

ADDENDUM NO. 1

TO CONTRACT DOCUMENTS RELATED TO

NORTH SAN JOAQUIN WATER CONSERVATION DISTRICT RFP 2020-01: TRETHERWAY AND BRANDT DISTRIBUTION BOX IMPROVEMENTS PROJECT

February 6, 2020

This **Addendum No. 1** consists of 7 pages, and must be signed, dated, and submitted along with the Bid Documents. The following additions, deletions or modifications shall become part of the Contract Documents:

Addendum No. 1

Exhibit A (General Terms and Conditions) which was mistakenly omitted from the RFP

Revised Exhibit C Bid Schedule

ITEM NO. 1: EXTENDED BID CLOSE DATE

The bid close date has been extended to **February 11, 2020 at 4:00 P.M.**

As a reminder, sealed bids should be delivered to

Provost & Pritchard Consulting Group

Attn: Daniel de Graaf

4701 Sisk Avenue, **Suite 102**

Modesto, Ca 95356

ITEM NO. 2: UPDATED BID SCHEDULE

The bid schedule was adjusted to reflect that Bid Item 9 has been included as a lump sum item per the item description. Also, Bid Item 10 has been excluded from the bid. Bid Item 10 will still be included as part of this project and the contractor will be required to work with Sierra Controls and the District Engineer to coordinate design and installation. At this time Bid Item is not sufficiently developed for a contractor to prepare an accurate estimate so this item is being excluded from the bidding schedule. Based on proposals submitted by February 11, 2020, the District will notify the preferred contractor (if any) may request Bid Item 10 be submitted within 2 weeks. The District may choose to award a contract with or without Bid Item 10, in its discretion.

ITEM NO. 3: CLARIFICATIONS FOR QUESTIONS RECEIVED

The following clarifications are provided for the questions received from bidders:

1. Sheet 1, Note 6 refers to NSJWCD Specifications. Are there standard specifications, and / or special provisions, and / or any additional specifications available for this project?

Answer: No, NSJWCD does not have standard specifications. Where called out, contractor should provide specified product. If not specified on the plans, contractor shall consult with district engineer or provide specifications to be approved by the district engineer.

2. Sheet 1, Note 8 states "All other exposed steel shall be painted with a pre-treatment primer, an undercoat and final coat of paint in accordance with these plans." The details for the railing and ladder do not state / indicate the required finish. Please clarify that the railing and ladder finish consists of primer & two coats of paint, and that there are no other specifications for the finish (ie acceptable paint manufacturer / brands, paint type, mil thickness, etc.)

Answer: Exposed steel such as the handrail, grating and ladder may at the contractor's discretion be hot dip galvanized. If the contractor chooses to use paint, color, brand, type to be submitted and approved by the engineer.

3. Project drawings state "PRELIMINARY NOT FOR CONSTRUCTION". When will construction documents be issued?

Answer: The plans that were submitted with the RFP shall be considered construction documents for bidding purposes. Final drawings issued for construction will be issued to include location of Bid Item 10 equipment at award of bid.

4. The (E) Right of Way limits are indicated on the drawings, Sheet 2. Is the ROW limits indicated on Sheet 2 consist of the NSJWCD easement limits? If "no", can the easement limits be shown of the project drawings?

Answer: The ROW lines shown on the plan are the County ROW. The District Easement is a 15' easement roughly along the center line of the pipeline. The easement can be shown on the final set of plans.

5. Based on the elevation information provided on the Structure Detail on Sheet 4, the distribution box extends +/- 8.91' above grade. The dimensioning shown for the ladder and ladder rungs in the Ladder Detail on Sheet 4 are inconsistent with the above grade box height of +/- 8.91'. Please clarify if the desired height of the ladder and quantity of ladder rungs required. If the ladder is to extend down to 1' from EG, please clarify the required quantity and spacing of the ladder mounts / supports.

Answer: Ladder rungs should be spaced at MAX 1' increments with the top rung parallel with the top of box and a maximum of 1' between the ground and the bottom rung. The ladder mounts can remain as shown on the plans with one at the top and one at the bottom.

6. What are the dimensions and thickness of the ladder mounting plates indicated in the Front View of the Ladder Detail 2 on Sheet 4?

Answer: All mounting plates shall be the same size 5"x8"x1/4" with two 1/2" anchor bolts each.

7. What is the required material type of the 1/2" through bolts for the ladder and railing (ie stainless steel, galvanized, etc)?

Answer: Galvanized or Stainless steel is acceptable.

8. Is all tubing for all railing and ladder 1-1/4" x 1-1/4" square steel tubing?

Answer: Yes

9. What gauge steel is required for the 1-1/4" x 1-1/4" square steel tubing?

Answer: 3/16"

10. Are the railing mounting plates indicated in the Front View of the Ladder Detail 2 on Sheet 4 typical for all railing posts around the perimeter of the distribution box?

Answer: Yes

11. Board guides are indicated in the Structural Detail on Sheet 4. What are the dimensions of the board guides, width and depth? Are steel embeds required / desired for the board guides? If "yes", please provide specifications for steel embeds.

Answer: Board guides shall be 3"x3"x1/4" stainless steel angle back to back anchored with 1/2" stainless anchor bolts at 1" spacing.

12. The details indicate that the floor of the distribution box extends beyond the exterior walls of the distribution box, but do not provide any dimensions. Please provide dimension for the distribution box floor.

Answer: 1' beyond limits of box exterior wall

13. Notes associated with the Grate Detail on Sheet 4 require steel angle and steel tube for the grate frame. Please clarify / provide additional detail regarding what specific portions of the grate frame are to be steel tube and what specific portions of the grate frame are to be steel angle.

Answer: The proposed design is a tube frame with hinged doors with angle frames that sit inside of the tube frame.

14. What finish is required for the frame and grating?

Answer: The frame and grating shall be painted to match the handrail or hot dip galvanized at the discretion of the contractor.

15. There is no information provided for the grating. Please provide specifications for the grating.

Answer: Grating shall be equivalent to McNichols 6.5# expanded metal grating.

16. Fresno Valves and Castings Series 8200 Slide Gate options: please specify slide gate material (4 options available), mounting option, self-contained or non self-contained option, handwheel lift or gear operated lift or bearing lift option, stainless steel or cold finish steel stem, seal option, seating head, etc.

Answer: Gates shall be self contained, stainless steel, gear operated, with stainless steel stem. Waterman Series SS250 gates are also acceptable for this project.

17. Section 1.(a) of the Contact states "The Contractor shall provide temporary power or otherwise maintain power to the construction site as needed." Please clarify that this language pertains only to power needed by the Contractor and / or the Contractor's subcontractor(s) to complete the contract scope of work.

Answer: This only pertains to the contractor's power needs to complete the project.

18. Has the District obtained an encroachment permit from the County for this project? If “yes”, can a copy of the encroachment permit be provided to the prospective bidders. If “no” is it the Contractor’s responsibility to obtain and pay for an encroachment permit from the County? If it is the Contractor’s responsibility to obtain an encroachment permit from the County, it will impede the Contractor’s ability to “commence the Work immediately after execution of the Contract and issuance of a Notice to Proceed.” Will the Notice to Proceed be issued after the encroachment permit is procured? Will the completion date of March 30th be adjusted if any delays out of the control of the Contractor and / or District are incurred associated with the procurement of an encroachment permit?

Answer: No encroachment permit has been obtained for this project. The contractor will be responsible to obtain the proper permitting. Reasonable adjustments may be made at the discretion of the district if necessary, to complete the project due to delays caused by permitting. The district and engineer will make every effort to assist in expediting the permitting with the county.

19. A portion of the new distribution box, as well as the required excavation for construction of the proposed improvements extends beyond the Right of Way and onto private property. Has the District obtained / established a right of entry agreement with the private property owner? If “yes”, can a copy of the right of entry agreement along with any / all requirements be provided to the prospective bidders. If “no”, will the District be obtaining a right of entry agreement with the owner prior to construction?

Answer: The district has notified the landowner of the work to be completed in the District ROW and will notify them prior to any construction activity.

20. For the purposes of safety for workers and public, can Brant Road from Locke Road to Tretheway Road be closed to through traffic during the construction of this project?

Answer: A traffic control plan will need to be submitted and approved by the county. It is anticipated that for a period of time the road will need to be closed. Contractor to make every effort to minimize road closure time.

21. Section 3, paragraph 2 of the Contract states “The Contractor should be fully aware of any permit requirements and further requirements of the Work in relation to the effects these requirements may have on the work force required to complete the various portions of the Project within the time limits provided.” What permits will be required for this project? Who is responsible to obtain said permits? What are the permit requirements?

Answer: The only permit that is anticipated by the district is the county encroachment permit.

22. Section 3, paragraph 3 of the Contract states “The District reserves the right to suspend, alter and / or modify the Work in any manner deemed necessary by the District. The District shall not be responsible for costs for costs for such suspension, alteration and / or modification due to conditions out of the District’s control.” Does “conditions out of the District’s control” include changes and costs resulting from differing site conditions?

Answer: The contractor is required by the contract Exhibit C to be familiar with the site and satisfied with general, local and site conditions that may affect the project. The site will not be impacted by any work by the district prior to or during the project.

23. The Contract references Exhibit A in multiple locations. Can Exhibit A be provided to the prospective bidders?

Answer: See attached Exhibit A.

24. What are the insurance requirements for this project?

Answer: See attached Exhibit A,

25. Exhibit A is referenced in the Contract. Exhibit C has been provided as part of the bid documents. Is there a Exhibit B associated with the project documents? If “yes” can Exhibit B be provided to the prospective bidders?

Answer: Exhibit B is the project plans.

26. Will survey / construction staking be provided by the District to / for the Contractor?

Answer: Yes, the district will provide project staking.

27. Is groundwater / water table elevations / information known for this area? If “yes” can this information be provided to the prospective bidders?

Answer: Groundwater will not be an issue for this project.

28. How is the water in the existing pipes controlled? Does the District have the ability to shut off / discontinue all flow in the existing pipes for the duration of the project? Will the pipes need to be dewatered to construct the project? What is the volume of water the Contractor should anticipate to remove to dewater the existing pipes?

Water will not be in the pipes at this location and is controlled by the district. The contractor should not anticipate any water in the pipeline throughout the project.

29. The description of Bid Item 3 in Exhibit C includes furnishing and installing project sign. Please provide specifications for the project sign.

Answer: The project sign will be provided by the District.

30. The excavation for the proposed improvements may result in damage to, or removal of the existing tree shown in the drawings. In the event of damage or necessary removal of the existing tree, will the Contractor be required to replace the tree?

Answer: The tree shown on the plans no longer exists.

31. The description of Bid Item 6 in Exhibit C includes a description of work "required to construct the bridge foundation". Please clarify if "bridge foundation" should be replaced with "irrigation distribution box".

Answer: Bid item 5 mistakenly references a bridge foundation. Correct "bridge foundation" should be replaced with irrigation distribution box.

32. Please clarify / provide specifications for slide gate anchors with respect to type and material.

Answer: Slide gate anchors should be stainless steel.

33. The description of Bid Item 9 in Exhibit C references the "spreading of unsuitable material at the end of the job at the direction of the Owner". Does the District have an intended disposal site for unsuitable material and / or excess material associated with this project?

Answer: District does not have an intended disposal site. For bidding purposes assume that hauling of unsuitable material will be within 5 miles of the job site.

CONTRACTOR

By: _____

ATTEST: _____

By: _____

Daniel de Graaf, RCE 86,415

PROVOST & PRITCHARD
CONSULTING GROUP

ATTACHMENTS:

- 1: Exhibit A
- 2: Amended Exhibit C

Exhibit A

**NORTH SAN JOAQUIN WATER CONSERVATION DISTRICT
CONSTRUCTION CONTRACT - GENERAL PROVISIONS**

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SECTION 1 DEFINITIONS

- 1.1. Definitions. Whenever in this Contract the following terms (whether initially capitalized or not) and abbreviations, or pronouns in place of them, are used, the intent and meaning shall be as follows:
- A. Apprentice. A person employed and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Bureau of Apprenticeship and Training, or with a state apprenticeship agency recognized by the Bureau; or (2) a person in his/her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a state apprenticeship council (where appropriate) to be eligible for probationary employment as an apprentice.
 - B. Contract. The Construction Contract between the Contractor and the District and including all documents incorporated into the Contract by reference.
 - C. Contracting Officer. The Contracting Officer, as identified in the Notice to Proceed, is the District's authorized representative under this Contract.
 - D. Contracting Officer's Representative. The authorized representative of the Contracting Officer acting within the limits of the authorized representative's authority.
 - E. Contractor. An individual, firm, or corporation entering into this Contract for the performance of the Work.
 - F. Day. A calendar Day. Saturdays, Sundays, and District holidays as well as weekdays are counted as Days.
 - G. Directors. The Board of Directors of the North San Joaquin Water Conservation District.
 - H. District or Owner. The North San Joaquin Water Conservation District, a public entity.
 - I. Drawings. Refers to the Contract drawings, profiles, cross sections, elevations, details, and other working drawings and supplementary drawings, or reproduction thereof, signed by the Designer, if applicable, approved by the District, and referred to in the Contract documents, which show the location, character, dimensions, and details of the work to be performed. The terms drawing, plan, and plans have the same meaning as the term drawings unless otherwise stated or specified. Shop drawings are not drawings as defined herein.
 - J. Engineer or Architect-Engineer. The independent engineering firm retained by the District to perform certain engineering services for the project.
 - K. General Provisions or GP. Exhibit A to the Contract representing the general clauses that establishes how the project is to be administered.
 - L. Hazardous Waste. The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
 - M. Notice to Proceed. The written notice by the District to the Contractor authorizing the Contractor to proceed with the work and establishing the date of commencement of the work.
 - N. Plans. Refers to the Contract drawings, profiles, cross sections, elevations, details, and other working drawings and supplementary drawings, or reproduction thereof, signed by the Designer, if applicable, approved by the District, and referred to in the Contract that show the location, character, dimensions, and details of the work to be performed. The terms drawing, plan, and plans have the same meaning as the term drawings unless otherwise stated or specified. Shop drawings are not drawings as defined herein.
 - O. Shop Drawings. All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by the Contractor, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work to be performed under this Contract and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by

a manufacturer, fabricator, supplier or distributor and submitted by the Contractor to illustrate material or equipment for some portions of the Work.

- P. Specifications. Those portions of the Contract consisting of (1) written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work under this Contract, administrative provisions applicable thereto, and (2) all Drawings and designs.
- Q. Subcontractor. An individual, firm, or corporation having a direct Contract with the Contractor or with any other Subcontractor for the performance of any part of the Work or the furnishing of any materials under this Contract. The term shall include Subcontractors and suppliers at all tiers.
- R. Surety. Any firm or corporation executing a surety bond or bonds payable to the District securing the performance of the Contract either in whole or in part, or securing payment of claims for labor and materials.
- S. Technical Specifications. Written technical descriptions of products and execution of the work.
- T. Work or The Work. All the facilities specified, indicated, shown, or contemplated by the Contract as comprising and necessary for completion of the project contemplated by the Contract, including any portions of such facilities furnished to the Contractor by the District, and, except as otherwise expressly provided in the specifications, the provision and furnishing by the Contractor of all materials, equipment, labor, methods, processes, construction and manufacturing materials and equipment, tools, plants, supplies, power, water, transportation, and other things necessary to complete such facilities in accordance with the Contract.

[End of Section 1]

SECTION 2 GENERAL SCOPE OF WORK

- 2.1. Site Investigation, Conditions Affecting Work and Hazardous Materials.
 - A. The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the conditions which can affect the Work, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; (5) drainage on, into and out of the site; and (6) the character of equipment and facilities needed preliminary to and during prosecution of the Work. The Contractor also acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory Work done by the District, as well as from information presented by the Specifications made a part of this Contract. Any failure by the Contractor to take the actions described and acknowledged in this paragraph (A) will not relieve the Contractor from responsibility for estimating properly the difficulty or cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to the District.
 - B. The District assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the District; nor does the District assume responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers, employees, or agents before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.
- 2.2. Intent of Specifications. The intent of the Specifications is to describe a complete project and prescribe the details for the construction and completion of the Work which the Contractor undertakes to perform in accordance with the terms of this Contract. Where the Specifications describe portions of the Work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be used. Unless otherwise specified, the Contractor shall furnish all labor, materials, tools, equipment, and incidentals, and do all the Work involved in executing this Contract in a satisfactory and workmanlike manner, and provide a complete, functional facility ready for operation by the District.

- 2.3. Discovery of Errors, Omissions, or Discrepancies in the Contract. If the Contractor discovers any errors, omissions, discrepancies, or conflicts in this Contract, the Contractor shall immediately so inform the Contracting Officer in writing. The Contracting Officer will promptly clarify such matters and so inform the Contractor. Any Work affected by such discoveries which is performed by the Contractor prior to authorization by the Contracting Officer shall be at the Contractor's own risk.
- 2.4. Ownership and Use of Contract Documents. The Contractor, any Subcontractor, manufacturer, fabricator, supplier, or distributor (1) shall not have or acquire any title to or ownership rights in any of the Specifications or the other Contract documents (or copies of any thereof) prepared by the District or the District's Architect-Engineer for this Contract, and (2) shall not reuse any of them on any other project without written consent of the District.
- 2.5. [Intentionally Omitted.]
- 2.6. Changes.
- A. The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make any change within the scope of the Work of this Contract, including but not limited to changes:
1. in the Specifications or Plans, including the right to increase or decrease the quantity of any item or portion of the Work or to omit any item or portion of the Work, as may be deemed by the District to be necessary or advisable, and to require such extra work as may be determined by the District to be required for the proper completion or construction of the Work.
 2. in the method or manner of performance of the Work;
 3. in the District-furnished facilities, equipment, materials, services, or site; or
 4. directing acceleration in the performance of the Work, except that no change shall be deemed to occur if the Contractor is behind schedule as a result of other than an excusable delay (listed in GP Section 6.6(D)(1)) and the Contracting Officer has directed the Contractor to take appropriate action to bring the Contractor's Work on schedule.
- B. Except as provided in this GP, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.
- C. If any change under this GP Section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under this Contract, the Contracting Officer shall make an equitable adjustment and modify the Contract in writing. In the case of defective Specifications for which the District is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective Specifications.
- D. The Contractor must submit any claim under this GP Section within thirty (30) Days after (1) receipt of a written change order under (A) above by submitting to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim.
- E. No claim of the Contractor under this clause shall be allowed unless the Contractor has properly complied with all applicable notice requirements of (D) above.
- F. No claim by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.
- G. Nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.
- 2.7. [Intentionally Omitted.]
- 2.8. Differing Site Conditions.
- A. The Contractor shall promptly (in no event later than five (5) days after such conditions are discovered), and before such conditions are disturbed, notify the Contracting Officer in writing of (1) subsurface or latent physical conditions at the site which differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids, or (2) unknown

physical conditions at the site of any unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract, or (3) material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

- B. The Contracting Officer shall promptly investigate the conditions after receiving said notice. If the Contracting Officer finds that the conditions do materially so differ, or do involve hazardous waste, and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under this Contract, the Contracting Officer shall issue a change order pursuant to GP Section 2.6.
 - C. In the event a dispute arises between the District and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided whether by Contract or by law which pertain to the resolution of disputes and protests. However, no claim by the Contractor for a change order pursuant to (B) above shall be allowed unless the Contractor has given the written notice required in (A) above.
 - D. For the purposes of this section, the Contractor is hereby notified and shall generally recognize that rock, hardpan, clay, and underground water are inherent in the character of work under this Contract.
- 2.9. Consent of Surety. All alterations, extensions of time, extra and additional Work, and other changes authorized by the Specifications or any other part of this Contract may be made without securing the consent of the surety or sureties on the Bonds required by GP Section 5.13 below.
- 2.10. Cleaning Up. The Contractor shall at all times keep the construction and storage areas ("Premises") free from accumulations of waste material or rubbish and, prior to completion of the Work, remove any rubbish from the premises and all tools, scaffolding, equipment, and materials not the property of the District. Upon completion of the construction the Contractor shall leave the Work and Premises in a clean, neat and workmanlike condition satisfactory to the Contracting Officer. The Contractor shall restore to their original condition those portions of the Premises not designated for alterations by this Contract. Full compensation for final cleaning up will be considered as included in the prices paid for the various Contract items of Work and no separate payment will be made therefor.
- 2.11. Notice of Potential Claim.
- A. The Contractor shall not be entitled to the payment of any additional compensation for any act, or failure to act by the Contracting Officer, including failure or refusal to issue a change order, or for the happening of any event, thing, occurrence, or other cause, unless the Contractor shall have given the Contracting Officer due written notice of potential claim as hereinafter specified; provided, however, that compliance with this GP Section 2.11 shall not be a prerequisite as to matters within the scope of the notice provisions in GP Section 2.6, in GP Section 2.8 or in GP Section 6.6(D)(2)
 - B. The written notice of potential claim shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the costs involved, and, insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the Contracting Officer prior to the time that the Contractor shall have performed the Work giving rise to the potential claim for additional compensation if based on an act or failure to act by the Contracting Officer, or in all other cases within thirty (30) Days after the happening of the event, thing, occurrence, or other cause giving rise to the potential claim.
 - C. It is the intention of this GP Section 2.11 (as well as of all the other notice provisions in this Contract) that differences between the parties arising under and by virtue of the Contract be brought to the attention of the Contracting Officer at the earliest possible time in order that the District may know the extent of any potential additional Contract costs before they are incurred and in order that such matters may be settled, if possible, or other appropriate action promptly taken. The Contractor hereby agrees that it shall have no right to additional compensation for any claim that may be based

on any such act, failure to act, event, thing, or occurrence for which no written notice of potential claim as herein required was filed.

2.12. Request for Time Extensions; Time Extensions.

- A. As a part of every Contractor's proposal or claim involving a request for a time extension, the Contractor shall submit the Contractor's standard scheduling diagram (such scheduling diagram shall be in a form approved by the Contracting Officer), showing in detail the Work necessitated by or involved in the alleged proposal or claim and the impact of the proposed time adjustment on other Work and on the project schedule.
- B. This GP Section 2.12 shall apply to all requests for time extensions under this Contract, including but not limited to GP Section 2.6, GP Section 2.8, GP Section 2.11, and GP Section 3.3(G), and to delay notices under GP Section 6.6(D)(2).
- C. Notwithstanding any other provision of this Contract, time extensions shall only be granted for excusable delays that actually delay scheduled project completion. The granting of time extension for changes in the Work will depend upon the extent, if any, by which the changes cause actual delay in the completion of the various elements or phases of construction. The change order or other order of the Contracting Officer granting the time extension may provide that the Contract completion date will be extended only for those specific elements or phases so delayed and that the remaining Contract completion dates for all other portions of the Work will not be altered and may further provide for an equitable readjustment of liquidated damages under the new completion schedule.

2.13. Right to Audit Accounting Records When Claim Made. The District shall have the right to audit Contractor's accounting records, and the accounting records of any Subcontractor whose claim is included in any claim by the Contractor under this Contract, to ascertain the extent of the costs actually incurred by the Contractor and/or Subcontractor as alleged in the Contractor's claim. This provision shall be incorporated in all subcontract agreements for the Work required by this Contract.

[End of Section 2]

**SECTION 3
CONTROL OF WORK**

3.1. Authority of Contracting Officer. The Contracting Officer 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 of progress of the Work; all questions which may arise as to the interpretation of this Contract; all questions as to the acceptable fulfillment of the Contract on the part of the Contractor; and all questions as to compensation. The Contracting Officer's decision shall be final and the Contracting Officer shall have authority to enforce and make effective such decisions and orders which the Contractor fails to carry out promptly.

3.2. Contractor Supervision.

- A. The Contractor shall supervise, direct, and coordinate all Work under this Contract using its best skills and attention. It is understood and agreed that the Contractor shall act as an independent Contractor in performing Work under this Contract, maintaining complete control over its employees and all of its Subcontractors. The Contractor shall perform all Work in accordance with its own methods subject to compliance with this Contract. The Contractor shall perform all Work in an orderly and workmanlike manner, enforce strict discipline and order among its employees and assure strict discipline and order by its Subcontractors.
- B. Before starting Work, the Contractor shall designate a competent authorized representative to represent and act for the Contractor and shall inform the Contracting Officer of the name of such representative. Such representative shall be present or duly represented at the site of Work at all times when Work is actually in progress and, during periods when Work is suspended, arrangements acceptable to the Contracting Officer shall be made for any emergency Work which may be required. The Contractor's authorized representative shall be supported by competent assistants as necessary, and the authorized representative and its assistants shall be satisfactory to the Contracting Officer. All directions, instructions and other communications given to the authorized representative by the Contracting Officer shall be as binding as if given to the Contractor.

3.3. Inspection of Construction.

- A. The Contractor shall maintain an adequate inspection system and perform such inspection as will ensure that the Work called for by this Contract conforms to Contract requirements. The Contractor shall maintain complete inspection records and make them available to the District. All Work is subject to District inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.
- B. District inspections and tests are for the sole benefit of the District and do not:
 - 1. Relieve the Contractor of responsibility for providing adequate quality control measures;
 - 2. Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
 - 3. Constitute or imply acceptance; or
 - 4. Affect the continuing rights of the District after acceptance of the completed Work under (H) below.
- C. The presence or absence of a District inspector does not relieve the Contractor from any Contract requirement, nor is the inspector authorized to change any term or condition of the Contract or Specifications without the Contracting Officer's written authorization.
- D. The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The District may charge to the Contractor any additional cost of inspection or test when Work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. The District shall perform all inspections and tests in a manner that will not unnecessarily delay the Work. Special, full size, and performance tests shall be performed as described in the Contract.
- E. The Contractor shall, without charge, replace or correct Work found by the District not to conform to Contract requirements, unless in the District's interest the District consents to accept the Work with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
- F. If the Contractor does not promptly replace or correct rejected Work, the District may (1) by Contract or otherwise, replace or correct the Work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.
- G. If, before acceptance of the entire Work, the District decides to examine already completed Work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the Work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its Subcontractors, the Contractor shall be responsible for the expenses of the examination and of satisfactory reconstruction. However, if the Work is found to meet Contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of time if requested by the Contractor. See GP Section 2.12.
- H. Unless otherwise specified in the Contract, the District shall accept, as promptly as practicable after completion and inspection, all Work required by the Contract. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the District's rights under any warranty or guarantee.
- I. Any Work done beyond the lines and grades shown on the Plans or established by the Contracting Officer, or any extra Work done without written authority will be considered as unauthorized Work and will not be paid for. Upon order of the Contracting Officer unauthorized Work shall be remedied, removed, or replaced at the Contractor's expense.
- J. Upon failure of the Contractor to comply promptly with any order of the Contracting Officer made under this GP Section 3.3, the District may cause rejected or unauthorized Work to be remedied, removed, or replaced, and to deduct the costs from any moneys due or to become due the Contractor.

3.4. [Intentionally Omitted.]

3.5. Normal Working Hours.

- A. The Contractor shall schedule its working hours to coincide with the working hours of the District, a normal 5-Day, 40-hour week, Monday through Friday, District holidays excepted. The Contractor shall not perform Work under this Contract during hours outside of such working hours of the District without the written approval of the Contracting Officer.
- B. If the Contractor, for its convenience, desires to perform Work under this Contract during other than normal working hours or on other than normal working Days, the Contractor shall reimburse the District for any additional expense occasioned the District thereby, such as, but not limited to, overtime pay for District inspectors.

3.6. Protection of Persons and Property.

- A. Contractor bears sole responsibility under the law for the safety of its own personnel and for all persons entering the Work site. Contractor also bears sole responsibility for posting applicable danger signs and warnings against hazards, erecting safety barriers, promulgating safety regulations, and notifying owners and users of adjacent utilities. This requirement shall apply continuously under this Contract and shall not be limited to normal working hours.
- B. In the event of the occurrence of a situation wherein life and/or valuable property is in apparent imminent danger, the Contractor is hereby authorized and required without any special instructions from the District or Contracting Officer to act at its own reasonable discretion to prevent injury to persons or damage to property.
- C. The Contractor shall comply with all applicable federal, state, county, and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss ("safety laws"). Where any of these are in conflict, the more stringent safety requirement or procedure shall be complied with. The Contractor's failure to thoroughly familiarize itself with the above safety laws shall not relieve it from compliance with any duty, obligation or penalty provided therein. Contractor, upon becoming aware of a violation of one of the above safety laws, or is informed of the existence of an otherwise unsafe/unhealthy condition, shall immediately take corrective measures. The District assumes no responsibility for the existence of the condition or for corrective measures, regardless of who observed the condition.
- D. The Contractor shall immediately notify the District's Contracting Officer, and any other applicable governmental agency (e.g., CAL OSHA) as required by law, of any damage, injury, death, or loss under this Contract. Contractor shall furnish to the District detailed written reports of all injuries occurring during completion of the Contract.
- E. Should District, the Contracting Officer, or any person witness a situation wherein life is in apparent, imminent danger, upon being notified or becoming aware of the condition, Contractor will address and immediately remedy such situation and enforce the applicable safety rules. Such notification action by District or the Contracting Officer shall be viewed as exercising independent prudent judgment based on an immediate threat and shall not be construed as controlling or enforcing safety for the project or as District assuming the controlling authority for safety.
- F. The Contractor shall promptly remedy all damage or loss to any property caused in whole or in part by the Contractor, any Subcontractor at any tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts or omissions any of them may be liable and for which the Contractor is responsible under this Contract.
- G. The Contractor shall designate in writing to the District's Contracting Officer, the contact name and phone number of a project safety officer who shall be a responsible member of its organization for safety at the Work site.
- H. The Contractor shall have an Injury & Illness Prevention Program (IIPP) meeting all of the requirements of Title 8, California Code of Regulations, Section 3203 and shall provide a copy of their current version to the District prior to starting Work.

3.7. Utilities.

- A. Unless otherwise indicated, the Contractor shall at the Contractor's expense remove, relocate, and protect (1) all existing main or trunkline utility facilities identified in the Specifications with reasonable accuracy and (2) all other utility facilities (such as existing service laterals or appurtenances) whether or not identified in the Specifications. The expense to remove, relocate, and protect utility facilities or other obstructions for the convenience of construction shall also be borne by the Contractor.
- B. If a main or trunkline utility facility is not identified in the Specifications with reasonable accuracy and if such utility facility could not have been located or any damage to such utility facility could not have been prevented had the Contractor exercised reasonable care, the Contractor shall be compensated for the cost of (1) locating, (2) repairing damage not due to the failure of the Contractor to exercise reasonable care, (3) removing or relocating such utility facility, and (4) equipment on the project necessarily idled during such Work. Contractor shall submit documentation of such costs to the District for the District's review and reasonable approval.
- C. The Contractor shall not be assessed liquidated damages for a delay in the completion of this Contract to the extent such delay was caused by the failure of the District to identify all existing main or trunkline utility facilities in the Specifications with reasonable accuracy and was not caused by the Contractor's failure to exercise reasonable care in locating, removing, relocating, or protecting such utility facilities.
- D. If the Contractor while performing the Contract discovers any utility facilities not identified by the District in the Specifications, the Contractor shall immediately notify the District and the owner of such facilities in writing.
- E. The District, the owners of any utility facilities, and their respective authorized agents shall have the right to enter upon the Work site for the purpose of making such changes and performing such work as are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. The Contractor shall cooperate with forces engaged in such work and shall conduct its operations in such a manner as to avoid any unnecessary delay or hindrance to the work being performed by such other forces. The owner of a utility facility shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work; the cost of such work to be borne by the owner of the facility, the Contractor, and/or District as determined in accordance with this GP Section and the applicable law.
- F. At least forty-eight (48) hours before excavating, the Contractor shall call USA Underground Service Alert at 811. The Contractor shall be deemed not to have exercised reasonable care if it fails to comply with this notification requirement.

3.8. Indemnity.

To the fullest extent permitted by law, the Contractor shall indemnify, hold harmless, and defend the District and the Architect-Engineer and their respective Directors, officers, employees, agents and representatives (including any subconsultants), from and against all loss, damage, liability, claims, citations, suits, costs, and demands, arising out of or resulting from this Contract or the performance or prosecution of the Work, whether such losses, damages, liability, claims, citations, suits, costs, and demands are caused by the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, or by products installed on this project by the Contractor or any Subcontractor, and regardless of whether the entity or person indemnified hereunder was actively or passively negligent. Such Contractor obligations shall extend to losses, damages, liability claims, citations, suits, costs, and demands for injury or damage occurring within the applicable statute of limitations period after completion of the project as well as during the Work's progress.

- 3.9. Patent Indemnity. The Contractor shall indemnify and save harmless the District and the Architect-Engineer, their respective Directors, officers, employees, agents and representatives, from and against all losses, damages, liabilities, claims, citations, suits, costs, and demands and expenses, including attorneys' fees, incurred by the District and the Architect-Engineer, their respective Directors, officers, representatives agents and employees, as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent and arising out of the use of the equipment or

materials furnished under this Contract by the Contractor, or out of the process or actions employed by the Contractor in connection with the performance of the Work under this Contract; and the Contractor shall at its expense promptly defend against any such claim or action; provided that the Contractor's aforementioned obligations shall not apply to equipment, materials or processes specified by or furnished by the District; and provided further, that the District shall have notified the Contractor upon becoming aware of such claims or actions. The Contractor shall have the right in order to avoid such claims to substitute at its own expense non-infringing equipment, materials or processes, or to modify at its own expense such infringing equipment, materials and processes so they become non-infringing; provided that such substituted and modified equipment, materials and processes shall meet the requirements of this Contract.

- 3.10. Contractor's Responsibility for the Work and Materials. Until the final acceptance of all the Work under the Contract, 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 Contractor shall rebuild, repair, restore, and make good all injuries, losses, or damage to any portion of the Work or the materials occasioned by any cause before its completion and acceptance and shall bear the expense thereof. The suspension of the Work from any cause whatsoever shall not relieve the Contractor of its responsibility for the Work and materials herein specified. Contractor shall not be responsible for the cost of repairing or restoring damage to the Work, which damage is determined to have been proximately caused by an Act of God, in excess of 5 percent of the contracted amount, provided, that the Work damaged is built in accordance with accepted and applicable building standards and the plans and specifications of the awarding authority. "Acts of God" for this Section 3.10 shall include only the following occurrences or conditions and effects: earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves.
- 3.11. Documents and Samples at Work Site. The Contractor shall maintain at the Work site for the District one (1) record copy of all Drawings, Specifications, change orders, and other modifications, in good order and marked currently to record all changes made during construction and of all approved Shop Drawings, product data, and samples. These shall be available to the Contracting Officer and shall be delivered to him upon completion of the Work.
- 3.12. [Intentionally Omitted.]
- 3.13. [Intentionally Omitted.]

[End of Section 3]

SECTION 4 CONTROL OF MATERIALS

- 4.1. Source of Supply and Quality of Materials.
- A. The Contractor shall furnish all materials required to complete the Work, except materials that are designated in the Specifications to be furnished by the District.
 - B. Only materials conforming to the Specifications shall be incorporated in the Work.
 - C. The materials furnished and used shall be new, except as may specifically be provided elsewhere in the Specifications. The materials shall be manufactured, handled, and used in a workmanlike manner to insure completed Work in accordance with the Specifications.
 - D. The Contractor shall furnish the Contracting Officer a list of material source in sufficient time to permit proper inspecting and testing of materials in advance of their use. The Contractor shall furnish without charge such samples as may be required. Inspection and tests will be made by the Contracting Officer or the Contracting Officer's representative, but it is understood that such inspections and tests in no way shall be considered as a guarantee of acceptance of such material nor of continued acceptance of material presumed to be similar to that upon which inspections and tests have been made.
 - E. Manufacturer's warranties, guarantees, instruction sheets and part's lists, which are furnished with

certain articles or materials incorporated in the Work, shall be delivered to the Contracting Officer before final acceptance of all Work.

F. Reports and records of inspections made and tests performed may be examined by the Contractor.

- 4.2. Storage of Materials. Articles or materials to be incorporated in the Work shall be stored in such a manner as to insure the preservation of their quality and fitness for the Work and to facilitate inspection.
- 4.3. Defective Materials. All materials which the Contracting Officer determines do not conform to the requirements of the Specifications will be rejected, whether in place or not. They shall be removed immediately from the site of the Work, unless otherwise permitted by the Contracting Officer. No rejected material, the defects of which have been subsequently corrected, shall be used in the Work, unless approval in writing has been given by the Contracting Officer. Upon failure of the Contractor to comply promptly with any order of the Contracting Officer made under this GP Section, the Contracting Officer shall have authority to cause the removal and replacement of rejected material and the District may deduct the cost of such removal and replacement from any amounts due or which may become due the Contractor under the Contract.
- 4.4. [Intentionally Omitted.]
- 4.5. [Intentionally Omitted.]
- 4.6. District-Furnished Property.
- A. The District shall deliver to the Contractor, for use only in connection with this Contract, the property described in the Specifications (hereinafter referred to as "District-furnished property"), at the times and locations stated therein. If the District-furnished property, suitable for its intended use, is not so delivered to the Contractor, the Contracting Officer shall, upon timely written request made by the Contractor, and if the facts warrant such action, equitably adjust any affected provision of this Contract pursuant to the procedures of the GP Section 2.6 clause hereof.
- B. Title to District-furnished property shall remain in the District. The Contractor shall maintain adequate property control records of District-furnished property in accordance with sound industrial practice.
- Unless otherwise provided in this Contract, the Contractor, upon delivery to him of any District-furnished property, assumes the risk of, and shall be responsible for, any loss thereof or damage thereto except for reasonable wear and tear, and except to the extent that such property is required to be consumed and is in fact consumed in the performance of this Contract.
- C. The Contractor shall, upon completion of this Contract, prepare for shipment, deliver f.o.b. destination, or dispose of all District-furnished property not consumed in the performance of this Contract or not theretofore delivered to the District, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the Contract price or paid in such other manner as the Contracting Officer may direct.
- 4.7. "Brand Name or Equal" Items; Substitutes.
- A. When the Specifications list a product or item to be furnished or used in the Work on a "Brand Name or Equal" basis, the Contractor shall have twenty (20) Days after receipt of the Notice to Proceed in which to submit a request for substitution of "equal" items along with data substantiating the request.
- B. All other requests for substitutions or product options where permitted by the Specifications shall be submitted to the Contracting Officer for review in accordance with the applicable submittals provision in the Specifications or the special provisions. No tests or action relating to the approval of a substitute will be made until the request for substitution is made in writing by the Contractor accompanied by complete data as to the equality of the product, item or material proposed. Such request shall be made in ample time to permit adequate review by the Contracting Officer and the Architect-Engineer without delaying the performance of the Work.
- C. The burden of proof as to the quality and suitability of substitutes shall be upon the Contractor and it shall furnish all information necessary as required by the Contracting Officer or the Architect-Engineer. The Contracting Officer shall be the sole judge as to the quality and suitability of substitute products, items, or materials and the Contracting Officer's decision shall be final.

[End of Section 4]

SECTION 5 LEGAL RESPONSIBILITIES

- 5.1. Laws to be Observed. The Contractor shall at all times observe and comply with, and shall cause all its agents and employees to observe and comply with all existing and future laws, ordinances, regulations, orders, and decrees of governmental entities having any jurisdiction or authority over the Work or any portion thereof 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. The Contractor shall protect and indemnify the District and all of its Directors, officers, employees, representatives and agents thereof connected with the Work against any claim or liability arising from or based on a violation of any such law, ordinance, regulation, order or decree.
- 5.2. Compliance with District Rules. The Contractor shall at all times observe and comply with all District Rules. Copies of all rules are available upon request from the Contracting Officer.
- 5.3. California Air Resources Board (CARB) Truck and Bus Regulation. Contractors who operate any vehicle(s) in the State of California, regardless of state of registration, for Work on behalf of the District, shall comply with the CARB Truck and Bus Regulation. This regulation applies to diesel-powered vehicles with a GVWR greater than 14,000 pounds which are privately or federally owned. The District requires the Contractor to declare compliance with this regulation prior to awarding any Work by submitting a statement of compliance and/or certificates of compliance with the Contractor's submittal. For Work which may overlap a calendar year, the Contractor is required to submit to the District an updated statement of compliance and/or current certificates of compliance by February 1st of each year. A Contractor who does not comply with this regulation will be subject to Work stoppages until the Contractor provides current compliance with this regulation. Contractor is responsible for confirming that all subcontractors hired by the Contractor are also in compliance with this regulation. For further information about this regulation and how it applies to the Work provided by Contractor see www.arb.ca.gov/dieseltruck.
- 5.4. Discrimination. Attention is directed to Section 1735 of the California Labor Code which provides: A contractor shall not discriminate in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of such persons, except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates Section 1735 of the Labor Code is subject to all the penalties imposed for a violation of Division 2, Part 7, Chapter 1 of the California Labor Code.
- 5.5. Prevailing Wage.
 - A. Not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which this Contract is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in Chapter 1 (commencing with Section 1720), Part 7, Division 2 of the Labor Code, shall be paid to all workers employed on this public work.
 - B. Copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to complete the Work are on file at the District's and Contractor's principal offices and shall be made available to any interested party upon request. A copy of the prevailing rate of per diem wages shall be posted by the Contractor at each job site.
 - C. The Contractor and each Subcontractor shall, as a penalty to the District, forfeit \$50.00 for each calendar Day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed under this Contract by Contractor or any Subcontractor. As required by Labor Code Section 1775, the difference between such 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 shall be paid to each worker by the Contractor or Subcontractor.

- D. The Contractor and each Subcontractor shall keep an 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 by the Contractor or Subcontractor in connection with the Project, and such other information as required by law, and such payroll records shall be certified and made available for inspection all in accordance with Labor Code Section 1776 and 8 California Code of Regulations Section 16000 et seq. Contractor and each Subcontractor shall furnish the records specified in Labor Code Section 1776 directly to the Labor Commissioner as required pursuant to Labor Code Section 1771.4. The Contractor may be required to file with the District certified copies of its and all its Subcontractors' payroll records within thirty (30) calendar Days after completion of each payroll period at no cost to the District. The foregoing sentence does not bar the District from making specific requests for certified payrolls pursuant to 8 California Code of Regulations Section 16400 which only allows the Contractor ten (10) working Days to respond. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
 - E. The District shall not recognize any claim for additional compensation from the Contractor because of the payment by the Contractor of any wage rate in excess of the prevailing rate of per diem wages. The possibility of wage increases is one of the elements to be considered by the Contractor in determining its bid and will not, under any circumstances, be considered as the basis of a claim against the District under this Contract.
 - F. The Contractor shall be required to pay travel and subsistence payments to each workman needed to execute the Work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.
- 5.6. Apprentices. It shall be the responsibility of the Contractor to insure that it and all Subcontractors on the project comply with the apprenticeship requirements set forth in Labor Code Section 1777.5.
- 5.7. Hours of Labor. Eight hours labor constitutes a legal Day's work. The Contractor or subcontractor shall forfeit, as a penalty to the District, \$25.00 for each worker employed in the execution of the Contract by the respective Contractor or any Subcontractor under it for each calendar Day during which such worker is required or permitted to work more than 8 hours in any one calendar Day and 40 hours in any one calendar week in violation of Labor Code Sections 1810 to 1815, except that Work performed by employees of Contractors in excess of 8 hours per Day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per Day at not less than one and one-half times the basic rate of pay, as provided in Section 1815. The Contractor and each Subcontractor shall keep accurate records of the hours of employment in accordance with Labor Code Section 1812.
- 5.8. Fair Labor Standard Act. The Wage and Hour Division, US Department of Labor states that contractors engaged in public construction work are required to meet the provisions of the Fair Labor Standards Act of 1938 and as amended (52 Stat. 1060).
- 5.9. Permits and Licenses. Except as to permits and licenses (if any) specifically stated in this Contract as being obtained by the District, the Contractor shall obtain all required permits and licenses for construction of this project and pay all charges and fees therefor at its own expense. All Contractors shall have a valid and current California State Contractor's License.
- 5.10. Workers' Compensation and Public Liability Insurance.
- A. Workers' Compensation and Employer's Liability Insurance.
 1. The Contractor shall take out and maintain during the life of the Contract, Workers' Compensation and Employer's Liability Insurance for all of its employees on the project and shall comply with Labor Code, Section 3700. In lieu of evidence of Workers' Compensation Insurance, the District will accept a Self-Insuring Certificate from the State of California.
 2. The following certification, required by Labor Code Section 1861, is incorporated by reference into this Contract:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to

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

By signing the Contract with the District, the Contractor is signing and filing the above certification with the District.

3. The Contractor shall require all Subcontractors to provide the Contractor with evidence of Workers' Compensation and Employer's Liability Insurance, all in strict compliance with California State Law.

B. Public Liability Insurance.

1. The Contractor shall take out and maintain during the life of this Contract Comprehensive Automobile Insurance and General Liability Insurance that provide protection for claims which may arise out of or result from operations or performance under this Contract, whether such operations or performance be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

2. The amount of insurance shall be not less than the following:

Single Limit Coverage applying to
Bodily and Personal Injury Liability
and Property Damage
\$1,000,000.00 each occurrence
\$2,000,000.00 annual.

3. Coverage must include the following provisions and must be indicated on the certificate or by endorsement to the policy:
 - a. The District, North San Joaquin Water Conservation District and the Architect-Engineer, their respective Directors, officers, employees, and agents are named as Additional Insureds in the policy with respect to the Contract;
 - b. The coverage is PRIMARY and no other insurance carried by the District will be called upon to contribute to a loss under this coverage;
 - c. The policy covers Blanket Contractual Liability;
 - d. The policy limits of liability are provided on an Occurrence basis;
 - e. The policy covers Broad Form Property Damage Liability;
 - f. The policy covers Personal Injury as well as Bodily Injury Liability including coverage for personal injury claims against any insured by employees of any other insured;
 - g. The policy covers Explosion, Collapse and Underground hazards;
 - h. The policy covers Products and Completed Operations for a period of not less than three (3) years following final completion or termination of this Contract.
 - i. The policy covers use of Non-owned Autos;
 - j. The coverage shall not be canceled nor materially altered unless thirty (30) Days written notice is given to the District;
 - k. "Cross Liability" or "Severability of Interest" clause.
 - l. An insurer's waiver of subrogation in favor of all insureds and additional insureds under the policies of insurance provided.

5.11. Builder's Risk Insurance.

- A. The Contractor shall purchase and maintain Builder's Risk insurance upon the entire Work under this Contract, including District-furnished property, for one hundred percent (100%) of the replacement value thereof. The insurance shall include the interests of the District, the owner of the facility if

other than the District, the Architect-Engineer, the Contractor, and Subcontractors in the Work and shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief and shall insure the property while in inland transit or interim storage.

- B. In the event of a loss by the perils insured against, of any or all of the Work and/or materials herein provided for, at any time prior to the final completion of the Contract and the final acceptance by the District, the Contractor shall promptly reconstruct, repair, replace, or restore all Work or materials so destroyed. Nothing herein shall in any way excuse the Contractor or his surety from the obligation of furnishing all the required materials and completing the Work in full compliance with the terms of the Contract.
- C. Any loss insured under (A) above is to be adjusted with the District and made payable to the District as trustee for the insureds, as their interests may appear. The Contractor shall pay each Subcontractor a just share of any insurance moneys received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to its Subcontractors in similar manner.
- D. The District and the Contractor waive all rights against (1) each other and the Subcontractors, agents and employees each of the other, and (2) separate contractors, if any, and their Subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this GP Section 5.11 or any other property insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance held by the District as trustee. The District or the Contractor, as appropriate, shall require separate contractors and Subcontractors to provide similar waivers each in favor of all other parties enumerated in this paragraph (D).
- E. The District as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within five (5) Days after the occurrence of loss to the District's exercise of this power and if such objection be made, the matter shall be handled in accordance with the GP's Disputes clause. The District as trustee shall, in that case, make settlement with the insurers in accordance with the final decision on the dispute.

If the District finds it necessary to occupy or use a portion or portions of the Work prior to completion thereof, such occupancy or use shall not commence prior to a time mutually agreed to by the District and the Contractor and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. This insurance shall not be canceled or lapsed on account of such partial occupancy or use. Consent of the Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

5.12. Insurance-General.

- A. Within fifteen days (15) of execution of this Contract and prior to commencement of any Work, the Contractor shall deliver to the District certificates of insurance issued in duplicate covering all policies providing the required insurance. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by its authorized representative. The Contractor agrees upon written request by the District to furnish copies of such policies, certified by an authorized representative of the insurer. These certificates shall contain a provision that coverages afforded under policies will not be canceled or reduced until at least thirty (30) Days' prior notice has been given to the District. Acceptance of the certificate of insurance shall not relieve the Contractor of any of the insurance requirements nor decrease the liability of the Contractor.
- B. The foregoing requirements as to the types, limits and the District's approval of insurance coverage to be maintained by the Contractor, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under the Contract.
- C. If the Contractor fails to maintain the required insurance coverage, the District may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as set forth above, and the District may deduct the cost of such insurance from any amounts due or which may become due the Contractor under the Contract.

5.13. Performance, Payment, and Warranty Bonds.

- A. The Contractor shall furnish to the District a Performance Bond and Payment Bond as security for the faithful performance and payment of all Contractor's obligations under this Contract. The Performance and Payment Bonds shall be in an amount equal to one hundred percent (100%) of the Contract price. The Performance Bond shall remain in effect until final acceptance of the Work by the District. The Payment Bond shall remain in effect until the last of the following occur: (1) the statutory time has expired to commence a legal action on the Payment Bond and no legal action was filed, (2) satisfaction of all judgments against the Payment Bond, and (3) as otherwise provided by law. The Contractor shall also furnish such other Bonds as are required by any other Contract provisions.
- B. All Bonds shall be in the forms prescribed by the bidding documents or the special provisions and be executed by such corporate sureties as are licensed to conduct business as sureties, and authorized to issue surety bonds, in the State of California. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act. The entire cost of the such Bonds shall be borne by Contractor.
- C. If the surety on any Bond furnished by the Contractor is declared as bankrupt or becomes insolvent or its right to do business is terminated in California or it ceases to meet the requirements of clauses (1) and (2) of (A) above, the Contractor shall within five (5) Days thereafter substitute another Bond and surety, both of which shall be acceptable to the District.

5.14 Antitrust Claims.

The following subdivision of section 7103.5 of Chapter 7 of the Public Contract Code of the State of California shall be complied with by the Contractor and all Subcontractors under this Contract:

"Section 7103.5. Assignment by contractor to awarding body of rights under federal law arising from purchases under public works Contract.

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

- 5.15 DIR Registration. As provided in Labor Code Section 1771.1(a), a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Public Contract Code Section 4104, or engage in the performance of any contract for public work, as defined Labor Code Section 1720, unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. A bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Labor Code Section 1725.5. The project described in the Contract is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- 5.16 State Audit. This Agreement shall be subject to the examination and audit of the California State Auditor, at the request of the District or as part of any audit of the District, for a period of three years after final payment under the Contract.

[End of Section 5]

**SECTION 6
PROSECUTION AND PROGRESS**

6.1. [Intentionally Omitted.]

6.2. Subcontracts.

- A. The Contractor with its own organization shall perform Work under the Contract equaling in value to at least sixty percent (60%) of the Contract price.
- B. The Contractor shall require each Subcontractor at every tier, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the term of this Contract and to assume toward the Contractor all the obligations and responsibilities which the Contractor by this Contract assumes toward the District. No subcontract shall relieve the Contractor of any of its liabilities or obligations under the Contract; and the Contractor agrees that it is fully responsible to the District for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them in the performance of the Contract. The Contractor shall assure that each Subcontractor and supplier complies with the provisions of any applicable Workmen's Compensation Act or similar law having application to Subcontractor's or supplier's employees. The Contractor shall at its expense, upon request of the Contracting Officer, furnish the Contracting officer with two (2) copies of all of its subcontracts or supply contracts; provided that the prices thereon may be deleted. Nothing contained in the Contract shall create any contractual relationship between any Subcontractor and the District.

6.3. Assignment.

- A. The performance of the Contract may not be assigned, except upon the written consent of the Contracting Officer. Consent will not be given to any proposed assignment which would relieve the original Contractor or its surety of their responsibilities under the Contract.
- B. The Contractor may assign moneys due or to become due him 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 assignments of moneys shall be subject to all proper set-offs 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.

6.4. [Intentionally Omitted.]

6.5. Liquidated Damages.

- A. If the Contractor fails to complete the Work within the time specified in the Contract, or any extension thereof, the Contractor shall pay to the District as liquidated damages, the sum as stated in Paragraph 3 of the Contract for each calendar Day of delay. The District may deduct the amount of such liquidated damages from any moneys due or that may become due the Contractor under this Contract.
- B. If the Contractor fails to complete the Work within the time specified in the Contract, or any extension thereof, because of a non-excusable delay or delays but the Contracting Officer determines (1) that it is in the District's interest not to terminate the Contractor's right to proceed or to impose liquidated damages and (2) grants the Contractor an extension of time in which to complete the Work, the District shall have the right to charge the Contractor for the cost of engineering, inspection, Contract administration, equipment, and related overhead expenses incurred by the District for this Contract and which accrue during the period of the extension, except that the cost of the final inspection shall not be included in such charges. The District may deduct the amount of such charges from any moneys due or that may become due the Contractor under this Contract.

6.6. Default.

- A. If the Contractor refuses or fails to prosecute the Work or any separable part, with the diligence that will insure its completion within the time specified in this Contract, including any extension, or fails to

complete the Work within this time, the District may, by written notice to the Contractor, terminate the right to proceed with the Work (or the separable part of the Work) that has been delayed. In this event, the District may take over the Work and complete it by Contract or otherwise, and may take possession of and use any materials, appliances, and plant on the Work site necessary for completing the Work. The Contractor and its sureties shall be liable for any damage to the District resulting from the Contractor's refusal or failure to complete the Work within the specified time, whether or not the Contractor's right to proceed with the Work is terminated. This liability includes any increased costs incurred by the District in completing the Work.

- B. If the District terminates the Contractor's right to proceed, the resulting damage will consist of increased costs occasioned the District in completing the Work.
- C. If the District does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the Work is accepted.
- D. The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if:
 - 1. The delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the District in its contractual capacity, (3) acts of another Contractor in the performance of a Contract with the District, (4) fires, (5) floods, (6) epidemics, (7) quarantine restrictions, (8) strikes, (9) freight embargoes, (10) unusually severe weather, or (11) delays of Subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the Subcontractors or suppliers; and
 - 2. The Contractor, within ten (10) Days from the beginning of any delay, notifies the Contracting Officer in writing of the causes of delay. See also GP Section 2.12. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the Work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.
- E. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the District pursuant to Section 6.7 below.
- F. The rights and remedies of the District in this clause are in addition to any other rights and remedies provided by law or under this Contract.

6.7. Termination for Convenience of District.

- A. The District may at its option terminate the Contract in whole or from time-to-time in part, at any time by written notice to the Contractor, whether or not the Contractor is in default.
- B. Upon any such cancellation and termination, the Contractor agrees to waive any claim for damages, including loss of anticipated profits on account thereof, but as the sole right and remedy of the Contractor and the District, the District shall pay the Contractor in accordance with (D) below; provided however, that the provisions of this Contract, which by their very nature survive final acceptance under this Contract, shall remain in full force and effect after such cancellation and termination to the extent provided in such provision.
- C. Upon receipt of any such notice, the Contractor shall, unless the notice directs otherwise:
 - 1. Immediately discontinue Work on the date and to the extent specified in the notice;
 - 2. Place no further orders or subcontracts for materials, services, or facilities, other than as may be necessary for completion of such portion of Work under this Contract as is not terminated;
 - 3. Promptly make every reasonable effort to obtain cancellation, upon terms satisfactory to the District, of all orders, subcontracts and rental agreements to the extent they relate to the performance of Work terminated; and

4. Assist the District as specifically requested, in writing, in the maintenance, protection and disposition of property acquired by the District under this Contract.
- D. Upon any such termination, the District will pay to the Contractor an amount determined in accordance with the following (without duplication of any item):
1. All amounts due and not previously paid to the Contractor for Work completed in accordance with the Contract prior to such notice, and for Work thereafter completed as specified in such notice;
 2. The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as provided in (C)(3) above;
 3. The reasonable costs incurred pursuant to (C)(4) above;
 4. Any other reasonable costs incidental to such termination of Work;
 5. The foregoing amounts shall include a reasonable sum under all of the circumstances as profit for any Work performed by the Contractor.

6.8. Disputes. It is the intent of the parties that California Public Contract Code Section 9204 shall govern in the event of a dispute arising under the Contract which is not disposed of by mutual agreement between the parties. This Section 6.8 sets forth the provisions of Section 9204, as they apply to this Contract, and additional arbitration and litigation provisions that the parties shall be bound by.

A. For purposes of this Section, the following definitions shall apply:

1. "Claim" means a separate demand by the Contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
 - a. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by the District under the Contract.
 - b. Payment by the District of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
 - c. Payment of an amount that is disputed by the District.
 - d. Resolution of any other dispute arising under this Contract which is not disposed of by mutual agreement between the parties.
2. "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.
3. a. "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.
 - b. "Public entity" shall not include the following: (i) The Department of Water Resources as to any project under the jurisdiction of that department. (ii) The Department of Transportation as to any project under the jurisdiction of that department. (iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department. (iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code. (v) The Military Department as to any project under the jurisdiction of that department. (vi) The Department of General Services as to all other projects. (vii) The High-Speed Rail Authority.
4. "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

5. "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.
- B. 1. a. Upon receipt of a claim pursuant to this Section, the District shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, the District and Contractor may, by mutual agreement, extend the time period provided in this subdivision.
- b. The claimant shall furnish reasonable documentation to support the claim.
- c. If the District needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the District shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.
- d. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the District issues its written statement. If the District fails to issue a written statement, subsection B.4 below shall apply.
2. a. If the claimant disputes the District's written response, or if the District fails to respond to a claim issued pursuant to this Section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the District shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- b. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the District shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the District issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the District and the claimant sharing the associated costs equally. The District and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to Subsection B.3 below.
- c. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Section.
- d. Unless otherwise agreed to by the District and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.
3. a. If any portion of the claim remains disputed following the mediation set forth above, the Contractor may elect to personally serve the Contracting Officer with either:
- (1) a demand for arbitration under the Construction Industry Arbitration Rules of the American Arbitration Association ("Rules") setting forth the nature of the dispute and the claim or relief sought (including the amount, if any). If the Contractor elects to serve the Contracting Officer with a demand for arbitration, then:

(a) The dispute shall be submitted to one (1) neutral arbitrator selected from the panels of arbitrators of the American Arbitration Association if the Contractor and the District cannot mutually agree on a person to serve as the neutral arbitrator.

(b) The District and the Contractor agree that they will faithfully observe the Rules and will abide by and perform any award rendered by the neutral arbitrator and that a judgment of the court having jurisdiction may be entered on the award. Notwithstanding the Rules, discovery shall be permitted and the provisions of the California Code of Civil Procedure Section 1283.05 are incorporated herein by reference.

(c) The arbitrator hearing shall be held in San Joaquin County, California, unless the parties agree otherwise.

(2) a written notice stating that the Contractor elects to have the dispute resolved by litigation and in addition shall, within sixty (60) Days from the date of receipt of a decision from a mediator pursuant to Subsection B.2.b above, personally serve the District with a summons and complaint concerning the dispute filed in a California State court of proper jurisdiction.

b. Within thirty (30) Days after receipt of the Contractor's demand for arbitration under Subsection B.3.a.(1) above, the District shall have the right to elect to have the dispute resolved by litigation and, if the District so elects, the Contractor shall have sixty (60) Days from the date of receipt of the District's election to litigate the dispute in which to personally serve the District with a summons and complaint concerning the dispute filed in a California State court of proper jurisdiction.

4. Failure by the District to respond to a claim from the Contractor within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the District's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.
5. Amounts not paid in a timely manner as required by this Section shall bear interest at 7 percent per annum.
6. If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against the District because privity of contract does not exist, the Contractor may present to the District a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on their own behalf or on behalf of a lower tier subcontractor, that the Contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the District shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the Contractor shall notify the subcontractor in writing as to whether the Contractor presented the claim to the District and, if the original Contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.
- C. Notwithstanding anything to the contrary contained herein, the provisions of this Section 6.8 do not apply to tort claims and nothing in this Section 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.
- D. Notwithstanding the provisions of this Section, upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable.
- E. The validity, performance and all matters relating to the interpretation and effect of this Contract and any amendments thereto shall be governed by the laws of the State of California and this Contract shall be deemed to have been entered into in San Joaquin County, California.
- F. The Contractor hereby consents to the jurisdiction of the courts of San Joaquin County, California for the confirmation, correction or vacation of any arbitration award and for the adjudication of any disputes relating to this Contract.

[End of Section 6]

**SECTION 7
MEASUREMENT AND PAYMENT**

7.1. [Intentionally Omitted.]

7.2. Scope of Payment.

- A. The Contractor shall accept the compensation provided in the Contract as full payment for furnishing all labor, materials, tools, equipment, and incidentals necessary to the completed Work and for performing all Work contemplated and embraced under this Contract; also for all loss or damage arising from the nature of the Work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the Work until final acceptance by the District and for all risks of every description connected with the prosecution of the Work, also for all expenses incurred in consequence of the suspension or discontinuance of the Work as provided in this Contract; and for completing the Work according to the Specifications. Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective Work or material.
- B. No payment will be made in any case for loss of anticipated profits.

7.3. [Intentionally Omitted.]

7.4. Progress Payments.

- A. Unless otherwise provided in this Contract, monthly progress payments will be made as Work proceeds. Such payments will be made in accordance with estimates made by the Contracting Officer of the amount and value of Work satisfactorily performed by the Contractor up to the time of each estimate. Estimates will not include any allowance for materials or equipment not incorporated into any Work; provided that the District may in its sole discretion make progress payments thereon. In making progress payments, the District will retain five percent (5%) of the cumulative estimated amount until final acceptance of all Work under this Contract, unless a higher percentage is allowed pursuant to a finding made under California Public Contract Code section 7201(b)(4).
- B. In addition, the District may deduct from any payments due the Contractor (1) any amounts the District may be authorized to retain pursuant to Federal, State or local laws, (2) any amounts due the District from the Contractor, and (3) any other amounts which the District is otherwise authorized to retain under this Contract or under any other Contract with the District. Such Contracting Officer's estimates covering Work performed since the previous estimate will be made in writing on or about the twenty-fifth (25th) Day of each calendar month and payment will normally be made within fifteen (15) calendar Days thereafter. Such progress estimates will not be required to be made by strict measurement but may be made by measurement or by estimation or partly by one method and partly by another.
- C. Progress payments submitted by the Contractor will be administered in accordance with Public Contract Code Section 20104.50 as follows:
 - 1. Upon receipt of a progress payment request from the Contractor, the District shall review the payment request as soon as practicable for the purpose of determining that the payment request is a proper payment request.
 - 2. The District shall make payment to the Contractor within thirty (30) Days after receipt of an undisputed and properly submitted payment request.
 - 3. Any payment request determined not to be a proper payment request suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) Days, after receipt. A request returned pursuant to this GP Section shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

4. The number of Days available to the District to make a payment without incurring interest shall be reduced by the number of Days by which the District exceeds the seven (7) Day return requirement set forth above.
- D. All equipment, materials and Work covered by progress payments will upon such payment become the sole property of the District, but this provision shall neither be construed as constituting acceptance of any Work or as relieving the Contractor from the sole responsibility for all equipment, materials and Work upon which payments have been made, including the restoration of any damaged or lost equipment, materials and Work until final acceptance thereof, nor as a waiver of the right of the District to require fulfillment of all of the terms of this Contract.
- E. If the Contractor's right to proceed with any Work should be discontinued, as provided in the Termination for Default Clause or Termination for Convenience of District Clause, no further progress payments will thereafter be made to the Contractor for Work so terminated until completion of such Work or final settlement thereof.

7.5. Final Payment and Release.

- A. Whenever the Contractor deems that its obligations under this Contract have been fulfilled, the Contractor shall notify the Contracting Officer. Upon receipt of such notice, the Contracting Officer will in company with the Contractor, inspect the Work which has been performed. If the Contracting Officer determines that all Work which, by the terms of the Contract is necessary or required to be performed, has been satisfactorily performed, the Contracting Officer will cause to be filed in the office of the County Recorder of the County (or Counties) in which such Work is located, a notice of completion of all Work under the Contract.
- B. Within sixty (60) Days after the notice of completion of all Work is filed in the office of the County Recorder of the County (or Counties) in which such Work is located, the retention held by the District shall be released; provided, however, that in the event of a dispute between the District and the Contractor, the District may withhold from the final payment an amount not to exceed one hundred fifty percent (150%) of the disputed amount.
- C. Upon expiration of the statutory periods for filing of stop notices, complaints on stop notices, and complaints on the Payment Bond, and provided no such notices and complaints have been filed, the District will pay the Contractor the amount remaining after deducting from such amount all such amounts as will have been previously paid to the Contractor under this Contract, and also any amounts which by the terms of this Contract, the District is or may be authorized or required to reserve or retain.
- D. No claim shall be made or filed by the Contractor and the District will not be liable to pay any money other than as specifically provided in the Contract.
- E. Final payment by District, and acceptance of it by the Contractor, shall constitute:
 1. A waiver of all claims by District against the Contractor except: (1) claims arising from unsettled liens, (2) claims based on fraud or gross mistakes amounting to fraud, (3) claims for defective Work after final inspection pursuant to (A) above, or (4) any warranties or guarantees specified therein. However, it shall not constitute a waiver by District to any rights with respect to the Contractor's continuing obligations, if any, as specified in the Contract; and
 2. A waiver of all claims by the Contractor against the District other than those *previously made* in writing and still unsettled.

7.6. Substitution of Securities for Retention. Contractor may substitute securities for any moneys withheld by the District to ensure performance under the contract, subject to the provisions of Public Contract Code Section 22300. Pursuant to Public Contract Code Section 22300 and upon Contractor's request, the District will make payments into escrow of funds which would otherwise be retained from progress payments under GP Section 7.4(A) if the Contractor deposits into that escrow securities eligible for investment under Public Contract Code Section 22300 (hereafter collectively referred to as "securities"), upon the following terms and conditions:

- A. The escrow agent shall be either the District Treasurer or a state or federal chartered bank acceptable

to the District.

- B. The Contractor shall bear all expenses of the District and of the escrow agent in connection with the escrow.
- C. The fair market value of the securities shall be at least equal to one hundred percent (100%) of the cash amount withheld as retention under the Contract and the amount of the required securities shall be adjusted from time to time based upon changes in the fair market value of the securities on deposit with the escrow agent. Such securities shall be valued by the District Treasurer whose decision on valuation of the securities shall be final.
- D. The Contractor shall enter into an escrow agreement substantially similar in form to that prescribed in Public Contract Code Section 22300.
- E. The Contractor shall obtain the written consent to the escrow agreement of the surety or sureties furnishing Contractor with its Performance and Payment Bonds.

[End of Section 7]

SECTION 8 WARRANTY OF CONSTRUCTION

8.1. One-Year Warranty of Construction.

- A. In addition to any other warranties in this Contract, the Contractor warrants, except as provided in (K) of this clause, that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any Subcontractor or supplier at any tier.
- B. This warranty shall continue for a period of ONE (1) YEAR from the date of final acceptance of the Work.
- C. The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to District-owned or controlled real or personal property, when that damage is the result of:
 - 1. The Contractor's failure to conform to Contract requirements; or
 - 2. Any defect of equipment, material, workmanship, or design furnished by the Contractor.
- D. The Contractor shall restore any Work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to Work repaired or replaced will run for ONE (1) YEAR from the date of repair or replacement.
- E. The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- F. If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the District shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- G. With respect to all warranties, express or implied, from Subcontractors, manufacturers, or suppliers for Work performed and materials furnished under this Contract, the Contractor shall:
 - 1. Obtain all warranties that would be given in normal commercial practice;
 - 2. Require all warranties to be executed, in writing, for the benefit of the District, if directed by the Contracting Officer; and
 - 3. Enforce all warranties for the benefit of the District, if directed by the Contracting Officer.
- H. In the event the Contractor's warranty under (B) of this clause has expired, the District may bring suit at its expense to enforce a Subcontractor's, manufacturer's, or supplier's warranty.
- I. Unless a defect is caused by the negligence of the Contractor or Subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by

the District or for the repair of any damage that result from any defect in District-furnished material or design.

- J. This warranty shall not limit the District's rights under this Contract with respect to latent defects, gross mistakes, or fraud.
- K. Defects in design or manufacture of equipment specified by the District on a "brand name and model" basis shall not be included in this warranty. In that event, the Contractor shall require the Subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to the District for such equipment.

[End of Section 8]

EXHIBIT C

PROPOSAL REQUIREMENTS (Proposal Forms)

North San Joaquin Water Conservation District is hereinafter called the Owner.

The work to be done and referred in the Contract, Exhibit A, Exhibit B, and herein (Exhibit C) is in the North San Joaquin Water Conservation District South System pipeline near the intersection of Tretheway Road and Brandt Road, in San Joaquin County, State of California.

The work is to be constructed in accordance with the plans and specifications, the Contract, Exhibits' A, B, and C inclusive.

Exhibit C shall be completed by the bidder, placed in a sealed envelope and returned to:

Provost & Pritchard Consulting Group
Attn: Daniel de Graaf
4701 Sisk Avenue
Modesto, Ca 95356

The envelope shall be clearly marked: PROPOSAL FOR: TRETHEWAY AND BRANDT DISTRIBUTION BOX IMPROVEMENT PROJECT

The work to be done is shown on a set of Plans, entitled: TRETHEWAY AND BRANDT DISTRIBUTION BOX IMPROVEMENTS

The undersigned, as CONTRACTOR, declares that the only persons, or parties interested in this proposal as principals are those named herein, that this proposal is made without collusion with any other person, firm or corporation; that he has carefully examined the location of the proposed work, in the annexed proposed form of contract, and the Plans therein referred to; and he proposes and agrees if this proposal is accepted, that he will contract with the Owner to provide all necessary machinery, tools, apparatus and other means of construction, and to do all the work and furnish all the materials specified in the contract in the manner and time therein prescribed, and according to the requirements of the Engineer as therein set forth, and that he will take in full payment for final accepted bid items in paragraph B., below.

In submitting this Proposal, Bidder represents, as set forth in the Agreement, that:

- A. Bidder has examined and carefully studied: 1.) The Contract and the project site, 2.) Exhibit A – Additional Contract Provisions, 3.) Exhibit B – Plans and Specifications, 4.) Exhibit C – Proposal Requirements, and 5.) Other related data identified in the Bid Item Descriptions (integral in this Exhibit) and the following Checklist. The bidder acknowledges the following work is included in the TOTAL price inclusive of ALL bid items for the project (please check all that apply), and has :

- Irrigation Distribution box including rebar, board guides, and concrete collars.

EXHIBIT C
Proposal and Proposal Requirements

North San Joaquin Water Conservation District
Tretheway and Brandt Distribution Box Improvements

- 4'x4' Fresno Valves and Castings Series 8200 Fabricated Slide Gate
- 3'x3' Fresno Valves and Castings series 8200 Fabricated Slide Gate
- Access Ladder and Grate
- Site Finish Grading
- Automation
 - Remote automation of the distribution box that integrates with automation of the District's South Pump Station
 - Meters for both pipeline outlets from the distribution box for instantaneous and cumulative measurement
 - Telemetry for the valve and meters that integrates with the District's master data control center
 - Design and coordination of the above with Sierra Controls, LLC
- As-built drawings and specifications

***NOTE: See paragraph C for bid item descriptions for additional information.**

And;

- B. Bidder has visited the Site and became familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

EXHIBIT C
Proposal and Proposal Requirements

**North San Joaquin Water Conservation District
 TRETHEWAY AND BRANDT DISTRIBUTION BOX IMPROVEMENTS**

BID SCHEDULE – PER ADDENDUM 1

Item	Description	Quantity	Unit	Unit Price	Total
GENERAL					
1.	Mobilization/Demobilization, Bonds, Insurance, and Permits			LUMP SUM	\$_____
2.	Worker Protection			LUMP SUM	\$_____
3.	Miscellaneous Facilities and Operations			LUMP SUM	\$_____
EARTHWORK, CONCRETE, VALVES, SITE GRADING					
4.	Site Clearing, Demo, Earthwork	LS	1	\$_____	\$_____
5.	Irrigation Distribution Box	LS	1	\$_____	\$_____
6.	4'x4' Fresno Valves and Castings Series 8200 Fabricated Slide Gate	LS	1	\$_____	\$_____
7.	3'x3' Fresno Valves and Castings series 8200 Fabricated Slide Gate	LS	1	\$_____	\$_____
8.	Access Ladder and Grate	LS	1	\$_____	\$_____
9.	Site Finish Grading	LS	1	\$_____	\$_____
AUTOMATION, METERS, TELEMETRY					
10.	ITEM REMOVED FROM BID				
OTHER					
11.	As Built Drawings and Specifications	LS	1	\$_____	\$_____
TOTALBID					\$_____

ABBREVIATIONS USED IN ENGINEER'S ESTIMATE AND PROPOSAL SHEETS

CF	-	Cubic Foot (Feet)	SACK(S)	-	Sack(s)
CY	-	Cubic Yard(s)	STAYD	-	Station Yard(s)
EA	-	Each	SF	-	Square Foot (Feet)
LB(s)	-	Pound(s)	SY	-	Square Yard(s)
LF	-	Linear Foot (Feet)	TN	-	Ton(s)
LS	-	Lump Sum	MGAL	-	Million Gallon(s)
(F)	-	Final Pay Quantity*	(S)	-	Specialty Item
(S-F)	-	Specialty Item and Final Pay Quantity*	(F&I)	-	Furnish and Install

Bids are required for the entire work. Bids will be compared on the basis of the Base Bid amount. The project will be awarded to the lowest responsible, responsive bidder.

The bidder shall set forth for each item of work, in clearly legible figures, total for the item in the respective spaces provided for this purpose. The "Total" column shall be the sum of all unit prices bid. If the total cost of any item, or the total bid, is inconsistent with the Unit Cost, or the sum of the Unit Costs, the Unit Costs shall prevail.

If this proposal shall be accepted and the undersigned shall fail to contract, as aforesaid, and to give the two bonds in the sums to be determined as aforesaid, with surety satisfactory to the Owner, within ten (5) days not including Sundays and legal holidays, after the bidder has received notice of award of the contract, the Owner, at its option, may determine that the bidder has abandoned the contract, and thereupon this proposal and the acceptance thereof shall be null and void, and the forfeiture of such security accompanying this proposal shall operate and the same shall be the property of the Owner.

And;

C. Bid Item Descriptions:

Bid Item 1 – Mobilization, Demobilization, Bonds and Insurance, Permits: Payment for this item shall include full compensation for all labor, materials, tools, equipment and incidentals making up the cost of mobilization, move-in, move-out, all necessary bonds, insurance, permits, licenses, and fees required during the performance of the work as specified. This item also includes demobilization, including the removal of all equipment, supplies, personnel and incidentals from the project at the end of construction. Payment shall not exceed 5% of the bidders total proposal. Payment for mobilization shall be made with the first progress payment and shall not exceed 80 percent of the bid item amount. Payment for demobilization shall be made with the last progress payment and shall not be less than 20 percent of the bid item amount.

Bid Item 2 – Worker Protection: Payment for this item shall be considered full compensation for all labor, materials, tools, equipment and incidentals for providing for worker protection from caving ground in excavations and other hazards that may occur during construction, in accordance with the Plans and specifications. This bid

item will be paid for by Lump Sum, prorated, based on percentage of contract work completed.

Bid Item 3 – Miscellaneous Facilities and Operations: This bid item includes provisions for de-watering, maintaining drainage, temporary storm and flood water control, traffic control, dust control, construction and removal of temporary security fencing, construction of staging areas, protection of existing facilities, furnishing and installing project sign, maintaining and providing the record documents, general project clean up, and all costs for miscellaneous work shown and described in the Contract Documents, not included in other bid items. This bid item will be paid for on a Lump Sum basis.

Bid Item 4 – Site Clearing, Demo, and Earthwork: Payment for this item shall include full compensation for all labor, materials, tools, equipment and incidentals making up the cost of all work involved in clearing and grubbing within project site, and for demolition, all as described in the Plans; and Protection of the existing flume as required for this scope of work. This bid item will be paid as a lump sum, prorated based on the percentage of this item completed.

Bid Item 5 – Irrigation Distribution Box: This item includes furnishing all labor, equipment, tools and materials required to construct the Irrigation Distribution Box as detailed on the Plans. This item includes constructing the reinforced concrete foundations and walls as detailed on the Plans. This item also includes, sub-grade preparation including excavation, scarification, backfill, moisture conditioning, compaction, and other incidentals required to construct the bridge foundation as detailed on the Plans; and Protection of the existing infrastructure as required for this scope of work. This bid item will be paid for on a Lump Sum basis.

Bid Item 6 – 4'x4' Fresno Valves and Castings Series 8200 Fabricated Slide Gate: This item includes furnishing all labor, equipment, tools and materials required to install the **Contractor Supplied** Fresno Valves and Castings Series 8200 Fabricated Slide Gate as detailed on the Plans. This item includes coordination of gate delivery, off-loading the gate, setting the gate, and anchoring the gate to the Irrigation Distribution Box in the location detailed on the Plans, and other incidentals required to install the Gate as detailed on the Plans. This bid item will be paid for on a Lump Sum basis.

Bid Item 7 – 3'x3' Fresno Valves and Castings Series 8200 Fabricated Slide Gate: This item includes furnishing all labor, equipment, tools and materials required to install the **Contractor Supplied** Fresno Valves and Castings Series 8200 Fabricated Slide Gate as detailed on the Plans. This item includes coordination of gate delivery, off-loading the gate, setting the gate, and anchoring the gate to the Irrigation Distribution Box in the location detailed on the Plans, and other incidentals required to install the Gate as detailed on the Plans. This bid item will be paid for on a Lump Sum basis.

Bid Item 8 – Access Ladder and Grate: This item includes furnishing all labor, equipment, tools and materials required to install the Access Ladder and Grate ad detailed on the plans. This item to include shop drawings to be approve by the Owner prior to construction and installation. This bid item will be paid for by Lump Sum.

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Bid Item 9 – **Site Finish Grading:** This bid item includes rough and finish grading and all labor and equipment required to complete the grading of the site including area around the Irrigation Distribution Box to the satisfaction of the District; and over excavation under all concrete slabs and compaction of fill material, fill areas and spreading unsuitable material at the end of the job at the direction of the Owner. This bid item will be paid for by Lump Sum.

Bid Item 10 – **Automation, Meters, Telemetry:** This bid item includes the design (in coordination with the District Engineer and Sierra Controls LLC) of automation equipment, hardware and software as needed to allow for remote automated control of the distribution box and measurement of the flow in both outlets from the box, with all data to be sent electronically to the District's master data control center, and integrated seamlessly with the District's South Pump Station.

Bid Item 11 – **Drawings:** This bid item includes completed as-built drawings and specifications for the project to be delivered to the District within 30 days of the completion of construction.

Questions regarding this proposal can be directed to Provost & Pritchard, Attn: Daniel de Graaf (209) 809-2300 or by email at ddegraaf@ppeng.com

North San Joaquin Water Conservation District
Tretheway and Brandt Distribution Box Improvements

A Bid Bond is not required of Contractor to submit proposal. Performance and payment bonds will be required by the Contractor upon executing this contract with the District, costs of such bonds shall be considered part of the total contract price. The District reserves the right to accept or reject all proposal(s), in whole or part, without cause or justification concerning this informal proposal. District will base the award of this contract on schedule, price, and qualifications of the bidder. Incomplete proposals will be considered non-responsive.

BIDDER: _____

The names of all persons interested in the foregoing proposals as principals are as follows:

IMPORTANT NOTICE: If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer and manager thereof; if a co-partnership, state true name of firm, also names of all individual co-partners composing firm; if bidder or other interested person is an individual, state first and last name in full.

Licensed in accordance with an act providing for the registration of Contractors,

Class _____ License No. _____

Contractor's DIR Registration Number: _____

By _____ Dated _____
Signature of Bidder

NOTE: If bidder is a corporation, the legal name of the corporation shall be set forth above together with the seal and signature of the officer or officers authorized to sign contracts on behalf of the corporation; if bidder is a co-partnership, the true name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts on behalf of the co-partnership; and if bidder is an individual, his signature shall be placed above. If signature is by an agent, other than an officer of a corporation or member of a partnership, a Power of Attorney must be on file with the Owner prior to opening bids or submitted with the bid; otherwise, the bid will be disregarded as irregular and unauthorized.

BUSINESS ADDRESS: _____

MAILING ADDRESS: _____

BUSINESS PHONE: _____

CONTACT NAME: _____

CONTACT EMAIL: _____

END OF Exhibit C

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