility for every portion of the work shall still remain with the Contractor.

7.27 ASSIGNMENT OF UNFAIR BUSINESS PRACTICE CLAIMS – In accordance with California 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.C. § 15) or under the Cartwright

Act (Chapter 2 (commencing with § 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.

7.28 THIRD PARTY CLAIMS – The District shall timely notify Contractor of the receipt of any third-party claim relating to the Contract, and the District shall be entitled to recover its reasonable costs incurred in providing such notice.

SECTION 8

PROSECUTION AND PROGRESS OF WORK

8.01 ASSIGNMENT - The performance of the Contract may not be assigned except upon the written consent of the Board of Directors. Consent will not be given to any proposed assignment which would relieve the original Contractor or his/her surety of their responsibilities under the Contract.

The Contractor may assign monies due or to become due him/her under the Contract and such assignment will be recognized by the District, if given proper notice thereof, to the extent permitted by law, but any assignment of moneys shall be subject to all proper setoffs in favor of the District and to all deductions provided for in the Contract and particularly all money withheld, whether assigned or not, shall be subject to being used by the District for the completion of the work in the event that the Contractor should be in default therein.

8.02 COMMENCEMENT OF WORK – The Contractor shall not begin work until s\he has received a Notice to Proceed from the District, and shall upon receiving notice, begin work within the time specified in the notice. After receipt of said notice, the Contractor shall provide written notice to the Director of the Contractor's intention to start work, specifying the date on which s\he intends to start at least 24 hours in advance.

8.03 WORK IN PROGRESS SCHEDULE – Unless not required by the Special Provisions, the Contractor or the bidder to whom the Contract is awarded shall, prior to beginning work, submit to the Director a practicable work schedule in the form required by the Special Provisions showing the order and dates within which the Contractor proposes to carry out the work.

8.04 TEMPORARY SUSPENSION OF WORK – The Director shall have the authority to suspend the work wholly, or in part, for such period as (s)he may deem necessary when work is being performed in unsuitable weather, or when any other conditions are considered unfavorable for the proper prosecution of the work. The Director shall also have authority to suspend the work wholly or in part because of failure on the part of the Contractor to carry out orders given or to perform any provisions of the Contract. The Contractor shall immediately comply with the written order of the Director to suspend the work wholly or in part. Work suspended wholly or in part shall be resumed by the Contractor on written order of the Director when conditions are favorable and methods corrected.

8.05 TEMPORARY SUSPENSION OF WORK FOR THE CONVENIENCE AND BENEFIT OF THE DISTRICT – The Director may order the Contractor, in writing, to temporarily suspend all or any part of the work for such period of time as may be determined by the Director to be necessary or desirable for the convenience and benefit of the District. Where such suspension has been ordered in writing as above provided and where such suspension unreasonably delays the progress of the work, the Director and/or Board of Directors may make an equitable adjustment in the contract price and contract time.

8.06 SUSPENSION OF WORK BECAUSE OF CONDITIONS BEYOND CONTROL OF DISTRICT OR CONTRACTOR – Should the work of this contract be suspended for a period of over one (1) year due to war conditions, labor conditions, legal actions, or for any other reason beyond the control of either the District or the Contractor, the work may be terminated by mutual agreement subject to the following conditions. The District shall be responsible for payment for the actual work accomplished only, based on bid prices. The pro-rated cost of such work, where not fully covered by unit costs or bid items, shall be determined by the District's evaluation of the work done and the bid costs.

8.07 TERMINATION OF UNSATISFACTORY SUBCONTRACTS – When any portion of the work which has been subcontracted by the Contractor is not being prosecuted in a satisfactory manner, the subcontract for such work shall be terminated immediately by the Contractor upon written notice from the Director, and the subcontractor shall not again be employed on the type of work in which his/her performance was unsatisfactory.

8.08 CHARACTER OF WORKERS – If any subcontractor or person employed by the Contractor or subcontractor shall fail or refuse to carry out the directions of the Director or shall appear to the Director to be incompetent or to act in a disorderly or improper manner, (s)he shall be removed from the work immediately on the request of the Director, and such persons shall not again be employed on the work.

8.09 TIME OF COMPLETION AND LIQUIDATED DAMAGES – The Contractor shall complete all the work under the Contract within the number of days set forth in the Special Provisions or the Proposal form. When a delay occurs due to unforeseen causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of nature, acts of the public enemy, governmental acts, fires, floods, epidemics, strikes (except as caused by improper acts or omissions of the Contractor), the time of completion shall be extended for a period justified by the effect of such delay on the completion of the work. A delay of a subcontractor or supplier due to the above circumstances will be taken into consideration for extensions of time of completion.

Acts of nature means an earthquake, flood, cloudburst, cyclone, or other cataclysmic phenomena of nature beyond the power of the Contractor to foresee or to make preparation in defense against, but does not include ordinary precipitation. The number of days provided for the work as set forth in the Special Provisions includes a normal number of days for downtime due to weather according to the time of year in which the Contract will be operational.

Should any of the unforeseen circumstances as described in the preceding portion of this Article occur, the Contractor shall file written notice with the Director within the 10 days of the beginning of such delay. The notification shall be accompanied by documentary evidence to the fact and effect of the circumstances. Circumstances of which no notification has been given within 10 days of their occurrence shall not afterward be claimed as grounds for extension of time of completion. The Director will determine the facts in the matter and his/her findings shall be final and conclusive.

If the Contract is revised by a Contract Change Order and the Director determines that such revision will cause delay in completion of the work, the Change Order will provide for extension of the time of completion.

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

8.10 TERMINATION OF CONTRACT – If the Contractor should fail to supply sufficient workers, material, supplies, and equipment, the District shall give written notice to the Contractor, which notice shall require that the Contractor supply sufficient workers, supplies, materials, and equipment to diligently prosecute the project. If the Contractor fails to resume diligent prosecution of the work within

48 hours after such notice is delivered, the District may eject the Contractor from the job, take over all supplies, equipment and material of the Contractor on the job site, and may either obtain another Contractor to finish the project or the District may finish the project with its own forces. In such event, the Contractor shall be liable to the District for damages including but not limited to the full cost of completing the project.

8.11 RIGHT-OF-WAY DELAYS – If performance of the Contractor’s work is delayed as the result of the failure of the District to acquire or provide rights-of-way, an extension of time will be granted pursuant to provisions of Article 8.09.

8.12 CONTRACTOR’S COST DATA – The District, or any of its duly authorized representatives shall, until the expiration of three years after final payment under this Contract or any subcontractor under it, have access to and the right to examine any of the Contractor’s or subcontractor’s payrolls, records of personnel, invoices of materials, records of plant and equipment costs, and any and all other directly pertinent books, documents, papers, and records of such Contractor or subcontractor, involving transactions related to said Contract or subcontracts. In the event State or Federal funds are involved in the financing of the project, the State or Federal Government shall have the same rights of inspection as the District.

8.13 COORDINATION WITH UTILITIES – The Contractor shall be required to coordinate the work with the removal or relocation of any utility facility by any utility company or public agency where the utility facility is shown on the plans or specified in the Special Provisions to be removed or relocated by such company or agency. It shall be the Contractor’s sole responsibility to effect said coordination, and it shall be deemed, upon his/her submission of a Proposal and Schedule to do Work, that the Contractor has reviewed his/her working plans with, and coordinated any utility facility removal or relocation with, all appropriate utility companies and public agencies.

In general, the location of existing utility facilities as shown on the drawings are approximate. This information has been obtained from utility maps furnished by the various agencies involved, and the District does not guarantee either the correctness of locations or the extent of such location. Minor lines such as house water, gas and sewer facilities are not shown. It shall be the responsibility of the Contractor to ascertain the exact location of the utility facilities, and no additional compensation may be claimed for additional work involved because the actual location is different than that shown on the plans.

Unless otherwise indicated on the Drawings or specified in the Special Provisions, the Contractor shall maintain in service all drainage, water, gas, and sewer lines, including house services, power, lighting and telephone conduits, and any other surface or subsurface structure of facility of any nature that may be affected by the work; provided, however, that the Contractor for his/her convenience may arrange with the owner to temporarily disconnect house service lines or other facilities along the line of the work. The cost of disconnecting and restoring such utilities shall be borne by the Contractor.

The Contractor is responsible for the protection of and for any damage to any utility facility encountered on the project during the prosecution of the work. Any such damage to a utility facility shall be repaired to the satisfaction of the utility owning the same. The District reserves the right, if so requested by the owner, to permit the owner to repair such damage. All expenses of whatever nature arising from such damage shall be borne by the Contractor.

8.14 RESPONSIBILITY FOR ACCURACY – The Contractor shall obtain all necessary measurements for and from the Work, and shall check dimensions, elevations, and grades for all layout and construction work and shall supervise such work, for the accuracy of all of which s/he shall be

responsible. Each subcontractor shall adjust, correct, and coordinate his/her work with the work of others so that no discrepancies will result in the whole work. Unless authorized by the Director, any work done without liens, levels, or grades established by the Director shall be done at the Contractor's risk.

8.15 TEMPORARY FACILITIES AND SERVICES - The Contractor shall be responsible for providing and maintaining the necessary storage places, field office, temporary fences, guards, etc., and required utilities, such as telephone, electric, and water service, at his/her expense.

8.16 CONSTRUCTION HOURS – Construction hours shall be limited between the hours of 8:00 a.m. and 5:00 p.m. on weekdays. Construction shall be prohibited on weekends or legal holidays except in case of an emergency work approved by the Director.

The Contractor shall give the Director 24 hours prior notice of any work to be done on weekends with the location and type of work to be done specified; and any work done without such notice and without the supervision of an inspector may be ordered removed and replaced at the Contractor's expense.

SECTION 9

MEASUREMENT AND PAYMENT

9.01 WORK TO BE DONE WITHOUT DIRECT PAYMENT – Whenever it is specified that the Contractor is to do work or furnish materials of any class for which no price is fixed in the proposal, it shall be understood that s\he is to do such work or furnish such materials without extra charge or allowance or direct payment of any kind. The cost of doing such work or furnishing such materials is to be included in the price bid for such other items of work as s\he may consider appropriate, unless it is expressly specified in the Special Provisions that such work or materials is to be paid for as extra work.

9.02 MEASUREMENT OF QUANTITIES – Payment for all work bid at a price per unit of measurement will be based upon the actual quantities of work as measured upon completion. The District does not expressly or by implication agree that the actual amount of work or materials of any class will correspond to the estimated quantities given in the proposal. The Contractor shall make no claim for anticipated profits, for loss of profit, for damages, or for any extra payment whatever because of any difference between the amount of work actually done or materials furnished and the estimated amount.

Items bid on a "Lump Sum" or "Job" basis shall result in a complete structure, operating plant or system in satisfactory working condition with respect to the functional purposes of the installation, and no extra compensation will be allowed for anything omitted but fairly implied.

9.03 REMOVED.

9.04 FORCE ACCOUNT WORK

9.04.01 General – Where extra work is to be paid for on a force account basis, the extra work will be paid for at the actual necessary cost as determined by the Director, plus an allowance for superintendence, general expense, and profit. Such an allowance will be made in accordance with the following schedule:

<u>Actual Necessary Cost</u>	<u>Allowance</u>
Labor	20 Percent
Materials	15 Percent
Equipment	15 Percent

The actual necessary cost for labor, material or equipment will be computed in accordance with Articles 9.04.02, 9.04.03, and 9.04.04, respectively. Office expense, general superintendence, and other general expense will not be included in the computation of actual necessary costs.

It is understood that labor, materials, and equipment may be furnished by the Contractor or by the subcontractor or by others on behalf of the Contractor.

When extra work paid for on a force account basis is performed by forces other than the Contractor's organization, the Contractor shall reach agreement with such other forces as to the distribution of the payment made by the District for such work and no additional payment therefor will be made by the District.

The Contractor shall furnish the Director daily report sheets covering the direct costs of labor and materials and charges for equipment, whether furnished by the Contractor, subcontractor, or other forces and said report sheets shall be signed by the Contractor or his\her authorized agent. The daily report sheets shall provide names or identifications and classifications of workers, and hours worked; size, type and identification number of equipment, and hours operated. Material charges shall be substantiated by valid copies of vendor's invoices.

The Director will make any necessary adjustments and compile the costs of force account work on daily extra work report forms furnished by the District. When these reports are agreed upon and signed by both parties, they shall become the basis of payment for the work performed, but shall not preclude subsequent adjustment based on a later audit.

9.04.02 Labor – The cost of labor used in performing the work by the Contractor, a subcontractor, or other forces will be the sum of the following:

- a. The actual wage paid which shall include any employer payments to, or on behalf of, workers for fringe benefits including health and welfare, pension, vacation, and similar purposes.
- b. To the actual wages, as defined in Article 9.04.02(a), will be provided a percentage set forth in the Special Provision, which percentage shall constitute full compensation for all payment imposed by State and Federal laws including, but not limited to, compensation insurance, and social security payments.
- c. The amount paid for subsistence and travel required by collective bargaining agreements.

At the beginning of the Contract and as later requested by the Director, the Contractor shall furnish the Director three copies of a certificate from the insurance company showing labor compensation rates.

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

- a. Cash or trade discounts available to the purchaser shall be credited to the District notwithstanding the fact that discounts may not have been taken.
- b. In materials secured by other than a direct purchase and direct billing to the purchase, the cost shall be deemed to be the price paid to the actual supplier as determined by the Engineer. Markup except for actual costs incurred in the handling of such materials will not be allowed.
- c. Payment for materials from sources owned wholly or in part by the purchaser for similar materials from said sources on Contract items or the current wholesale price for such materials delivered to the job site, whichever price is lower.
- d. If, in the opinion of the Director, the cost of materials is excessive, or the Contractor does not furnish satisfactory evidence of the cost of such materials, then the cost shall be deemed to be the lowest current wholesale price for the quantity concerned delivered to the job site less cash or trade discounts.

The District reserves the right to furnish materials for the work and no claim shall be made by the Contractor for costs and profit on such materials.

9.04.04 Equipment – The allowance made for such equipment used on force account work shall be determined from the latest schedule of equipment rental rates in use at the date hereof by the California State Transportation Department and incorporate herein by reference the same as though set out in full. Equipment shall be in good operating condition when starting work covered by the order. Rental time will not be allowed while equipment is inoperative due to breakdowns. Allowance for equipment ownership expense for use of items of equipment not listed with the Board shall be established in conformance with the items listed.

When extra work is ordered, the Contractor shall furnish a complete description of each item of equipment to be used on such extra work, listing the make, model, size, capacity, mounting, type of power and cost.

Allowance determined in accordance with this Article include all costs of operating equipment such as servicing labor and equipment, labor and parts for minor field repairs, fuel, oil, grease, and supplies, but not operating crew labor. No additional payment or allowance will be made in extra work orders for these items other than operating labor in addition to the amounts allowed for equipment use.

When equipment is obtained for the extra work from beyond the limits of the Contract, in addition to the rental rates paid while the equipment is actually in use on the work, the District will pay the cost of loading, unloading, and transporting to and from work subject to the following conditions:

- a. The point from which the equipment is to be transported shall be agreed to by the Director in advance.
- b. Transportation on low bed trailers shall not exceed rates of established haulers or applicable minimum rates of the Public Utilities Commission.
- c. Saturdays, Sundays, and Holidays will not be paid for unless directed by the Director.
- d. The District will pay an amount not to exceed the charge for moving the equipment to the work if the equipment is returned to a location other than from which it was obtained.
- e. Payment for transportation, loading, and unloading will not be made if the equipment is used on the work under the Contract in any other way than upon extra work paid for on a force account

9.05 RETENTION – In accordance with the Contract Documents and applicable law, the District may retain out of any payment due the Contractor up to 5% of the payment. In no event shall the District's total retention proceeds exceed 5% of the contract price.

Under no circumstances shall any provision of this section be construed to limit the ability of the District to withhold 150 percent of the value of any disputed amount of work from the final payment, as provided for Public Contract Code section 7107(c). In the event of a good faith dispute, nothing in this section shall be construed to require a public entity to pay for work that is not approved or accepted in accordance with the proper plans or specifications.

9.05.010 SECURITIES IN LIEU OF RETENTION – 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. The Escrow for Security Deposit agreement is provided in the Contract Documents. Upon satisfactory completion of the Work, the securities will be returned to the Contractor.

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 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.

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.

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

9.06 PARTIAL PAYMENT – At monthly intervals, as fixed by the District, the Contractor will prepare an estimate in writing of the total amount of work done and the acceptable materials furnished and delivered by the Contractor on the ground and not used, to the time of such estimate, and the value thereof. Acceptable materials shall be those materials which will become a part of the finished construction work. The basis for partial payments of lump sum or other unit Contract items will be determined by agreement between the Director and the Contractor. No such estimate of payment shall be required to be made when, in the judgment of the Director the work is not proceeding in accordance with the provisions of the Contract, or when in his/her judgment the total value of the work done since the last estimate amounts to less than \$500. No such estimate or payment shall be considered to be an acceptance of any defective work or improper materials. All progress estimates and payments shall be subject to correction in the final estimate.

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

At the earliest practicable time after having filed a claim, either during the performance of the work or after its completion as specified in the foregoing paragraph, it shall be the responsibility of the Contractor to submit in writing the basis for each claim, reference to the applicable provisions of the Specifications, the method of computation of the amount claimed due, and all other factual data pertaining thereto. Failure to submit such information and details within the 90 days after filing said claims will be sufficient

cause for denying the claims. No claim will be considered where there has been a failure to comply with the requirements of Article 4.04.

9.08 SCOPE OF PAYMENT - Payment for all items of work at the unit or lump sum price shall be considered as full compensation for furnishing all labor, materials, tools, equipment, and incidentals necessary to complete the items of work, and no additional allowance will be made therefor.

9.09 GUARANTEE - Should any failure of the work occur within a period of one year after acceptance of the project by the District, which can be attributed to faulty materials, poor work, or defective equipment, or should discovery be made within this period of any non-compliance with the Plans and Specifications, the Contractor shall promptly make the needed repairs, replacement, or installation at his/her expense.

The District is hereby authorized to make such repairs if the Contractor fails to make or undertake with due diligence the aforesaid repairs within ten days after s\he is given written notice of such failure; provided, however, that in case of emergency where, in the opinion of the Director, delay would cause serious loss or damages, or a serious hazard to the public, the repairs may be made, or lights, signs, and barricades erected without prior notice to the Contractor, and the Contractor shall pay the entire costs thereof.

Unless otherwise set forth in the Special Provisions, as a condition precedent to the acceptance of the Contract, the Contractor shall furnish a corporate surety bond, of an acceptable surety company authorized to do business in the State of California, to protect the District against the results of such faulty materials, poor work, or defective equipment and to guarantee the Contractor's responsibility as outlined above, for period of one year after completion and acceptance of the project by the District. Said bond shall be a sum not less than ten (10%) of the Contract amount.