



# MIDWAY CITY SANITARY DISTRICT

Serving the Community of Westminster and Midway City since 1939

## **Request For Bids**

**For**

**15th Street Pavement Repair Project**

**Project No. EP2025-04**

**April 1, 2026**

## **Scope of Work and Project Specifications**

### **Project Location**

The project is located on 15th Street in the City of Westminster, extending from Pacific Avenue to Beach Boulevard. The work area is within a residential neighborhood.

### **Project Description**

The work consists of asphalt pavement repair at three (3) separate locations within the project limits. The scope includes:

- Removal and replacement of approximately 500 square feet of asphalt pavement (approximately 6 inches in thickness).
- Pavement striping is not included in this project.
- The work shall be performed based on the City of Westminster Standard Drawing #609 - Utility Excavation in the Public Right of Way

### **Subgrade and Base Assessment**

- The contractor shall assess the condition of the aggregate base beneath the existing pavement and coordinate with the District Engineer on the assessment.
- If the aggregate base is found to be loose or inadequately compacted, the contractor shall provide optional pricing (based on tonnage) for replacement of the aggregate base and/or underlying soil.

### **Manhole Adjustment**

- Adjust one (1) existing manhole to match the finished surface grade based on Midway City Sanitary District Detail S-055A.
- Replacement of the manhole frame and cover is not included in this scope.

### **Requirements**

- Prevailing wages are required for this project.
- A valid Class A Contractor License is required.

- An encroachment permit must be obtained from the City of Westminster prior to construction.
- The contractor shall obtain any additional permits required by other applicable jurisdictions.
- All work shall be performed in accordance with Cal/OSHA requirements.
- All work shall comply with all applicable federal, state, and local laws and regulations.

### **Bonds and Insurance**

- The contractor shall provide payment and performance bonds, each in the amount of 100% of the contract value.
- The contractor shall maintain insurance coverage, including:
  - o General Liability Insurance according to the Construction Agreement.
  - o Automobile Liability Insurance according to the Construction Agreement.
  - o Workers' Compensation Insurance (as required by law).
- Certificates of insurance and endorsements shall be provided prior to the start of work and must name the District as an additional insured.

### **Schedule**

- Quotes are due no later than April 13, 2026, at 3:00 PM.
- Questions are due no later than April 8, 2026, at 3:00 PM.
- Submit proposal via email to: Milo Ebrahimi  
[mebrahimi@midwaycitysanitaryca.gov](mailto:mebrahimi@midwaycitysanitaryca.gov)
- Anticipated project completion date: April 27, 2026.

### **Bid Requirements**

- Provide a lump sum price for the base scope of work and include all costs for mobilization and traffic control.
- Provide optional per ton unit pricing for potential aggregate base and/or subgrade replacement (if required).
- Provide optional per ton unit pricing for more pavement replacement (if required).

## **Attachments**

1. Project Location Map
2. City of Westminster Standard Drawing #609 - Utility Excavation in the Public Right of Way
3. Existing Conditions Photos
4. Sample Agreement

**Attachment 1**  
**Project Location Map**



MIDWAY CITY  
SANITARY DISTRICT

DATE: 04/01/2026

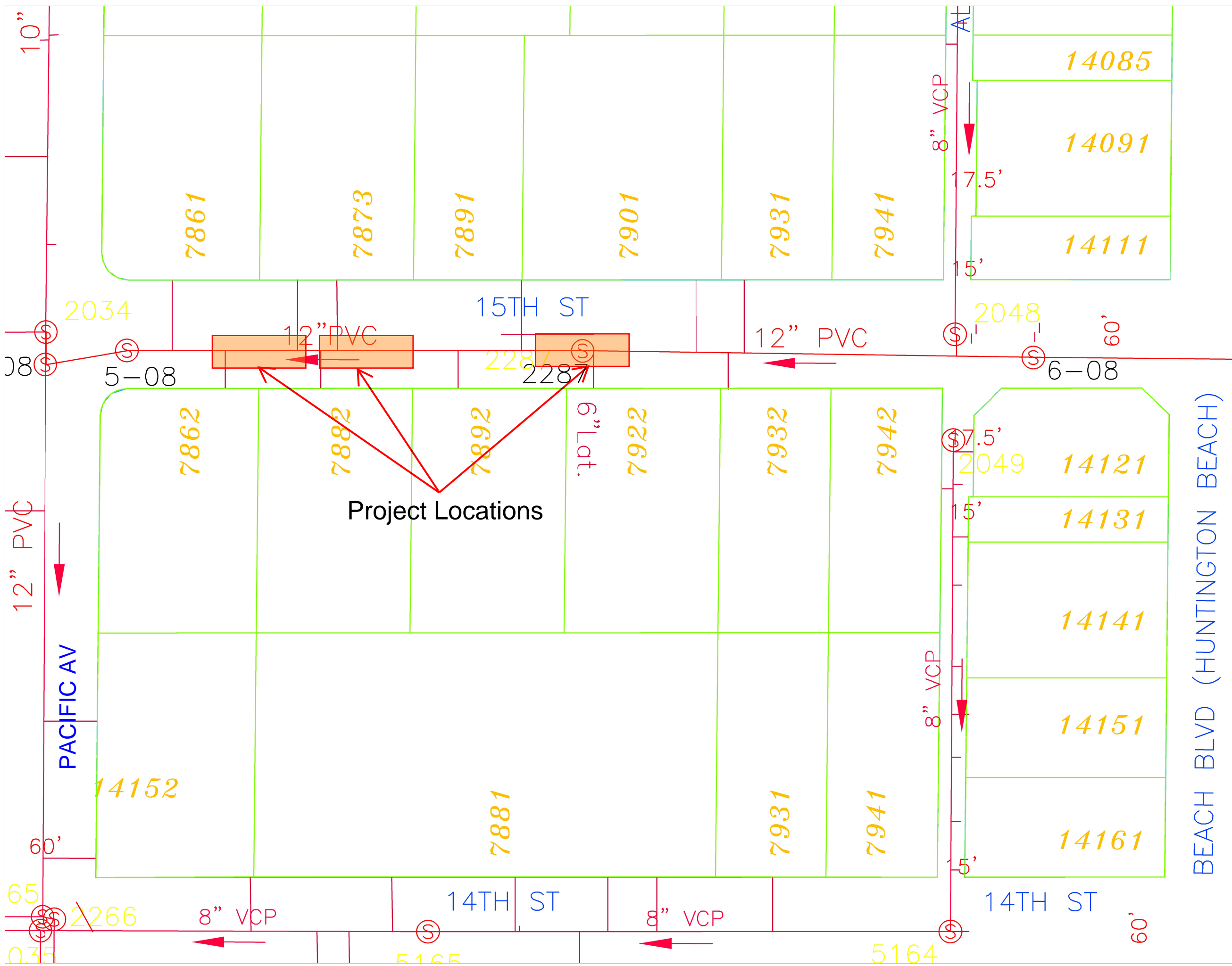
SC: NTS

PROJECT NAME: 15TH STREET



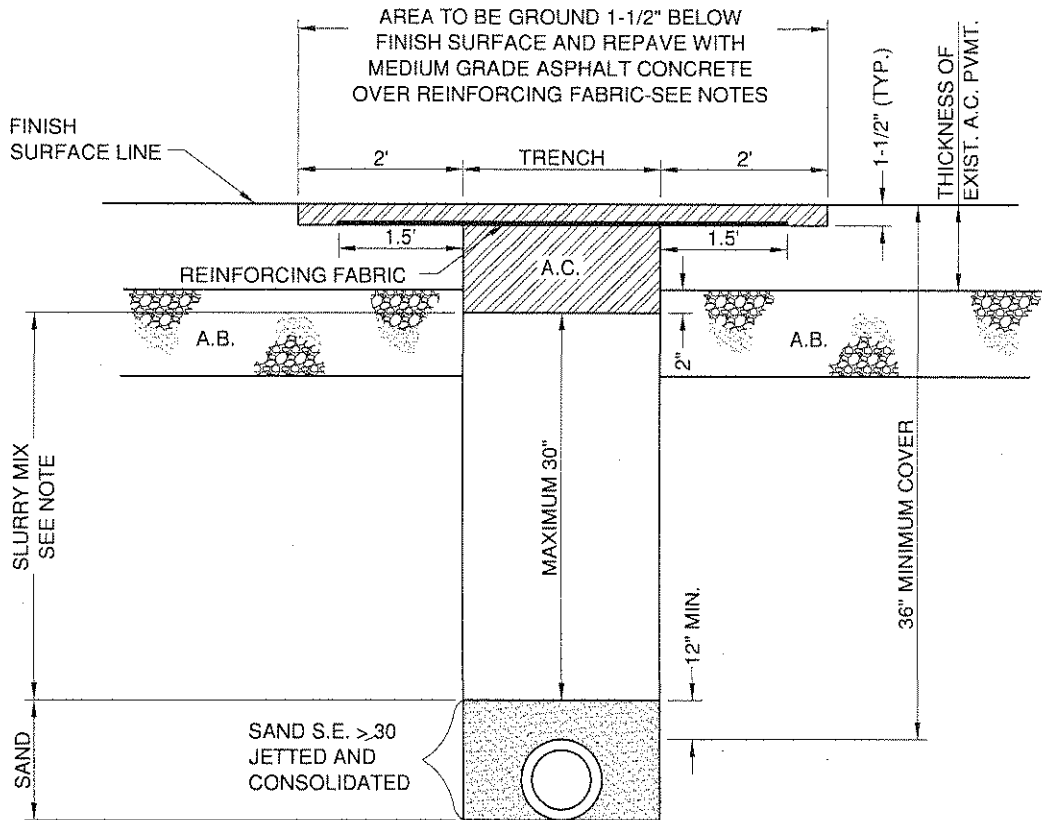
Legend

- 14591 Property Number
- Property Line
- MCSO Sewer Line
- OCSD Trunk
- SABRE LN Street Name
- S Sewer Manhole
- Flow Direction
- 8" VCP Pipe Size & Type




**Attachment 2**

**City of Westminster Standard Drawing #609 - Utility Excavation in the Public Right of  
Way**



APPROVED:

  
 P.W. DIRECTOR / CITY ENGINEER



**City of Westminster**  
 DEPARTMENT OF PUBLIC WORKS

REVISED DATE: 5/15/08

UTILITY EXCAVATION

STANDARD NUMBER

609

# STANDARD DRAWING # 609

## UTILITY EXCAVATION IN THE PUBLIC RIGHT OF WAY

The intent of these standards is to assure the best repair possible and reduce adverse impacts for the Public from road roughness, closures, and time to do work. IT MUST BE DONE SAFELY!

### Notes

1. **Slurry Backfill:** Use 1.5 sack slurry with two (2) percent calcium chloride. If steel pipe is used then use non-chloride accelerator. Slurry shall be a maximum of thirty (30) inches deep, and shall be placed to the depth of two (2) inches below existing A.C. pavement.
  
2. **Pavement:** The trench shall be paved for the thickness of the existing paving plus a depth of two (2) inches, twenty-four (24) hours after slurry has been placed. The A.C. pavement shall be placed directly over the slurry with no aggregate base. The A.C. pavement in the trench plus two (2) feet each side of the trench, shall be ground a depth of one and one-half (1.5) inches below finish surface, and paved with a medium grade A.C. over reinforcing fabric.  

Latex rubber asphalt concrete or other type of asphalt concrete material may be required based on existing conditions.
  
3. **Reinforcing Fabric:** The trench, plus one and one-half (1.5) feet on each side, shall be covered with reinforcing fabric prior to paving.
  
4. **Cold Mix:** Use of cold mix (UPM) to temporarily repair excavations the same day, in order to allow traffic flow on smooth transitions, is generally allowable. If cold mix is to be used, use (UPM) or approved equal, following the City Engineer's approval. It shall be a minimum thickness of three (3) inches for residential streets and six (6) inches for arterial and secondary arterials, and kept in good and safe condition.
  
5. **Slurry Seal:** Longitudinal continuous excavation shall be sealed using Type II slurry seal and cracks sealed, for the width of any affected lanes following the A.C. repairs, to the satisfaction of the City Engineer.
  
6. **Sand:** Sand shall be used for bedding and as cover for installed pipes. A minimum cover of twelve (12) inches of sand shall be used. On water service laterals, maintain twelve (12) inches of sand above the lateral, even when the elevation varies as the lateral is closer to the edge of gutter. Sand shall have a sand equivalence of greater than or equal to thirty (30). Sand shall be placed in maximum one foot lifts or less thickness as necessary to be able to achieve the necessary consolidation. It shall be jetted and consolidated to the satisfaction of the City Engineer.
  
7. **NPDES Requirements:** Streets shall be kept clean at all times. The City may require mechanical sweeping. The contractor shall maintain a clean work area, and prevent any material prohibited by the NPDES permit and the City's Water Quality Ordinance from entering the storm drain system.  

The contractor shall meet all NPDES requirements during construction. All erosion control measures shall be taken during construction, to the satisfaction of the City Engineer. If no proper erosion control measures are taken on site, City may require that all operations cease and the encroachment permit may be revoked until proper measures have been taken to the satisfaction of the City Engineer.
  
8. **Traffic Control Plan:** Contractor (or applicant) shall submit traffic control plans complying with the California Manual on Uniform Traffic Control Devices (MUTCD), in advance for review and approval prior to excavating within the Public Right of Way, unless the excavation is an emergency, and then comply with the WATCH Manual.

**STANDARD DRAWING # 609**  
**UTILITY EXCAVATION IN THE PUBLIC RIGHT OF WAY**  
**Notes (Continued)**

9. **CAL-OSHA:** Contractor shall follow and will be responsible to obtain a Cal-OSHA permit when required.
10. **Steel Plates:** When steel plates are used, they shall be used per Caltrans Standards, with the following modification: Method Two (2) shall be applied to all arterial and secondary arterials. Steel plates shall be doweled into the ground, and/or welded together to eliminate movement. The City Engineer may recommend additional safety measures if it is deemed necessary. Steel plates shall always have cold mix around all edges. Recessing of steel plates shall be performed as required by the City Engineer on arterial and secondary arterial streets for planned activities requiring more than twenty-four (24) hours for open travel ways.
  - a) **Planned activity:** Planned activities shall be cleared through the Engineering Division to be working in the Public Right of Way under an approved schedule. Steel plates can remain at one location for twenty-four (24) hours, then shall be removed. If unforeseen conditions arise, then follow emergency procedures below.
  - b) **Emergency procedures:** When an unforeseen condition arises, steel plates can be maintained at a location for up to seventy-two (72) hours.
11. **Potholing/Temporary Excavating:** If potholing is the result of an investigation for a planned activity or for temporary excavations, cold mix (UPM) or approved equal could be used temporarily with suitable backfill, flush with adjacent existing asphalt. Following completion of the activity, standard excavation for permanent repair shall be followed. This will be done the same day as the excavation to reduce adverse impacts to roadway use. The City Engineer may require, based on the existing street condition, that excavation repair includes grinding along the edges, as per standard utilities excavation repair.
12. **Boring:** Boring shall be considered as a continuous trench as far as excavation repair. Potholes located intermittently will not be treated as separate excavations but as a continuous excavation. The City shall reserve the right to require boring or open trench as the situation may arise, to the satisfaction of the City Engineer.
13. **Moratorium on Newly Resurfaced Streets:** Excavation shall generally not be permitted in any street that has been resurfaced in the past five years. No permit will be granted to excavate in the Public Right of Way except for lateral extensions to customers/repairs less than one thousand five hundred (1,500) feet, or as approved by the City Council. Approved excavations in new streets shall require full lane or full width of the street, as determined by the City Engineer, with grind and overlay repairs. In case of an emergency, applicant shall obtain the City Engineer's approval for appropriate repair measures as soon as possible.
14. **Contractor Identification:** Anyone working within the Public Right of Way shall be identified with the entity's name, to be visible from both directions of travel lanes.
15. **Variances:** The City Engineer may consider variances as requested in advance, that meet the intent of these specifications.
16. **Lane Closure:** Multiple lane closures will normally be prohibited.
17. **Work Hours:** Arterial and secondary arterial streets work hours shall be restricted to 9:00 a.m. until 3:00 p.m. No traffic control shall be placed before 9:00 am and shall be removed by 3:00 p.m. Residential and secondary streets work hours shall be restricted to 7:00 a.m. until 4:00 p.m.

**STANDARD DRAWING # 609**  
**UTILITY EXCAVATION IN THE PUBLIC RIGHT OF WAY**  
**Notes (Continued)**

18. **Insurance:** Anyone working within the Public Right of Way shall comply with the City's insurance requirements, prior to obtaining an encroachment permit.
19. **Encroachment Permit:** Anyone excavating within the Public Right of Way shall be required to obtain an encroachment permit prior to start of any excavation.
20. **Underground Service Alert:** Section 4216/4217 of the Government Code requires a DigAlert Identification Number be issued before an "Encroachment Permit" will be valid. For your DigAlert I.D. Number, Call Underground Service Alert, Toll Free: 1-800-422-4133, two working days before you dig.

**CALTRANS STANDARD**  
**TEMPORARY STEEL PLATE BRIDGING WITH A NON-SKID SURFACE**

Highway encroachment work involving excavations shall be identified during the review process of the permit applications package. It is recognized that to accommodate excavation work, steel plate bridging may be necessary. All permit conditions for use of steel plate bridging should be set forth in the special provisions of the permit.

Consideration of steel plate bridging in the review process should take into account the following factors:

1. Traffic volume and composition
2. Duration and size of the proposed excavation
3. Weather conditions

When it is determined in the review process that shoring will be a part of the permitted operation, the shoring shall conform to Caltrans standards.

When backfilling operations of an excavation in the traveled way, whether transverse or longitudinal, cannot be properly completed within a work day, steel plate bridging with a non-skid surface and shoring may be required to preserve unobstructed traffic flow. In such cases, the following conditions shall apply:

1. Steel plate bridging on freeways is not allowed.
2. Steel plates used for bridging must extend a minimum of twelve (12) inches beyond the edges of the trench.
3. Steel plate bridging shall be installed to operate with minimum noise.
4. The trench shall be adequately shored, per Caltrans Standards, to support the bridging and traffic loads.
5. Temporary paving with cold asphalt concrete shall be used to feather the edges of the plates, if plate installation by Method Two (2) is used.
6. Bridging shall be secured against displacement by using adjustable cleats, shims or other devices.

As required by Caltrans, steel plate bridging and shoring shall be installed using either Method One (1) or Two (2):

**Method One (1) For speeds more than 45 mph:**

The pavement shall be cold planed to a depth equal to the thickness of the plate and to a width and length equal to the dimensions of the plate.

**Method Two (2) For speeds 45 mph or less:**

Approach plate(s) and ending plate (if longitudinal placement) shall be attached to the roadway by a minimum of two (2) dowels pre-drilled into the corners of the plate and drilled two (2) inches into the pavement. Subsequent plates are butted to each other. Fine graded asphalt concrete shall be compacted to form ramps, maximum slope eighty-five (85) percent with a minimum twelve (12) inches taper to cover all edges of the steel plates. When steel plates are removed, the dowel holes in the pavement shall be backfilled with either graded fine or asphalt concrete mix, concrete slurry, or equivalent slurry satisfactory to the Caltrans' representative.

The contractor shall be responsible for maintenance of the steel plates, shoring and asphalt concrete ramps.

Unless specifically noted in the provisions of the permit, steel plate bridging should not exceed four (4) consecutive working days in any given week. Backfilling of excavations shall be covered with a minimum three (3) inches temporary layer of cold asphalt concrete.

The following table shows the required minimal thickness of steel plate bridging required for a given trench width:

TRENCH WIDTH	MINIMUM PLATE THICKNESS
0.3 m (1.0')	13 mm (1/2")
0.45 m (1.5')	19 mm (3/4")
0.6 m (2.0')	22 mm (7/8")
0.9 m (3.0')	25 mm (1")
1.2 m (4.0')	32 mm (1 1/4")

NOTE: For spans greater than four (4) feet, a structural design shall be prepared by a registered Civil Engineer and approved by Caltrans.

Steel plate bridging shall be steel plates designed for HS20.44 truck loading per Caltrans Bridge Design Specifications Manual. The permittee shall maintain on the steel plate a non-skid surface having a minimum coefficients of friction equivalent to 035 as determined by California Test Method 342 (see Caltrans Standards). If a different test method is used, the permittee may utilize standard test plates with known coefficients of friction available from each Caltrans District Materials Engineer to correlate skid resistance result to California Test Method 342.

A Rough Road Sign (W33) with black lettering on an orange background, may be used in advance of steel plate bridging. This is to be used with any other required construction signing.

**Attachment 3**  
**Existing Conditions Photos**

Please see the current condition photos below with pavement temporary fix (date photos are taken: 2026-01-30):

Location 1:



Location 2:



Location 3:



**Attachment 4**  
**Sample Agreement**

## SAMPLE AGREEMENT FOR STREET/SEWER REPAIRS

*(15th Street Pavement Repair Project)*

THIS AGREEMENT FOR STREET/SEWER REPAIRS (hereinafter “Agreement” or “Contract”) is made this \_\_\_\_ day of \_\_\_\_\_, 2026, by the MIDWAY CITY SANITARY DISTRICT, a public entity (hereinafter referred to as “DISTRICT”) and \_\_\_\_\_, (hereinafter referred to as “CONTRACTOR”). DISTRICT and CONTRACTOR are sometimes hereinafter individually referred to as “Party” and are hereinafter collectively referred to as the “Parties.”

### RECITALS

The following recitals are a substantive part of this Agreement:

- A. This Agreement is entered into pursuant to Resolution No. 2023-09 adopted by the Midway City Sanitary District Board of Directors on April 4, 2023, and Public Contract Code Sections 20806 and 22050.
- B. DISTRICT has determined there is a need to retain the services of a qualified contractor to perform street repairs in 15th Street between Pacific Avenue to Beach Boulevard (the “Project”).
- C. CONTRACTOR has submitted to DISTRICT a proposal, dated \_\_\_\_\_, 2026, to complete the PROJECT (the “Proposal”).
- D. CONTRACTOR represents and maintains that it is ready, willing, and able to perform the street repairs required as specified in Sections 1 and 2 of this Agreement and in accordance with the terms and conditions of this Agreement and under the direction of the District’s Engineer.
- E. DISTRICT desires to retain CONTRACTOR to complete the Project.

### AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

#### **1. Scope of Work and General Conditions.**

**1.1 Scope of Work.** In compliance with all terms and conditions of this Agreement, CONTRACTOR shall furnish, under the conditions expressed in the Plans and Specifications, at its own expense, all tools, equipment, materials and supplies and shall perform all labor necessary to complete the Project in good workmanlike and substantial order (hereinafter referred to as the “Scope of Work,” the “Services” or “Work”). “Project” shall mean the work to be performed under the “Contract Documents,” as defined below. All Work or Services shall be completed to the reasonable satisfaction of DISTRICT.

**1.2 Contract Documents.** The Agreement between the Parties shall consist of the “Contract Documents,” which shall consist of following: (1) this Agreement (also referred to as the “Contract”); (2) CONTRACTOR’S Proposal attached hereto at Exhibit A; (3) the Plans and Specifications attached hereto at Exhibit B; and (4) the General Conditions attached hereto at Exhibit C. Each of the Contract Documents is hereby incorporated by reference into this Agreement with the same force and effect as if the same were set forth at length herein. All provisions of the Contract Documents shall be binding on the Parties. Should any conflict or inconsistency exist in the Contract Documents, the conflict or inconsistency shall be resolved by applying the provisions in the highest priority document, which shall be determined in the following order of priority: (1st) the terms and conditions of this Agreement; (2nd) the terms and provisions of the Plans and Specifications (Exhibit B); (3rd) the terms and provisions of the General Conditions (Exhibit C); and (4th) the provisions of the CONTRACTOR’s Proposal (Exhibit A).

**1.3 Compliance with Law.** CONTRACTOR shall comply at all times during the term of this Agreement with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government, including without limitation all applicable fair labor standards and Cal/OSHA requirements. CONTRACTOR shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules, and regulations in any manner affecting the performance of the Work and Services, including all Cal/OSHA requirements, and shall give all notices required by law. CONTRACTOR shall be liable for all violations of such laws and regulations in connection with performing the Work and Services. If CONTRACTOR performs any Work or Services in violation of such laws, rules, and regulations, CONTRACTOR shall be solely responsible for all penalties and costs arising therefrom. CONTRACTOR shall defend, indemnify, and hold DISTRICT, its officials, officers, employees, agents and volunteers, free and harmless from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules, or regulations.

**1.4 Licenses, Permits, and Fees.** Prior to performing any Services or Work hereunder CONTRACTOR shall obtain all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession and perform the Work and Services required by this Agreement. CONTRACTOR represents and warrants to DISTRICT that CONTRACTOR shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement and any extension, any license, permit, qualification, or approval that is legally required for CONTRACTOR to perform the Work and Services under this Agreement. CONTRACTOR further represents and warrants to DISTRICT that CONTRACTOR is in good standing and authorized to do business in California and the local jurisdiction(s) comprising the site for the Work and is properly registered with the California Secretary of State pursuant to applicable law. CONTRACTOR shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the CONTRACTOR’s performance of the Work and Services required by this Agreement, and shall defend, indemnify, and hold DISTRICT, its officials, officers, employees, agents and volunteers, free and harmless from and against any claim or liability arising out of any failure or alleged failure to obtain such license, permits, and approvals of whatever nature that are legally required to perform the Work or Services.

**1.5 Familiarity with Work.** By executing this Agreement, CONTRACTOR warrants that: (1) it is fully familiar with all the terms, conditions, and obligations of the Contract Documents; (2) it has thoroughly investigated and considered the Scope of Work or Services to be performed; (3) it has carefully considered how the Services or Work should be performed and has carefully examined the location or locations at or with respect to where such Services or Work is to be performed and is aware of all conditions there; and (4) it understands the facilities, difficulties, and restrictions of attending performance of the Services or Work under this Agreement. If the Services or Work involve work upon any site, CONTRACTOR represents and maintains that CONTRACTOR has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of any Services or Work hereunder. Should CONTRACTOR discover any latent or unknown conditions materially differing from those inherent in the Work or as represented by DISTRICT, it shall immediately inform DISTRICT of this and shall not proceed, except at CONTRACTOR's risk, until written instructions are received from DISTRICT.

**1.6 Care of Work.** CONTRACTOR shall adopt reasonable methods during the term of the Agreement to furnish continuous protection to the Work and the equipment, materials, papers, documents, plans, studies, and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the Work by DISTRICT, except such losses or damages as may be caused by DISTRICT's own negligence.

**1.7 Stop Notices.** In the event DISTRICT receives a stop notice from any laborer or material supplier alleging non-payment by CONTRACTOR, DISTRICT shall be entitled to deduct all of its costs and expenses incurred relating thereto, including but not limited to administrative and legal fees.

**1.8 Further Responsibilities of Parties.** Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement.

## **2. Time of Commencement and Completion.**

**2.1 Schedule of Performance.** CONTRACTOR shall commence the Services pursuant to this Agreement upon receipt of a written notice to proceed from DISTRICT's Engineer and shall perform all Services within the time period(s) established in the Schedule of Performance set forth in the Plans and Specifications (Exhibit B), or otherwise mutually agreed upon by the Parties. When requested by CONTRACTOR, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the DISTRICT; however, the DISTRICT shall not be obligated to grant such an extension.

**2.2 Time of Essence.** Time is of the essence in the performance of this Agreement. The time for commencement and completion of the Work to be performed by CONTRACTOR is an essential condition of this Agreement. CONTRACTOR shall prosecute regularly and diligently the Work according to the agreed upon Schedule of Performance.

### **3. Contract Price and Method of Payment.**

**3.1 Contract Price.** DISTRICT agrees to pay and CONTRACTOR agrees to accept as full consideration for the faithful performance of this Agreement, subject to any subsequent additions or deductions as provided below and/or in approved change orders, the lump sum of \_\_\_\_\_ DOLLARS and 00/100 CENTS (\$ \_\_\_\_\_), which includes all “Inclusions” as itemized on CONTRACTOR’s Proposal (Exhibit A) (the “Contract Price”). DISTRICT further agrees to compensate CONTRACTOR all work and services required to dewater groundwater, if encountered, on a time and materials basis, which costs, if any, shall be added to the Contract Price. The Contract Price shall include the attendance of CONTRACTOR at all Project meetings deemed reasonably necessary by the DISTRICT. CONTRACTOR shall not be entitled to any increase in the Contract Price for attending these meetings. In addition to payment of the Contract Price, DISTRICT agrees to reimburse CONTRACTOR for the actual cost of any bonds, permits, and/or other items specified in CONTRACTOR’s Proposal as excluded from the Contract Price.

**3.2 Payment.** Prior to the twentieth (20th) day of the month next following the commencement of the Work, there shall be paid to CONTRACTOR a sum equal to ninety-five percent (95%) of the value of the actual Work completed as determined by DISTRICT; and thereafter, prior to the twentieth (20th) day of each successive month as the work progresses, CONTRACTOR shall be paid such sum as will bring the total payments received, since the commencement of the Work as determined by the DISTRICT (less all previous payments) to ninety-five percent (95%) of the value of the actual Work completed, provided that CONTRACTOR submits its request for payment prior to the last day of the preceding month. Partial payments on the Contract Price shall not be considered as an acceptance of any part of the Work. Pursuant to Public Contract Code Section 22300, CONTRACTOR will be permitted to substitute securities for any monies withheld by DISTRICT to ensure performance of the Agreement.

**3.3 Changes in Contract Price.** Any changes to the Contract Price shall be pursuant to written change order approved by the DISTRICT as set forth in the General Conditions (Exhibit C).

**3.4 Termination.** If termination of this Agreement for default or convenience is effected by the DISTRICT in accordance with paragraphs (a) or (b) of Section 11, an equitable adjustment in the Contract Price shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the CONTRACTOR at the time of termination may be adjusted to cover any additional costs to the DISTRICT because of the CONTRACTOR’s default. If termination for default is effected by the CONTRACTOR in accordance with paragraph (a) of Section 11, the equitable adjustment shall include a reasonable profit for services or other work performed, but no adjustment will be allowed for anticipated profits. The equitable adjustment for any termination shall provide for payment to the CONTRACTOR for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the CONTRACTOR relating to commitments which had become firm prior to the termination.

4. **Completion.** Within ten (10) days after the completion date of the Project, CONTRACTOR shall file with the DISTRICT's Engineer its affidavit stating that all workers and persons have been paid in full, and that there are no claims outstanding against the Project for either labor or material, except those certain items, if any, to be set forth in affidavit covering disputed claims, or items in connection with Stop Notices which have been filed under the provisions of the statutes of the State of California. DISTRICT may require affidavits or certificates of payment and/or releases from any subcontractor, laborer or material supplier.

5. **Warranty.**

(a) CONTRACTOR agrees to perform all Work under this Agreement in accordance with the Plans and Specifications.

(b) CONTRACTOR guarantees for a period of at least one (1) year from the date of completion of the Work that the completed work is free from all defects due to faulty materials, equipment or workmanship and that it shall promptly make whatever adjustments or corrections may be necessary to cure any defects, including repairs of any damage to other parts of the Project resulting from such defects. DISTRICT shall promptly give notice to CONTRACTOR of observed defects. In the event that CONTRACTOR fails to make adjustments, repairs, corrections or undertake other work made necessary by such defects, DISTRICT may do so and charge CONTRACTOR the cost incurred. The Performance Bond shall remain in full force and effect through the guarantee period.

(c) CONTRACTOR's obligations under this clause are in addition to CONTRACTOR's other express or implied assurances under this Agreement or state law and in no way diminish any other faulty materials, equipment or work.

6. **Prevailing wages.** DISTRICT has determined that the Work and Services under this Agreement requires work of labor categories which are subject to Prevailing Wage Laws identified in the State of California Labor Code. CONTRACTOR is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. CONTRACTOR agrees to fully comply with all applicable federal and state labor laws (including, without limitation, the Prevailing Wage Laws). It is agreed by the Parties that, in connection with the Work or Services provided pursuant to this Agreement, CONTRACTOR shall bear all risks of payment or non-payment of prevailing wages under California law, and Consultant hereby agrees to defend, indemnify, and hold DISTRICT, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. The foregoing indemnity shall survive termination of this Agreement CONTRACTOR understands and agrees to comply with the following California Labor Code compliance conditions [Labor Code Sections 1720 et seq., 1813, 1860, 1861, 3700]:

(a) This Agreement is subject to the provisions of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works and the

awarding public agency (“DISTRICT”) and CONTRACTOR agrees to be bound by all the provisions thereof as though set forth in full herein.

(b) CONTRACTOR shall be registered with the Department of Industrial Relations (“DIR”) in accordance with California Labor Code Section 1725.5 and has provided proof of registration to DISTRICT prior to the Effective Date of this Agreement.

(c) CONTRACTOR agrees to comply with the provisions of California Labor Code Sections 1771, 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The applicable prevailing wage determination(s) may be obtained at <https://www.dir.ca.gov/oprl/dprevwagedetermination.htm>, are on file with DISTRICT, and are available to any interested party upon request. A copy of said rates shall be posted at each job site during the Term of this Agreement.

(d) Pursuant to California Labor Code Section 1771.4, CONTRACTOR’s services are subject to compliance monitoring and enforcement by the Department of Industrial Relations. CONTRACTOR shall post job site notices as prescribed by DIR regulations and furnish the records specified in California Labor Code Section 1776 directly to the Labor Commissioner in the manner prescribed by California Labor Code Section 1771.4(a)(3) and (c)(2).

(e) CONTRACTOR shall comply with the provisions of California Labor Code Section 1776 which, among other things, require Contractor and each subcontractor to (1) keep accurate payroll records, (2) certify and make such payroll records available for inspection as provided by Section 1776, and (3) inform the DISTRICT of the location of the records. CONTRACTOR is responsible for compliance with Section 1776 by itself and all of its subcontractors.

(f) CONTRACTOR shall comply with the provisions of California Labor Code Section 1777.5 concerning the employment of apprentices on public works projects, and further agrees that CONTRACTOR is responsible for compliance with Section 1777.5 by itself and all of its subcontractors.

(g) Eight (8) hours of labor shall constitute a legal day’s work for all workmen employed in the execution of this Agreement, and CONTRACTOR and any subcontractor shall comply with and be governed by the laws of the State of California having to do with working hours set forth in Division 2, Part 7, Chapter 1, Article 3 of the California Labor Code. CONTRACTOR shall comply with the provisions of California Labor Code Section 1813 concerning penalties for workers who work excess hours. CONTRACTOR shall, as a penalty to DISTRICT, forfeit twenty-five dollars (\$25) for each worker employed in the execution of this Agreement by the CONTRACTOR or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the California Labor Code. (See, e.g., Cal. Labor Code §1815.)

(h) Pursuant to California Labor Code Sections 1860 and 3700, CONTRACTOR will be required to secure the payment of compensation to its employees. By signing this Agreement, CONTRACTOR hereby certifies as follows:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement.”

(i) Pursuant to California Labor Code Section 1771.1, CONTRACTOR and any subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the California Public Contract Code, or engage in the performance of any contract for public work on a public works project unless registered with the DIR and qualified to perform public work pursuant to California Labor Code Section 1725.2. It is not a violation of California Labor Code Section 1771.1 for an unregistered contractor to submit a bid that is authorized by California Business and Professions Code Section 7029.1 or by California Public Contract Code Section 10164 or 20103.5, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. CONTRACTOR shall not perform any work under this Agreement with any subcontractor who is ineligible to perform work on the public works project pursuant to Section 1777.1 or 1777.7 of the California Labor Code. By submitting a bid or proposal to DISTRICT, CONTRACTOR is certifying that it has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and CONTRACTOR shall provide proof of registration for themselves and all listed subcontractors to DISTRICT upon request.

(j) CONTRACTOR shall provide the list of subcontractors, along with their DIR registration numbers, utilized on this Agreement prior to any Work being performed; and the CONTRACTOR shall provide a complete list of all subcontractors with each invoice. Additionally, CONTRACTOR shall provide DISTRICT with a complete list of all subcontractors utilized on this Agreement within ten working days of the completion of the Work, along with their DIR registration numbers.

## **7. Limitations Upon Subcontracting and Assignment.**

**7.1 Subcontracting.** Except for those entities disclosed in CONTRACTOR’s Proposal or subsequently approved by the DISTRICT in writing, CONTRACTOR shall not contract with any other entity to perform any portion of the Work without written approval of the DISTRICT. If CONTRACTOR is permitted to subcontract any part of this Agreement, each such subcontractor shall be duly licensed and registered, and CONTRACTOR shall be responsible to DISTRICT for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and DISTRICT. All persons engaged in the work will be considered employees of CONTRACTOR. DISTRICT will deal directly with and will make all payments to CONTRACTOR. CONTRACTOR represents and warrants that it has complied, and will comply,

with all applicable provisions the Subletting and Subcontracting Fair Practices Act, Public Contract Code Sections 4100 through 4113, inclusive.

**7.2 Assignment.** No assignment(s) by the CONTRACTOR of this Agreement or any part hereof, or of funds to be received hereunder, will be recognized by the DISTRICT unless such assignment(s) has(have) had prior written approval and consent of the DISTRICT and the surety.

**8. Surety Bonds.** If the Contract Price is in excess of \$25,000.00, CONTRACTOR shall, before entering upon the performance of this Agreement, furnish bonds approved by the DISTRICT's General Counsel - one in the amount of one hundred percent (100%) of the Contract Price bid, to guarantee the faithful performance of the work and one year guarantee, and the other in the amount of one hundred percent (100%) of the Contract Price bid to guarantee payment of all claims for labor and materials furnished. This Agreement shall not become effective until such bonds are supplied to and approved by the DISTRICT.

**9. Insurance requirements.**

**9.1 Commencement of Work.** CONTRACTOR shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the DISTRICT. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the DISTRICT of any material change, cancellation, or termination at least thirty (30) days in advance.

**9.2 Workers Compensation Insurance.** During the duration of this Agreement, CONTRACTOR and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable.

**9.3 Insurance Amounts.** CONTRACTOR and all subcontractors shall procure and maintain insurance acceptable to DISTRICT. Unless otherwise agreed or waived in writing by DISTRICT's General Manager, CONTRACTOR and all subcontractors shall maintain the following insurance for the duration of this Agreement:

(a) Commercial general liability in an amount of \$5,000,000.00 per occurrence: **claims made and modified occurrence policies are not acceptable;** Insurance companies must be acceptable to DISTRICT and have a Best's Guide Rating of A- Class VII or better, as approved by the DISTRICT.

(b) Automobile liability in an amount of \$1,000,000.00 combined single limit: **claims made and modified occurrence policies are not acceptable;** Insurance companies must be acceptable to DISTRICT and have a Best's Guide Rating of A- Class VII or better, as approved by the DISTRICT.

An **On-Going and Completed Operations Additional Insured Endorsement** for the policy under section 4.3 (a) shall designate DISTRICT, its officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONTRACTOR. CONTRACTOR shall provide to DISTRICT proof of insurance

and endorsement forms that conform to DISTRICT's requirements, as approved by the DISTRICT.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate DISTRICT, its officers, officials, employees, agents, and volunteers as additional insureds for automobiles, owned, leased, hired, or borrowed by the CONTRACTOR. CONTRACTOR shall provide to DISTRICT proof of insurance and endorsement forms that conform to DISTRICT's requirements, as approved by the DISTRICT.

For any claims related to this Agreement, CONTRACTOR's insurance coverage shall be primary insurance as respect to DISTRICT, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the DISTRICT, its officers, officials, employees, agents, and volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

If CONTRACTOR maintains higher insurance limits than the minimums shown above, CONTRACTOR shall provide coverage for the higher insurance limits otherwise maintained by the CONTRACTOR.

**10. Risk and Indemnification.** All work covered by this Agreement done at the Project site or in preparing or delivering materials to the site shall be at the risk of CONTRACTOR alone. CONTRACTOR agrees to save, indemnify and keep DISTRICT, its officers, officials, employees, agents, architects, engineers, and consultants for this Agreement, and all public agencies from whom permits will be obtained, harmless against any and all liability, claims, judgments, costs and demands, including demands arising from injuries or death of persons (CONTRACTOR's employees included) and damage to property, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by CONTRACTOR, save and except claims or litigation arising through the active negligence or willful misconduct of DISTRICT, and CONTRACTOR will make good to and reimburse, DISTRICT for any expenditures, including reasonable attorney's fees DISTRICT may incur by reason of such matters, and if requested by DISTRICT, will defend any such suits at the sole cost and expense of CONTRACTOR. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR.

**11. Termination.**

(a) This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given: (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

(b) This Agreement may be terminated in whole or in part in writing by the DISTRICT for its convenience, provided that the CONTRACTOR is given (1) not less than ten (10) calendar

days' notice (delivered by certified mail, return receipt requested) or intent to terminate, and (2) an opportunity for consultation with the DISTRICT prior to termination.

(c) Upon receipt of termination action under paragraph (a) or (b) above, the CONTRACTOR shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the DISTRICT all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the CONTRACTOR in performing this Agreement whether completed or in process.

(d) Upon termination under paragraphs (a) or (b) above, the DISTRICT may take over the work and may award another party an agreement to complete the work under this Agreement.

**12. Non-Liability of Officials and Employees of the District.** No official or employee of DISTRICT shall be personally liable to CONTRACTOR in the event of any default or breach by DISTRICT, or for any amount which may become due to CONTRACTOR.

**13. Conflict of Interest.** No officer or employee of the DISTRICT shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his or her financial interest or the financial interest of any corporation, partnership, or association in which they are, directly or indirectly, interested in violation of any state statute or regulation. CONTRACTOR represents and warrants that it has not paid or given and will not pay or give any third party any money or other consideration in exchange for obtaining this Agreement.

**14. Covenant Against Discrimination.** In connection with its performance under this Agreement, CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, disability, medical condition, religion, color, sex, sexual orientation, age, marital status, ancestry, or national origin. CONTRACTOR shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, disability, medical condition, religion, color, sex, sexual orientation, age, marital status, ancestry, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**15. Independent Contractor.** The legal relationship between the Parties is that of an independent contractor, and nothing herein shall be deemed to make CONTRACTOR a DISTRICT employee.

**16. Notices.** All notices shall be personally delivered or mailed to the below listed address, or to such other addresses as may be designated by written notice, and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; or (ii) five (5) business days after the date of

posting by the United States Post Office if by mail. These addresses shall be used for delivery of service of process.

(CONTRACTOR)

(DISTRICT) Midway City Sanitary District  
Attention: District Engineer  
14451 Cedarwood Street  
Westminster, CA 92863

(WITH COPY TO) Midway City Sanitary District  
Attention: General Counsel  
14451 Cedarwood Street  
Westminster, CA 92863

**17. Reports.**

(a) Each and every report, draft, work product, map, video, record and other document, hereinafter collectively referred to as "Report", reproduced, prepared or caused to be prepared by CONTRACTOR pursuant to or in connection with this Agreement, shall be the exclusive property of DISTRICT. CONTRACTOR shall not copyright any Report required by this Agreement and shall execute appropriate documents to assign to District the copyright to Reports created pursuant to this Agreement. Any Report, information and data acquired or required by this Agreement shall become the property of DISTRICT, and all publication rights are reserved to DISTRICT.

(b) All Reports prepared by CONTRACTOR may be used by DISTRICT in execution or implementation of:

- (1) The original Project for which CONTRACTOR was hired;
- (2) Completion of the original Project by others;
- (3) Subsequent additions to the original Project; and/or
- (4) Other DISTRICT projects as appropriate.

(c) No Report, information or other data given to or prepared or assembled by CONTRACTOR pursuant to this Agreement shall be made available to any individual or firm by CONTRACTOR without prior approval by District.

**18. Waiver.** No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. Any waiver by the Parties of any default or breach of any covenant, condition, or term

contained in this Agreement, shall not be construed to be a waiver of any subsequent or other default or breach, nor shall failure by the Parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions hereof.

**19. Rights and Remedies Cumulative.** Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

**20. Legal Action.** In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

**21. California Law; Venue.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Orange County Superior Court.

**22. Interpretation.** This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties. The terms of this Agreement are contractual and the result of negotiation between the Parties. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification purposes only and shall not be deemed to limit, expand, or define the contents of the respective sections or paragraphs.

**23. Entire Agreement; Modification.** The Contract Documents constitute the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by DISTRICT and CONTRACTOR.

**24. No Third-Party Beneficiaries.** Except as may be specifically provided for herein, nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as third-party beneficiary or otherwise, upon any entity or person not a party hereto.

**25. Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be determined to be invalid by a final judgment or decree of a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of that provision, or the remaining provisions of this Agreement

unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

**26. Corporate Authority.** Each of the undersigned represents and warrants that (i) the Party for which he/she is executing this Agreement is duly authorized and existing, (ii) he/she is duly authorized to execute and deliver this Agreement on behalf of the Party for which he/she is signing, (iii) by so executing this Agreement, the Party for which he/she is signing is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the Party for which he/she is signing is bound.

**27. Counterparts; Facsimile Signatures.** This Agreement may be executed in counterparts, all of which shall constitute the same Agreement, notwithstanding that all parties to this Agreement are not signatory to the same counterpart. Signature and acknowledgement pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one (1) original document. These counterparts may be transmitted by facsimile or Portable Document Format (PDF), with the originals to be thereafter provided by the Parties. Such facsimiles or electronic copies shall be deemed original signatures.

*[SIGNATURES ON FOLLOWING PAGE]*

IN WITNESS THEREOF, these parties have executed this Agreement as of the date first written above.

**“DISTRICT”**

**“CONTRACTOR”**

MIDWAY CITY SANITARY DISTRICT,  
a public entity

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Robert Housley  
General Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
General Counsel  
Midway City Sanitary District

Tax ID No. \_\_\_\_\_

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to District.

**EXHIBIT A**  
**CONTRACTOR'S PROPOSAL**

**EXHIBIT B**  
**PLANS AND SPECIFICATIONS**

**EXHIBIT C**  
**GENERAL CONDITIONS**

## **GENERAL CONDITIONS**



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# GENERAL CONDITIONS

## 1. DEFINITIONS

The following definitions are used in the Specifications or other Contract Documents. Their intent and meaning shall be as follows:

**As-Built Drawings** – A copy of the Plans used by the CONTRACTOR to record changes to the Work as specified in the General Requirements.

**Beneficial Occupancy** – Intended use of a building, system, structure, or facility by MCSD prior to Final Completion.

**Bid** – A form, or forms, completed in their entirety stating the Bidder's offer to both furnish all materials and to perform all Work required under the Contract. Bid also includes a proposal submitted by CONTRACTOR to perform all required Work.

**Board** – Board of Directors of the Midway City Sanitary District (MCSD). Where authority has been properly delegated to him, the Board may act through the General Manager

**Bond** – Performance Bond Public Works (Performance Bond), or Payment Bond Public Works (Payment Bond) or other instrument of security.

**Business Day** – A day on which MCSD offices are open for regular business, Monday through Friday between the hours of 8:00 A.M. to 4:30 P.M. (Pacific Time Zone) unless otherwise specified, and excluding MCSD Holidays.

**Change Order** – A written order by the ENGINEER, made bilaterally by MCSD and CONTRACTOR or unilaterally by MCSD, which covers alterations, changes, additions, or deletions to the Contract Documents or the Work in any manner which are necessary for the proper completion of the Work and which may result in adjustments to the Contract Price, period of performance, or both.

**Claim** – A written statement by the CONTRACTOR requesting additional time and/or money from MCSD arising out of acts or omissions of MCSD and/or differing conditions during the performance of the Contract which the CONTRACTOR could not have reasonably anticipated at the time of entering into the Contract, and which is submitted in response to MCSD's rejection of, or failure to approve, CONTRACTOR's Request for Change, or otherwise issue a Change Order modifying the Contract, adjusting the Contract Price and/or period of performance in a manner consistent with that which the CONTRACTOR believes is appropriate. The Claim shall be submitted in the manner and in the time consistent with the requirements set forth in these General Conditions.

**Code** – Codes of the State of California as well as any other federal or local law, statute, ordinance, rule or regulation.

**Construction Schedule** – The CONTRACTOR’s accepted Baseline Construction Schedule as it evolves through periodic updates that record actual progress of the Work to completion, when it shall show the “as-built” record of the CONTRACTOR’s work plan as executed.

**CONSULTANT** – Any CONSULTANT retained by MCSD or its (sub) consultant(s) who provides design or construction phase services for support of this Project.

**Contract / Contract Documents** – The following documents constitute a part of and comprise the Contract Documents: Agreement, CONTRACTOR’s Bid, Performance Bond Public Works, Payment Bond Public Works, insurance certificates and endorsements, Plans and Specifications, General Conditions, plan clarifications, and Supplemental Agreements, including Change Orders issued after Contract award.

**Contract Duration / Time of Completion** – The period of performance provided for in the Agreement, and as amended via Change Orders.

**Contract Milestone / Milestone** – A significant performance point in the Work, as provided for in the Contract Documents.

**CONTRACTOR** – The individual, partnership, joint venture, corporation, or other combination thereof, identified as such in the Contract, and referred to throughout the Contract Documents as if singular in number and who directly contracts with MCSD. The term “CONTRACTOR” means the CONTRACTOR or its authorized representative.

**Contract Price** – The total amount of money for which the Contract is awarded, as modified by any Change Orders.

**Contract Unit Price** – The amount stated in the CONTRACTOR’s Bid for a single unit of an element of the Work.

**Critical Path** – A continuous sequence of schedule network activities with the least amount of total float, ending at a Contract Milestone.

**Days** – Unless otherwise specifically stated, the term “days” will be understood to mean consecutive calendar days.

**Drawings** – See Plans.

**DISTRICT** – Midway City Sanitary District.

**DISTRICT Holidays** – MCSD recognizes the following holidays on which its offices are closed for regular business: New Year’s Day, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Veteran’s Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve, and Christmas Day. Holidays that occur on Saturdays and Sundays will be observed on the preceding Fridays and the following Mondays, respectively. MCSD reserves the right to recognize additional holidays without prior notice.

**ENGINEER** –The District Engineer of MCSD or MCSD’s designee.

**Extra Work** – New or unforeseen Work, or added Work of a different character or function and for which no basis for payment is prescribed in the Contract Documents; or that involves revisions of the details of the Work in such manner as to render inequitable payment under items upon which the CONTRACTOR bid in its Bid; or that Work to be done under “stipulated prices” as given in the Schedule of Prices.

**Final Acceptance** – Action taken by MCSD Board of Directors accepting the Work as fully completed.

**Final Completion / Contract Completion / Completion / Completion Date** – The Contract Milestone recognized through action taken by the ENGINEER certifying that the Work is fully completed under the Contract Documents prior to MCSD’s acceptance of the Work as fully completed.

**Float** – The flexibility that an activity has against the critical path.

**Fragment**– A fragment of the schedule network that typically illustrates a particular sequence of activities for thorough analysis.

**General Conditions** – Legal and contractual instructions to the CONTRACTOR setting forth both the CONTRACTOR and MCSD responsibilities for business related activities pertaining to the Contract. The term “General Conditions” used in the Specifications shall be interpreted to refer to the General Conditions of the Contract Documents.

**General Manager** – The individual designated by MCSD as its Chief Executive Officer and agent.

**General Requirements** – Legal and contractual instructions to the CONTRACTOR setting forth both the CONTRACTOR and MCSD responsibilities for technical aspects of the Work indicated under the Contract. The term “General Requirements” used in the Specifications shall be interpreted to refer to the General Requirements of the Contract Documents.

**INSPECTOR** – The individual(s) designated by the ENGINEER as the field Project representative with delegated authority to enforce the requirements of the Contract Documents, subject to the approval of the General Manager.

**Law** – Any federal, state or local law, statute, ordinance, rule, regulation or code.

**Legal Address of CONTRACTOR** – The address given on the CONTRACTOR’s Bid shall be the legal address of the CONTRACTOR and is the designated place to which all notices, letters or other communications to the CONTRACTOR shall be mailed or delivered.

**MCSD** – Midway City Sanitary District.

**Notice to Proceed** -- A written notice given by MCSD to the CONTRACTOR fixing the date on which the time for performance under the Contract will commence.

**MCSD** – Midway City Sanitary District.

**Operational Acceptance** – Written notification by the ENGINEER accepting the Work as operationally complete. Used for the purpose of placing equipment or facilities in service before all of the Contract Work is completed.

**or equal / Or Equal / OR EQUAL** – Any product, equipment, material, thing, or service which is proposed by the CONTRACTOR for use in the Work, which is equal to or better than, and is as suitable as the product, material, equipment, thing or service specified in the Contract Documents as to function, performance, reliability, quality, and general configuration.

**OWNER** – Midway City Sanitary District.

**Payment Bond Public Works** – A bond required from a CONTRACTOR to secure payment to Subcontractors, laborers, mechanics and Suppliers employed on the Work of the Contract.

**Performance Bond Public Works** – A bond required from a CONTRACTOR at the time of execution of a Contract which guarantees faithful performance of the Contract by the CONTRACTOR.

**Plans** – The part of the Contract Documents consisting of the plans, profiles, typical and general cross-sections, working drawings, or exact reproductions thereof, which show the location, character, dimensions and details of the Work to be done (if any).

**Project(s)** – The entire scope of Work covered by all Contract Documents.

**Proposal** – A standard form supplied by MCSD as tear-out sheets, which when completed in its entirety and executed, shall constitute a Bid Submittal.

**Record Drawings** – Construction drawings from completed projects maintained by MCSD as a record of how facilities were actually constructed. These are generally created from the original plans, addendum and Change Order drawings, and the CONTRACTOR's as-built copy of the construction plans.

**Request for Change** – A written request by the CONTRACTOR to MCSD for the issuance of a Change Order.

**Schedule of Prices** - A list of Bid Item(s) in the Bid or Proposal including the item number, approximate quantities, item descriptions, total price per item and total amount of Bid.

**Specifications** – Elements of the Contract Documents and revisions which describe the commercial, legal, technical and non-technical requirements of the Project. Specifications

include but are not limited to Project Requirements, Provisions, General Conditions, General Requirements, Supplementary Conditions, Technical Specifications, and all revisions made to the Specifications including Addenda, Notice to Bidders, and Change Orders, signed by the ENGINEER and authorized by the Board.

**Standard Plans / Standard Drawings** – Details of standard structures, devices or instructions referred to on the Plans or in the Specifications by title or number and issued by MCSD.

**Standard Specifications for Public Works Construction** – The latest edition of Standard Specifications for Public Works Construction (“Green Book”) as written and promulgated by the Public Works Standards, Inc.

**Subcontractor** – One who is licensed pursuant to California Business and Professions Code, Section 7000 et. seq., and who contracts directly with the prime CONTRACTOR or with another Subcontractor to perform some part of the Work. A Subcontractor does not have any direct contract with MCSD related to the Work.

**Supplemental Agreements** – Written agreements between MCSD and the CONTRACTOR, covering schedules, drawings, instructions, alterations, amendments or extensions to the Contract and including Contract Change Orders.

**Supplier** – An individual, organization, or firm who is not required for the purposes of the Work to be licensed pursuant to California Business and Professions Code as a CONTRACTOR or Subcontractor, within the meanings of those terms as defined hereinabove, who provides equipment and/or materials for the Work to the CONTRACTOR or a Subcontractor, including that fabricated to a special design, but who does not perform labor at the site except for labor or labor supervision required by some manufacturers as part of their equipment installation for warranty or other purposes or for operation of rented equipment, and only to the extent such labor or labor supervision is excepted from licensing requirements under the California Business and Professions Code, including but not limited to Section 7040 et seq. The term “supplier” also includes fabricator, manufacturer, or vendor.

**Surety or Sureties** – The bondsmen or party or parties who guarantee the fulfillment of the Contract, or a portion of the Contract, by Bond and whose signatures are affixed to the Bond.

**Terms** – The terms “Approved”, “Directed”, “Satisfactory”, “Accepted”, “Acceptable”, “Proper”, “Required”, “Necessary”, and “Or Equal” mean as approved, directed, satisfactory, accepted, acceptable, proper, required, necessary, and or equal, in the opinion of the ENGINEER.

**Total Float** – The amount of time that the actual start and finish of an activity can be delayed along a given network path without delaying the Contract Completion date.

**Trade Names** – Where a certain product is called by its Trade Name, it is intended as a guide for type and quality.

**Typical Details** – Details of standard structures, devices or instructions referred to on the Plans and Specifications by title or number and developed by the CONSULTANT.

**Unavoidable Delay** – An interruption of the Work beyond the control of the CONTRACTOR and which interruption the CONTRACTOR could not have avoided by the exercise of care, prudence, foresight, diligence and mitigation.

**Work** – All the Work specified in the Contract Documents necessary to complete the requirements of the Contract, including the furnishing of all labor and materials. Also, the completed construction or parts thereof required to be provided under the Contract Documents, including all materials, equipment, and supplies incorporated or to be incorporated in the construction.

## **2. EXECUTION OF CONTRACT**

### **2.1. NOTICE TO PROCEED**

Upon receipt of all properly executed Contract Documents from CONTRACTOR, MCSD shall execute all documents as necessary, establish the effective date of the Contract, and MCSD shall issue a Notice to Proceed, unless the ENGINEER determines that good cause exists to delay the issuance. In such case, MCSD may delay issuance of the Notice to Proceed. Said Notice to Proceed shall be forwarded to the CONTRACTOR by mail or by any other means which shall provide confirmation of a date and time receipt acknowledgment, including but not limited to electronic telecommunication. The time required for completion of the Contract shall begin upon the effective date of the Notice to Proceed.

### **2.2. CONTRACT BONDS**

Before or concurrently with final execution of the Contract, the CONTRACTOR shall furnish two Surety Bonds, on the forms provided by MCSD, as part of the Contract Documents. Each Bond shall have good and sufficient Sureties subject to the approval of MCSD. The first shall ensure the payment of all labor performed and material used in the Work, and the second shall ensure the faithful performance of the Contract.

The Payment Bond Public Works (Labor and Material Bond) shall be in an amount equal to one hundred percent (100%) of the Bid price, so conditioned as to inure to the benefit of persons furnishing materials to the CONTRACTOR for and/or performing labor upon the Work of the CONTRACTOR. This Bond shall be maintained by the CONTRACTOR in full force and effect until the Work has been completed and accepted by MCSD and all claims for labor and material have been paid. As changes to the Contract occur via approved Change Orders, the CONTRACTOR shall assure that the amount of the Bond is adjusted to maintain 100% of the Contract Price.

The Bond for faithful performance (Performance Bond Public Works) shall be an amount equal to one hundred percent (100%) of the Total Amount of Bid price, so conditioned as to insure

the faithful performance by the CONTRACTOR of all Work within the time limit prescribed, and in a manner that is satisfactory and acceptable to MCSD. This Bond shall be maintained by the CONTRACTOR in full force and effect during the performance of the Work of the Contract and until the Work has been accepted by MCSD. This Bond shall also apply to the use of patented articles, materials or processes; to guarantee the payment of all stop payment notice claimants, and shall assure faithful performance of the one (1) year warranty from the date of Final Acceptance by MCSD and any extensions to said warranty period as provided by the Contract Documents. As changes to the Contract occur via approved Change Orders, the CONTRACTOR shall assure that the amount of the Bond is adjusted to maintain the 100% of the Contract Price.

Should any Surety or Sureties ever be deemed unsatisfactory by MCSD, the CONTRACTOR shall be notified to that effect, and the CONTRACTOR shall forthwith substitute a new Surety or Sureties satisfactory to MCSD. No further payment shall be deemed due or will be made under the Contract until the new Sureties shall qualify and be accepted by the Board of Directors. For Surety companies to be acceptable to MCSD they must be admitted to do business as a Surety in and have an agent for service of process in California.

### **2.3. INSURANCE**

The CONTRACTOR shall purchase and maintain insurance, in amounts equal to the requirements in the form and manner provided for in the Contract Documents.

### **2.4. CONTRACTOR'S LIABILITY NOT LIMITED BY INSURANCE**

Nothing contained in the insurance requirements is to be construed as limiting the liability of the CONTRACTOR or the CONTRACTOR's Sureties.

## **3. CONTROL OF THE WORK**

### **3.1. AUTHORITY OF THE ENGINEER**

The ENGINEER serves as the agent of MCSD and will observe the accomplishment of the Work in accordance with the provisions of the Contract. The ENGINEER will decide any and all questions which may arise as to the interpretations of the Contract Documents, as to the quality and acceptability of materials furnished and Work performed, as to the manner of performance, and as to the rate of progress of the Work. All questions as to the acceptable performance of the Contract on the part of the CONTRACTOR shall be decided by the ENGINEER.

It shall be the duty of the CONTRACTOR to call the ENGINEER's attention to apparent errors and omissions in the Plans and Specifications. The ENGINEER may, by appropriate written instructions, correct errors and omissions, which instructions shall be as binding upon the CONTRACTOR as though contained in the original Contract Documents. The ENGINEER

shall have authority to make minor changes in the Work not involving extra or lesser cost, and not inconsistent with the intent of the Contract Documents.

All instructions, rulings, and decisions of the ENGINEER shall be in writing, and shall be final and binding on the CONTRACTOR unless formal written objection is made as specified herein.

It is expressly agreed that the ENGINEER shall not have the power to waive any of the obligations of the Contract Documents for the furnishing by the CONTRACTOR of good and suitable material, and for performing the Work as herein described. Failure or omission on the part of the ENGINEER to reject defective or inferior Work or materials, or the ENGINEER's release of the CONTRACTOR from obligations to remedy the defective or inferior Work, shall not imply acceptance of the Work. Upon discovery of said defective Work, the CONTRACTOR shall immediately tear out, remove, and properly replace the defective Work without additional compensation. Neither shall such failure or omission, nor any acceptance by the ENGINEER, or by the Board be construed as relieving the responsibilities of the CONTRACTOR or its Sureties, for a sum of money as may be needed to remove and replace, or to repair, any or all Work or materials which is found to be defective or inferior. In such instance, in lieu of the recovery of said sum of money, MCSD may permit the CONTRACTOR to perform, at the CONTRACTOR's own expense, the work of removing and replacing or repairing Work or materials found to be defective or inferior.

The Board shall have the final authority in all matters affecting the Work. Within the scope of the Contract Documents, the ENGINEER shall have the authority to enforce compliance with the Contract Documents. The CONTRACTOR shall promptly comply with all instructions from the ENGINEER which are made in accordance with the Contract Documents.

In all matters relating to acceptability of construction materials and equipment, execution and progress of Work, percentage of completion, the interpretation of Contract Documents, delays and Claims by the CONTRACTOR, the decision of the ENGINEER shall be final and binding unless the CONTRACTOR timely follows the appropriate procedures to object to the same as set forth herein under Claims and Disputes, or unless otherwise ordered by the Board or General Manager.

### **3.2. SUPERVISION BY CONTRACTOR**

The CONTRACTOR is required to give personal attention to the fulfillment of this Contract, and to keep the Work under control. The CONTRACTOR shall have a copy of the Contract Documents available at the worksite at all times. During the CONTRACTOR's absence from the worksite, the CONTRACTOR shall provide a site superintendent with full authority to receive and execute such instructions, orders or directions as the ENGINEER may issue in connection with the provisions of the Contract Documents. The site superintendent shall be available on site at all times during progress of the Work.

The CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to

perform the Work in accordance with the Contract Documents. The CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but the CONTRACTOR shall not be solely responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence, or procedure of construction which is indicated in and required by the Contract Documents except as otherwise provided in the General Conditions, entitled Errors and Omissions.

The CONTRACTOR shall be responsible to see that the completed Work complies with the Contract Documents.

Before any Work is done at the worksite, the CONTRACTOR shall give written notice to the ENGINEER stating the name, home address and telephone number of the CONTRACTOR's site superintendent. The ENGINEER shall be informed in writing prior to any change of site superintendent. A statement naming more than one representative at a time to be in charge, depending upon which is present at the time, will not be acceptable.

The CONTRACTOR shall file with the ENGINEER the names, addresses, and telephone numbers of representatives who can be contacted at any time in case of emergency. These representatives must be fully authorized and equipped to correct unsafe or excessively inconvenient conditions on short notice.

If a site superintendent or the CONTRACTOR is not present at a particular location of the worksite, the ENGINEER may inform the foreman, or other person in charge, regarding an interpretation of the Contract Documents or of any disapproval or rejection of materials or Work performed. Information so given shall be as binding as if given to the superintendent.

### **3.3. CONTRACTING AND ASSIGNMENT**

Subcontractors not specifically listed in the Bid Submittal or otherwise disclosed to MCSD will not be recognized as such and will not be allowed to work on the Project unless the value of said Work is less than one-half of one percent of the total Contract Price. All persons engaged in the Work of construction will be considered as employees of the CONTRACTOR, and not as independent contractors. No assignment of any portion of the Work or of any obligation or duty under the Contract is permitted without the express prior written consent of MCSD, and as otherwise authorized by the Contract Documents.

## **4. LEGAL RELATIONS AND RESPONSIBILITIES**

### **4.1. LAWS TO BE OBSERVED**

The CONTRACTOR shall, at its own cost and expense, observe and keep fully informed regarding all existing and future federal, state, city, county, local agency or special district laws and regulations which may in any manner affect those engaged or employed on the Project, or the materials to be used or furnished, or which may in any respect govern, control or otherwise affect the conduct of the Project or any part thereof. The CONTRACTOR shall, at its own cost and expense, furnish all materials and facilities required to comply with such laws and

regulations. The CONTRACTOR shall furnish copies of all valid licenses and certifications required of Suppliers, Subcontractors, or employees for the Work upon the request of the ENGINEER.

If any discrepancy or inconsistency is discovered on the Plans, Specifications, permits, or in the Contract Documents for the Project in relation to any such law, regulation, order or decree, the CONTRACTOR shall forthwith report the same to MCSD, in writing, and shall cease operations on that part of the Work until MCSD has given the CONTRACTOR appropriate instructions as provided for in General Conditions, Errors and Omissions.

The CONTRACTOR shall defend and indemnify MCSD, the Board of Directors, the ENGINEER, the CONSULTANT, and its subconsultants, each of their directors, officers, employees or agents against any claim or liability arising from or based on the violation of any such law, or regulation, whether by the CONTRACTOR or any of the CONTRACTOR's employees or agents, including its Subcontractors and Suppliers.

Attention is directed to the following specific regulations and requirements that are included in the Contract Documents. This list of regulations is not warranted to be complete and the burden of ascertaining legal requirements that must be satisfied shall rest solely with the CONTRACTOR.

- A. Employment of Apprentices. The CONTRACTOR and any Subcontractor shall comply with the requirements of Sections 1777.5 and 1777.6 of the California Labor Code in the employment of apprentices.

Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the Director of Labor Relations, c/o the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

A CONTRACTOR or Subcontractor that is determined by the chief of the Division of Apprenticeship Standards to have knowingly violated Labor Code Section 1777.5 shall forfeit as a civil penalty an amount not to exceeding One Hundred Dollars (\$100) for each full calendar day of noncompliance. A contractor or subcontractor that knowingly commits a second or subsequent violation within a three-year period, if the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance. (California Labor Code Section 1777.7)

- B. Travel and Subsistence Payments. Each worker needed to execute the Work must be paid travel and subsistence payments as defined in the applicable collective bargaining agreements filed in accordance with California Labor Code Section 1773.1.
- C. Hours of Labor. The CONTRACTOR shall forfeit, as a penalty to MCSD, twenty-five dollars (\$25) for each worker employed in the execution of the Contract by the CONTRACTOR or any Subcontractor, for each calendar day during which such worker is

required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) calendar week in violation of the provisions of the Labor Code and, in particular, Section 1810 to Section 1815 thereof, inclusive, except that work performed by employees of CONTRACTOR in excess of eight (8) hours per day and forty (40) hours during any one (1) week shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than 1-1/2 times the basic rate of pay as provided in said Section 1815.

- D. Nondiscrimination in Employment. The CONTRACTOR shall comply with Government Code §12940. Projects under this Contract will obligate the CONTRACTOR and Subcontractors not to discriminate in employment practices. CONTRACTOR must, if requested, submit a compliance report concerning its employment practices and policies. The CONTRACTOR must be prepared to comply in all respects with the requirements regarding nondiscrimination including but not limited to California Labor Code Section 1735.
- E. Prevailing Wage Rates. The CONTRACTOR shall comply with California Labor Code Section 1771 by the payment of prevailing wages as established by the Director of the State Department of Industrial Relations. In accordance with Labor Code Section 1775, the CONTRACTOR and any Subcontractor shall forfeit, as a penalty to MCSD, not more than Two Hundred Dollars (\$200) for each calendar day or portion thereof for each worker paid less than the established prevailing rates for such work or craft in which such worker is employed for any Work done under the Contract in violation of the provisions of the California Labor Code Sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to said Section 1775, for each day or portion thereof in which each worker was paid less than the prevailing wage rate the difference between such established prevailing wage rates and the amount paid to each worker shall be paid to each worker by the CONTRACTOR. Per California Labor Code 1773.2, MCSD will have on file copies of the prevailing rate of per diem wages at its principal office and at each job site, which shall be made available to any interested party upon request.
- F. California Department of Industrial Relations (DIR) Registration and Record of Wages.
- 1) The CONTRACTOR and its subcontractors shall comply with the registration requirements of Labor Code §1725.5. Pursuant to Labor Code §1771.4, the Work is subject to compliance monitoring and enforcement by the DIR.
  - 2) The CONTRACTOR shall maintain accurate payroll records and shall comply with all of the provisions of Labor Code §1776, and shall submit payroll records to the Labor Commissioner pursuant to Labor Code §1771.4(a)(3). Penalties for non-compliance with the requirements of §1776 may be deducted from progress payments per §1776.
  - 3) Pursuant to Labor Code §1776, the CONTRACTOR shall furnish a copy of all certified payroll records to MCSD and/or the general public upon request, provided the public request is made through MCSD, the Division of Apprenticeship

Standards or the Division of Labor Enforcement of the Department of Industrial Relations.

- 4) The CONTRACTOR shall comply with the job site notices posting requirements established by the Labor Commissioner per Title 8, California Code of Regulations §16461(e) or other regulation promulgated pursuant to Labor Code Section 1771.4(a)(2).

G. Public Records Act.

1) Ownership and Disclosure

Except as otherwise provided herein, all records, documents, Drawings, Plans, Specifications, and all other information relating to the conduct of MCSD's business, including information submitted by the CONTRACTOR ("Records"), shall become the exclusive property of MCSD and shall be deemed public records. Said Records are subject to the provisions of the California Public Records Act (Government Code § 6250 et. seq.). MCSD's use and disclosure of its records are governed by this Act. MCSD will use its best efforts to inform the CONTRACTOR of any request for any financial records or documents marked "Trade Secret", "Confidential" or "Proprietary" provided by the CONTRACTOR to MCSD. MCSD will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.

2) Litigation Related to Disclosure

In the event of litigation concerning the disclosure of any Records, MCSD's sole involvement will be as a stakeholder, retaining the Records until otherwise ordered by a court. The submitting party, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the Records and shall indemnify and hold MCSD harmless from all costs and expenses including attorney's fees in connection with any such action.

H. Subcontracting. Pursuant to the provisions of Sections 4100 to 4114, inclusive, of the California Public Contract Code, as amended from time to time, the CONTRACTOR shall not, without the consent of MCSD:

- 1) Substitute any person(s) or Subcontractor(s) designated in the original Bid.
- 2) Assign or transfer any subcontract or allow any subcontract to be performed by anyone other than the original Subcontractor.
- 3) Sublet or subcontract any portion of the Project not so designated in the original Bid when the value of said Work is greater than one-half of one percent (1/2%) of the CONTRACTOR's total Bid.

A violation by the CONTRACTOR of any of the provisions of Sections 4100 to 4114, inclusive, of the Public Contract Code, shall be deemed a violation of the Contract and MCSD will impose the penalties provided therein.

- I. Workers' Compensation. Pursuant to the requirements of California Labor Code Section 1860, the CONTRACTOR shall secure the payment of compensation to CONTRACTOR's employees in accordance with the provisions of Section 3700 of the California Labor Code.
- J. California Air Resources Board (CARB) In-Use Off-Road Diesel Fleets Regulation.
  - 1) The CONTRACTOR and its subcontractors shall comply with all applicable CARB regulations, including, without limitation, all applicable requirements of CARB's regulations governing In-Use Off-Road Diesel-Fueled Fleets, 13 CCR §§ 2449-2449.3.
  - 2) Pursuant to 13 CCR § 2449(i)(1), if applicable, prior to entering into the Contract, the CONTRACTOR shall provide MCSD with a valid Certificate of Reported Compliance from CARB for all vehicles to be used by CONTRACTOR and/or any of its subcontracts for Work under the Contract that are subject to CARB's In-Use Off-Road Diesel Fleets Regulations. If the Project qualifies as an "emergency operation" as defined in 13 CCR §2449(c)(18), pursuant to 13 CCR § 2449(i)(4), in lieu of providing Certificates of Reported Compliance as required above, CONTRACTOR may, instead provide MCSD with an attestation from itself and/or its subcontractors that the vehicles are operated on the Project for emergency operations only.
- K. State Regulations. All requirements applicable, as established by CalEPA, CalOSHA, CARB, DIR, or other state regulatory agencies.
- L. Federal Regulations. All requirements applicable, as established by the EPA, OSHA, or other federal regulatory agencies.

#### **4.2. GENERAL INDEMNIFICATION**

The CONTRACTOR shall, with respect to all Work covered by or incidental to these Contract Documents, be responsible for any liability imposed by law and shall indemnify, defend and hold MCSD, the ENGINEER, the CONSULTANT and its subconsultants, and each of their directors, officers, agents and employees, and all public entities issuing permits to the CONTRACTOR, free and harmless from and against all of the following:

Any claim, suit or action of every name, kind, and description, loss, damage, cost, expenses, including reasonable attorney's fees and expert fees, costs of compliance with administrative orders and directives, litigation, arbitration, awards, fines, and administratively or judicially-imposed penalties or judgments, arising by reason of death or bodily injury to person(s), injury to property, or other loss, damage or expense, resulting from the construction of the Work, design defects (if design originated by the CONTRACTOR only), defects in the Work, or by

or on account of acts, errors or omissions of the CONTRACTOR or CONTRACTOR's Subcontractors, Suppliers, employees, invitees, or agents or from any other cause whatsoever arising during the progress of the Work or at any time prior to its completion and Final Acceptance, including any of the same resulting from MCSD's alleged or actual acts, errors, or omissions regardless of whether on or off of the worksite. Said responsibility shall extend to claims, demands or liability for loss, damage or injuries occurring or discovered after completion of the Work, as well as during the progress of the Work. However, the CONTRACTOR shall not be obligated under this Contract to indemnify MCSD, the ENGINEER or its CONSULTANT(s) with respect to the active negligence, sole negligence, or willful misconduct of MCSD, the ENGINEER, or its CONSULTANT(s).

In addition, if any action is brought against the CONTRACTOR or any Subcontractor to enforce a stop payment notice or Notice to Withhold, which names MCSD as a party to said action, MCSD shall be entitled to reasonable attorney's fees, costs and necessary disbursements arising out of the defense of such action by MCSD. MCSD shall be entitled to deduct its costs for any stop payment notice filed, whether court action is involved or not.

In any and all claims against the indemnified parties by an employee of the CONTRACTOR, any Subcontractor, any Supplier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation as specified herein shall not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR, or any Subcontractor, or any Supplier or other person under Workers' Compensation acts, disability benefit acts, or other employee acts.

The obligations of the CONTRACTOR as specified herein shall not extend to the liability of the ENGINEER, the CONSULTANT or its subconsultants, and each of their directors, officers, agents and employees, arising out of or resulting from or in connection with the preparation or approval of maps, Drawings, opinions, reports, surveys, designs or Specifications, provided that the foregoing was the sole and exclusive cause of the loss, damage or injury.

The CONTRACTOR shall also be responsible for and shall indemnify, defend and hold harmless MCSD, the ENGINEER, the CONSULTANT and its subconsultants, and each of their directors, officers, employees, and agents from and against all losses, expenses, damages (including damages to the Work itself), attorney's fees, and other costs, including all costs of defense, which any of them may incur with respect to the failure, neglect, or refusal of the CONTRACTOR to faithfully perform the Work and all of the CONTRACTOR's obligations under the Contract. Such costs, expenses, and damages shall include all costs, including attorney's fees incurred by the indemnified parties in any lawsuit to which they are a party.

In the event CONTRACTOR or its insurer refuses or fails to provide a legal defense to MCSD after receiving written notice of the legal action and a tender and demand for defense, MCSD shall have the right to select counsel of its own choice to represent all the interests of MCSD at CONTRACTOR's cost and expense. CONTRACTOR agrees that the amount of legal costs and expenses, including attorneys' fees, may be withheld by MCSD from any Contract amounts due and owing to CONTRACTOR until such time as a final determination is made as

to the responsibility for payment of said fees and costs. CONTRACTOR further agrees that to the extent MCSD incurs such damages and the damages exceed any remaining Contract amounts due and owing to CONTRACTOR, CONTRACTOR shall reimburse MCSD for all such additional damages upon demand by MCSD for the same.

CONTRACTOR and MCSD agree that nothing in this Section is intended to be or is a prevailing party clause as it pertains to attorney's fees.

#### **4.3. JOINT AND SEVERAL LIABILITY**

If the CONTRACTOR is a joint venture or partnership, each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of the CONTRACTOR that are assumed under or arise out of the Contract. Each of such venturers or partners waives notice of the breach or non-performance of any undertaking or obligation of the CONTRACTOR contained in, resulting from or assumed under the Contract, and the failure to give any such notice shall not affect or impair such venturer's or partner's joint and several liability hereunder.

#### **4.4. RESPONSIBILITY FOR LOSS, DAMAGE OR INJURY**

Neither MCSD, nor its Directors, officers, employees or agents shall be held responsible in any manner for any loss or damage that may happen to the Work or any part thereof during the course of construction; for any loss or damage to any of the materials, equipment, supplies or other things used or employed in performing the Work; for injury to or death of any person, either workers or the public; or for damage to property, from any cause that might have been prevented by the CONTRACTOR, CONTRACTOR's workers, or anyone employed by the CONTRACTOR.

In the event any hazardous materials, including but not limited to asbestos, are utilized in construction or hazardous materials are otherwise encountered during construction, the CONTRACTOR shall take all appropriate precautions to protect persons and property and shall comply with all applicable regulations for the installation, removal, and handling of such hazardous materials. The CONTRACTOR is solely responsible for protection of persons and property that could be affected by construction and the CONTRACTOR's handling of such materials.

#### **4.5. OWNERSHIP OF PLANS, SPECIFICATIONS, SHOP DRAWINGS**

All Plans, Specifications, shop drawings, other drawings, permits, reports, licenses, etc., used for this Project are the property of MCSD and shall not be used for any other work. Nothing in this Contract shall be construed to vest in CONTRACTOR any property right in any Plans, Specifications, shop drawings, other drawings, permits, reports, licenses, or other Project-related documents, nor shall the CONTRACTOR obtain any property right in any material, article or structure within the Project area which is in existence at the time the Contract is awarded or subsequently is furnished by the CONTRACTOR to MCSD and becomes a part of the Project.

#### **4.6. PRESERVATION OF PROPERTY**

The CONTRACTOR shall exercise reasonable care to avoid injury to existing improvements or facilities, utility facilities, any private or public property wherever located, trees, shrubbery and other landscaping which are not to be removed. The CONTRACTOR is required to familiarize itself with the worksite.

All trees, shrubbery, landscaping which are not to be removed, and pole lines, fences, signs, survey markers and monuments, buildings, structures and improvements, conduits, pipelines (under or aboveground), sewers, waterlines, highway or street facilities, and any other improvements or facilities with respect to any private or public property wherever located shall be protected from injury or damage. The CONTRACTOR shall provide and install suitable safeguards to protect such objects from injury or damage.

If such objects are injured or damaged by reason of the CONTRACTOR's operation, they shall be replaced or restored at the CONTRACTOR's expense to a condition equivalent to their condition prior to such injury or damage or as required by the Contract Documents.

The CONTRACTOR is obligated to respond to a notification of damages to any private or public property wherever located caused by CONTRACTOR's operations by beginning work on emergency repairs/restorations immediately, and in no event later than 4 hours from said notification and on non-emergency repairs/restorations within 72 hours of said notification. Within these required timeframes, the CONTRACTOR must begin efforts to resolve issues of responsibility for any damages or losses for any asserted claim. For any claims the CONTRACTOR asserts are not related to its operations, the CONTRACTOR must provide MCSD with written notice to MCSD stating its position and all documentation supporting the same, as well as written proof of referral to its insurance carrier and its determination, along with detailed rationale for any denial of coverage or denial of the claim. Said proof shall be submitted to MCSD within 30 days of the date of notification to the CONTRACTOR of the damages or losses.

In the event that the CONTRACTOR does not respond in the manner required herein and within the required timeframes, MCSD may determine the validity of the claim and perform the repair/restoration work itself or have another contractor or qualified entity perform the same, and CONTRACTOR's next progress payment shall be reduced in amount commensurate with the cost of the repair/restoration work and/or resulting damages as a Contract deduction. If the cost of the repair/restoration work and/or resulting damages exceeds the amounts remaining due under the Contract, CONTRACTOR shall reimburse MCSD for all remaining costs and/or damages immediately.

The fact that any pipe or other underground facility is not shown on the Contract Documents, or is shown in a different location, shall not relieve the CONTRACTOR of responsibility under this section. The CONTRACTOR shall be responsible for avoiding all injury or damage to any type of underground utility facility.

In addition to any requirements imposed by law, the CONTRACTOR shall shore up, brace, underpin, and protect as may be necessary, all foundations and other parts of all existing structures adjacent to and adjoining the worksite which are, or may be, in anyway affected by the excavations or other operations connected with the performance of the Work. Whenever any notice is required to be given by MCSD or the CONTRACTOR to any adjacent or adjoining landowner or other party before commencement of any Work, such notice shall be given by MCSD, unless the CONTRACTOR is directed otherwise by MCSD.

In an emergency affecting the safety of life or property, including adjoining property, the CONTRACTOR, without special instructions or authorizations, is authorized to act with discretion to prevent such threatened loss or injury.

#### **4.7. PERSONAL LIABILITY**

No director, officer, employee, or agent of MCSD, or its CONSULTANT, shall be personally responsible for any liability arising under or by virtue of the Contract.

#### **4.8. WARRANTY OF TITLE**

No materials, supplies or equipment for the Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest therein or any part thereof is retained by the seller or Supplier. The CONTRACTOR warrants clear and good title to all materials, supplies, and equipment installed and incorporated in the Work and agrees, upon completion of all Work, to deliver the Work together with all improvements and appurtenances constructed or placed thereon to MCSD free from any claims, liens, encumbrances, or charges, and further agrees that neither the CONTRACTOR, nor any person, firm, or corporation furnishing any material or labor for any Work covered by the Contract shall have any right to a lien upon the premises or any improvement or appurtenance thereon, provided that this shall not preclude the CONTRACTOR from installing metering devices or other equipment of utility companies or of municipalities, the title to which is commonly retained by the utility company or the municipality.

Nothing contained in this section shall defeat or impair the right of such persons furnishing materials or labor, under any bond given by the CONTRACTOR for their protection, or any right under any law permitting such persons to look to unpaid funds due the CONTRACTOR in possession of MCSD. The provisions of this section shall be inserted in all subcontracts and material contracts, and notices of its provisions shall be given to all persons furnishing materials for the Work when no formal contract is entered into for such materials.

The CONTRACTOR is responsible for, and shall be obligated to pay, all stop payment notice claims asserted and proved to be an obligation of the CONTRACTOR.

#### **4.9. PROPERTY RIGHTS IN MATERIAL**

Nothing in these Contract Documents shall be construed as vesting in the CONTRACTOR any right of property in the materials used after they have been attached or affixed to the Work or the soil, or after payment has been made for materials delivered to the worksite or stored subject to or under the control of MCSD.

All such materials shall become the property of, and title shall pass to, MCSD upon being so attached or affixed or upon payment for materials delivered to the worksite or stored subject to or under the control of MCSD. The CONTRACTOR shall promptly execute, acknowledge and deliver to MCSD proper bills of sale or other written instruments of title in a form as required by MCSD. The written instrument of title shall convey to MCSD title to material, goods, and/or equipment for the Work free and clear of debts, claims, liens, mortgages, taxes and/or encumbrances. If title has not been vested in MCSD previously, title shall pass to MCSD upon Final Acceptance.

The CONTRACTOR at its own expense shall conspicuously mark such material, goods and equipment necessary for the Work as the property of MCSD, and shall not permit such material, goods and equipment necessary for the Work to become commingled with non-MCSD owned materials, equipment or goods, and shall take such other steps MCSD may require or regard as necessary to vest title to such material, goods and equipment necessary for the Work to MCSD free and clear of debts, claims, liens, mortgages, taxes and/or encumbrances.

Transfer of title of Work to MCSD shall not constitute or imply MCSD's acceptance of the Work. Notwithstanding the transfer of title, the CONTRACTOR shall continue to be liable and responsible to MCSD for any damage to or loss of Work until the Work achieves Final Acceptance, as defined herein.

Soil, stone, gravel and other materials found at the worksite and which conform to the Contract Documents for incorporation into the Work may be used in the Work. No other use shall be made of such materials except as may be otherwise described in the Contract Documents.

#### **4.10. TERMINATION FOR DEFAULT**

If the CONTRACTOR refuses or fails to prosecute the Work or any separable part thereof with such diligence as will ensure its completion within the time specified herein, or any authorized extension thereof, or fails to perform the Work in a manner required by the Contract Documents and/or industry standards, or fails to complete such Work within such time as required under the Contract Documents or, if the CONTRACTOR should be adjudged as bankrupt, or is otherwise deemed insolvent by MCSD based on good cause and is unable to proceed with the Work, or if the CONTRACTOR should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency, or if the CONTRACTOR files a petition to take advantage of any debtor's act, or should any Subcontractor violate any of the provisions of the Contract, or if the CONTRACTOR should persistently or repeatedly refuse or fail, except in cases for which an authorized extension of

time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified, or if the CONTRACTOR should fail to make prompt payment to Subcontractors for material or labor, or if the CONTRACTOR should persistently disregard laws, or instructions given by MCSD, or if the CONTRACTOR otherwise substantially fails to fulfill its obligations under the Contract Documents, MCSD may, without prejudice to any other right or remedy, serve written notice upon the CONTRACTOR and Sureties of MCSD's intention to terminate the CONTRACTOR's performance under the Contract. Said notice shall contain the reasons for such intention to terminate the CONTRACTOR's performance under the Contract, and unless, within ten (10) days after the service of such notice, such violations cease and/or satisfactory arrangements for the corrections thereof have been made, the MCSD may terminate CONTRACTOR's performance under the Contract and the CONTRACTOR shall not be entitled to receive any further payment until the Work is finished.

In the event of any such termination, MCSD shall serve written notice thereof upon the Surety and CONTRACTOR, and the Surety shall have the right to take over and perform the Contract. However, if the Surety, within five (5) days after the service of a notice of termination, does not give MCSD written notice of its intention to take over and perform the Contract, and if it serves such notice of its intent to take over and perform the Contract and does not begin performance thereof within fifteen (15) days from the date of serving said notice, MCSD may take over the Work and prosecute the same to completion by contract or by any other method it may deem advisable for the account and at the expense of the CONTRACTOR, and the Sureties and/or CONTRACTOR shall be liable to MCSD for any excess cost or other damage incurred by MCSD thereby. In such an event MCSD may without liability for so doing, take possession of and utilize such materials, tools, equipment, supplies and other property belonging to the CONTRACTOR and/or assume assignment of any and all subcontracts for Subcontractors and/or Suppliers that may be on the worksite and be necessary to complete the Work. For any portion of such Work that MCSD elects to complete by furnishing its own employees, materials, tools, and equipment, MCSD shall be compensated in accordance with the schedule of compensation for force account work as stated in the General Conditions section entitled Contract Price Adjustments and Payments.

If the Surety assumes the CONTRACTOR's terminated Work, it shall take the CONTRACTOR'S place in all respects for that part and shall be paid by MCSD for all Work performed by it in accordance with the terms of the Contract Documents. If the Surety assumes the entire Contract, all money due the CONTRACTOR at the time of its default shall be payable to the Surety as the Work progresses, subject to the terms of the Contract.

CONTRACTOR hereby consents to assigning to MCSD and/or MCSD's replacement contractor all subcontracts and other agreements of any and all Subcontractors and/or Suppliers that may be on the worksite and/or may be necessary to complete the Work in the event of Termination for Default or Termination for Convenience, as set forth below. CONTRACTOR agrees to obtain, by way of a subcontract provision, the consent of each and every Subcontractor and/or Supplier for such assignment prior to the commencement of each such Subcontractor's and/or Supplier's Work on the Project.

In the event of such termination, the CONTRACTOR will be paid the actual amount due based on unit prices or lump sums Bid and the quantity of Work completed at the time of termination, less damages caused to MCSD by acts of the CONTRACTOR causing the termination, including but not limited to, all costs to MCSD arising from professional services and attorneys' fees and all costs generated to insure or bond the Work of substituted contractors or subcontractors utilized to complete the Work, such excess shall be paid to the CONTRACTOR. If such costs exceed the unpaid balance, the CONTRACTOR shall pay the difference to MCSD promptly upon demand. On failure of the CONTRACTOR to pay, the Surety shall pay on demand by MCSD. Any portion of such difference not paid by the CONTRACTOR or Surety within thirty (30) days following the mailing of a demand for such costs shall earn interest at the maximum rate authorized by California law.

The CONTRACTOR and MCSD agree that nothing in this section is intended to be or is a prevailing party clause as it pertains to attorney's fees.

The foregoing provisions are in addition to and not in limitation of any other rights or remedies under law or in equity available to MCSD.

If it is later determined by MCSD that the CONTRACTOR had an excusable reason for not performing, such as a fire, flood, or other event which was not the fault of or was beyond the control of the CONTRACTOR, MCSD, after setting up a new performance schedule, may allow the CONTRACTOR to continue Work, or treat the termination as a termination for convenience, and the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of MCSD.

#### **4.11. TERMINATION FOR CONVENIENCE**

MCSD may terminate the CONTRACTOR's performance under the Contract, either in whole or in part, at its own discretion or when conditions encountered during the Work make it impossible or impracticable to proceed, or when MCSD is prevented from proceeding with the Contract by act of God, by law, or by official action of a public authority, or upon a determination that such termination is in the best interest and convenience of MCSD, or whenever MCSD is prohibited from completing the Work for any reason. MCSD shall provide no less than ten (10) days written notice of its intent to terminate the Contract for convenience, and shall provide the CONTRACTOR with consultation with MCSD prior to termination.

Upon receipt of such written notice of termination, the CONTRACTOR shall:

1. Stop Work as specified in the written notice;
2. Terminate all orders and Subcontractors except as necessary to complete Work which is not terminated;
3. If directed in writing by MCSD to do so, assign all right, title and interest in subcontracts and materials in progress, in which case MCSD will have the right at its discretion to settle, or pay any or all claims arising out of the termination of such

Subcontractors, but in no event shall recovery by any CONTRACTOR include lost profits for uncompleted portions of Work;

4. Deliver or otherwise make available to MCSD all data, Drawings, Specifications, reports, estimates, summaries and such other information and material as may have been accumulated by the CONTRACTOR in performing this Contract whether completed or in process;
5. Settle outstanding liabilities and claims with the approval of MCSD;
6. Complete performance of such part of the Work as has not been terminated; and
7. Take such other actions as may be necessary, or as may be directed by MCSD for the protection and preservation of the Project and/or property related to the Contract.

Upon receipt of MCSD's written notice of termination for convenience, and within a period of 30 to 60 days, as determined by the ENGINEER at the time of termination, the CONTRACTOR shall submit to the ENGINEER a Termination Proposal which shall include, but is not limited to, the CONTRACTOR's estimated costs to be incurred by the CONTRACTOR as a result of the termination for convenience, and as allowed by the Contract Documents, including all documentation to support such costs; the status of the Work at time of termination; the status of termination of the CONTRACTOR'S Subcontractor(s) and Supplier(s) agreement(s) including the amount of each said agreement, amount paid under each agreement up to the date of termination, and the amount that currently remains due and owing under each agreement for Work completed as of the date of termination, if any; a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the ENGINEER; and any other information and/or documentation as required by MCSD.

Upon receipt of MCSD's written notice of termination for convenience, the CONTRACTOR shall submit to the ENGINEER a request for Final Payment, pursuant to the requirements set forth herein. Such request shall be submitted promptly, but no later than sixty (60) days from the effective date of termination.

The Final Payment to the CONTRACTOR after termination for convenience shall be limited to amounts due and owing under the Contract at time of termination, including the following:

1. Any actual costs incurred by the CONTRACTOR for restocking charges;
2. The agreed upon price of protecting the Work in any manner, if any, as directed by MCSD;
3. The cost of settling and paying claims arising out of the termination of the Work under subcontract agreements or orders with MCSD's approval, as specified above, exclusive of the of the amounts paid or payable on account of goods delivered or Work furnished by Subcontractor prior to the effective date of the termination; and

4. The Contract Price allocable to the portion of the Work properly performed or goods supplied by the CONTRACTOR as of the date of termination, as determined in accordance with the within Sections herein entitled Payment – General and Contract Price Adjustments And Payments, reduced by any sums previously paid to the CONTRACTOR.

MCSD shall have the right to withhold any portion or the whole of the Final Payment under this provision in the event there are any outstanding claims for compensation asserted by MCSD against the CONTRACTOR, or by any third party against MCSD which arises out of the CONTRACTOR's Work.

#### **4.12. NOTICE AND SERVICE THEREOF**

Any notice required or given under the Contract shall be in writing, be dated, and signed by the party giving such notice or its duly authorized representative, and be served as follows:

If to MCSD, by personal delivery or by deposit in the United States mail, or by electronic telecommunication.

If to the CONTRACTOR, by personal delivery to the CONTRACTOR or to its authorized representative at the worksite or by deposit in the United States mail, or by electronic telecommunication.

If to the Surety or any other person, by personal delivery to the Surety or other person or by deposit in the United States mail or by electronic telecommunication.

All mailed notices shall be in sealed envelopes, shall be sent by certified mail with postage prepaid, return receipt requested, and shall be addressed to the addresses and addressees contained in the Contract Documents, or such substitute addresses which a party designates in writing and serves as set forth herein.

All electronic telecommunication, to be effective, shall have a date and time receipt acknowledgment, and shall be clearly identified as a contractual notice under this, and any other applicable, provision of the Contract.

#### **4.13. PARTIAL INVALIDITY**

In the event any article, section, paragraph, sentence, clause, or phrase (collectively referred to hereinafter as "Contract Elements" or singularly as "Contract Element") contained in the Contract Documents shall be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, such determination, declaration, or adjudication shall in no manner affect the other Contract Elements, which shall remain in full force and effect as if the Contract element declared, determined, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, was not originally contained in the Contract Documents.

#### **4.14. WAIVER OF RIGHTS**

Except as otherwise specifically provided in the Contract Documents, no action or failure to act by MCSD, ENGINEER or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under the Contract Documents, nor shall any such actions or failure to act constitute an approval of or acquiescence in any breach thereunder.

#### **4.15. TAXES**

The CONTRACTOR shall pay all sales, consumer, use and other taxes.

#### **4.16. ASSIGNMENT OF ANTITRUST ACTIONS**

In entering into a public works contract or subcontract to supply goods, services or materials pursuant to a public works contract, the CONTRACTOR or Subcontractor offers and agrees to assign to MCSD 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.A. Section 15), or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the California Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or subcontract. This assignment shall be made and become effective at the time MCSD tenders Final Payment to the CONTRACTOR, without further acknowledgment by the parties.

In submitting a Bid to MCSD, the Bidder offers and agrees that if the Bid is accepted, it will assign to MCSD 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.A. Section 15), or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the California Business and Professions Code), arising from purchases of goods, materials or services by the Bidder for sale to the purchasing body, pursuant to the Bid. Such assignment shall be made and become effective at the time MCSD tenders Final Payment to the Bidder.

#### **4.17. SUBCONTRACTING**

If the CONTRACTOR subcontracts any part of the Contract, the CONTRACTOR shall be as fully responsible to MCSD for the acts, errors and omissions of the Subcontractor(s) and Suppliers and of the person(s) either directly or indirectly employed by the Subcontractor(s) and Suppliers as the CONTRACTOR is for the acts, errors and omissions of persons directly employed by the CONTRACTOR. Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor/Supplier and MCSD. The divisions and sections of the Specifications and the identifications of any Drawings shall not control the CONTRACTOR in dividing the Work among Subcontractors.

#### **4.18. FLOW-DOWN REQUIREMENTS**

Each Subcontract and Supplier agreement shall preserve and protect the rights of MCSD, its directors, officers, agents, and employees under the Contract Documents with respect to the

Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor or Supplier, unless specifically provided otherwise in the subcontract agreement, the benefits of all rights, remedies and redress against the CONTRACTOR that the CONTRACTOR, by the Contract Documents, has against MCSD. Where appropriate, the CONTRACTOR shall require each Subcontractor and Supplier to enter into similar agreements with sub-Subcontractors. The CONTRACTOR shall make available to each proposed Subcontractor or Supplier, prior to the execution of the subcontract, copies of the Contract Documents. In addition, upon the request of MCSD, the CONTRACTOR shall make available to MCSD any and all Subcontract and Supplier agreements pertaining to the Project and the Work thereunder. By appropriate agreement, written where legally required for validity, the CONTRACTOR shall require:

1. Each Subcontractor and Supplier to be bound to the CONTRACTOR by the terms of the Contract Documents;
2. Each Subcontractor and Supplier shall assume toward the CONTRACTOR all obligations and requirements and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the CONTRACTOR, by the Contract Documents, assumes toward MCSD;
3. Each Subcontractor and Supplier shall require all subcontracted Work to be performed in accordance with the Contract Documents and that with respect to the Work the Subcontractor or Supplier performs that the Subcontractor or Supplier assume toward the CONTRACTOR all the obligations and responsibilities which the CONTRACTOR assumes toward MCSD.
4. Each of its Subcontractors or Suppliers to include in their contracts with lower-tier Subcontractors or Suppliers these same requirements, and to require each Subcontractor or Supplier to make copies of the Contract Documents available to the Sub-Subcontractors or sub-Suppliers.

This section does not and shall not operate to relieve the CONTRACTOR of any duty or liability under the Contract Documents, nor does it create any duty or liability on the part of MCSD. The CONTRACTOR shall have sole responsibility for promptly settling any disputes between its Subcontractors and between the Subcontractors and any of their lower-tier Subcontractors.

#### **4.19. ASSIGNMENT**

The performance of all or any portion of the Contract may not be assigned except upon the written consent of MCSD, and as specifically provided herein. Consent will not be given to any proposed assignment that would relieve the original CONTRACTOR or the Sureties of responsibilities under the Contract.

Upon obtaining prior written consent of MCSD, the CONTRACTOR may assign monies due or to become due under the Contract, to the extent permitted by law, but any assignment of

monies shall be subject to all proper setoffs in favor of MCSD and to all deductions provided for in the Contract. In particular, all monies withheld, whether assigned or not, shall be subject to being used by MCSD for the completion of the Work in the event that the CONTRACTOR should default.

No assignment of the Contract will be approved unless it contains a provision that the funds to be paid to the assignee under the assignment are subject to a prior lien for services rendered or materials supplied for performance of the Work called for under the Contract in favor of all persons, firms, or corporations rendering such services or supplying such materials and that MCSD may withhold funds due until all Work required by the Contract Documents is completed to MCSD's satisfaction.

#### **4.20. WARRANTY (CONTRACTOR'S GUARANTEE)**

- A. The CONTRACTOR shall and hereby does guarantee the entire Work, and its performance through maintenance of sufficient warranties, that the entire Work shall perform at all times as part of a fully integrated system consisting of all Work elements specified in the Contract Documents for a period of one (1) year after the Final Acceptance of the Work by MCSD. Any portion of the Work that is Beneficially Occupied shall be additionally warranted as described, in these General Conditions, Use Prior to Final Completion (Beneficial Occupancy). During the warranty period, the CONTRACTOR shall repair or remove and replace any Work, together with any other work which may be displaced in so doing that is found to be defective in workmanship and/or materials without any expense to MCSD, ordinary wear and tear and unusual abuse or neglect excepted. In the event of failure to comply with the above-mentioned conditions within one (1) week after being notified in writing, MCSD is hereby authorized to proceed to have the defects remedied at the expense of the CONTRACTOR who hereby agrees to pay the cost and charges thereof immediately on demand. The CONTRACTOR's warranty shall continue as to any corrected deficiency until the later of:
1. The remainder of the original one-year warranty period; or
  2. One year after acceptance by MCSD of the corrected Work.
- B. Such action by MCSD will not relieve the CONTRACTOR of the warranties required by this section or elsewhere in the Contract Documents.
- C. All guarantees and warranties, expressed or implied shall inure to the benefit of both MCSD and the CONTRACTOR during the performance of the Work. Upon Final Completion of the Work, such guarantees and warranties shall inure to the benefit of MCSD.
- D. The Performance Bond and the Payment Bond shall continue in full force and effect for the warranty period, including all extensions thereof as provided by the Contract Documents.

- E. If, in the opinion of MCSD, defective Work is detected during the warranty period which creates a dangerous condition or requires immediate correction or modification to prevent further loss to MCSD or to prevent interruption of MCSD operations, MCSD will attempt to give the notice required by this section. If the CONTRACTOR cannot be contacted or does not comply with MCSD's request for correction within a reasonable time as determined by MCSD, MCSD may, notwithstanding the provisions of this section, proceed to make such correction or provide such modification. The costs of such correction or modification shall be charged against the CONTRACTOR. Such action by MCSD will not relieve the CONTRACTOR of the warranties required by this section or elsewhere in the Contract Documents.
- F. This section does not in any way limit the warranty on any items for which a longer warranty is specified or on any items for which a manufacturer or Supplier gives a warranty for a longer period. The CONTRACTOR agrees to act as a co-guarantor with such manufacturer or Supplier and shall furnish MCSD all appropriate guarantee or warranty certificates upon completion of the Project and acceptance by MCSD. No warranty period, whether provided for in this section or elsewhere, shall in any way limit the liability of the CONTRACTOR, Sureties or insurers.

#### **4.21. SAFETY PRECAUTIONS AND EMERGENCIES**

- A. CONTRACTOR's Responsibility for Safety.

CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. This requirement will apply continuously twenty four hours a day every day until Final Acceptance of the Work and shall not be limited to normal working hours. The duties of MCSD, Engineer and Inspector do not include review of the adequacy of CONTRACTOR's safety measures in, on, or about the site and vicinity.

- B. Safety Officer.

Contractor shall designate a responsible member of its organization at the site of the Work whose duty shall be the prevention of hazards and accidents. This person shall be CONTRACTOR's Superintendent unless otherwise designated in writing by CONTRACTOR to the ENGINEER.

- C. Safety Measures.

Contractor shall comply with all Codes and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. Contractor shall comply with the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, Inc., including the recommendations for safe construction methods and the requirements for the guarding of machinery and equipment therein, to the extent that the provisions of the manual are not in conflict with applicable Codes and orders. CONTRACTOR shall maintain copies of all

documents mentioned or referenced in this paragraph readily available at the site until the Work is completed.

D. Warnings and Barricades.

CONTRACTOR shall provide and maintain barricades, guards, temporary bridges and walkways, watchmen, night lights and danger signals illuminated from sunset to sunrise, and all other necessary appliances and safeguards to protect the Work, life, property, the public, excavations, equipment, and materials. Barricades shall be of substantial construction and shall be painted such as to increase their visibility at night. Suitable warning signs shall be so placed and illuminated at night as to show in advance where construction, barricades, or detours exist. Guard rails shall be provided for bridges and walkways over or adjoining excavations, shafts, and other openings and locations where injury may occur.

E. Fire Prevention.

CONTRACTOR's Safety Officer shall inspect the entire Work and site, including storage areas, at frequent intervals to verify that fire prevention measures are constantly enforced.

F. Flammable or Toxic Materials.

Only a working supply of flammable or toxic materials shall be permitted in or on any of the permanent structures and improvements, and shall be removed therefrom at the end of each day's operations. CONTRACTOR shall store flammable or toxic materials and waste separate from the Work and stored materials for the Work in a manner that prevents spontaneous combustion or dispersion, and none shall be placed in any sewer or drain piping nor buried on the Owner's property.

G. Safety Helmets, Clothing, and Equipment.

CONTRACTOR shall not permit any person for whom he is responsible or liable to enter or remain on the site of the Work unless the person is equipped with and wearing a safety helmet and other protective clothing and safety equipment conforming to the requirements of paragraph C. "Safety Measures," and shall discharge from the site all persons not so equipped.

H. Hazardous Areas.

CONTRACTOR shall not permit or allow any person or persons to enter any pipe or space containing hazardous or noxious substances or gases, or where there is an insufficient amount of oxygen to sustain life and consciousness, or any other hazardous area unless equipped with lawful and appropriate safety equipment and life supporting apparatus, and unless those entering are continually monitored and guarded by and in communication with other persons outside the space or area who are equipped in the same way, can give an alarm to others for assistance, and initiate immediate rescue operations in the event of mishap.

## I. Emergencies.

CONTRACTOR shall perform any and all operations and shall furnish any materials and equipment necessary during an emergency endangering life or property and, in all cases, shall notify the ENGINEER of the emergency as soon as practicable, but shall not wait for instruction before proceeding to properly protect both life and property.

CONTRACTOR shall file with the ENGINEER a written list giving the names, addresses, and telephone numbers of at least two of his representatives who can be contacted at any time in case of emergency. The representatives shall be fully authorized and equipped to correct unsafe or inconvenient conditions on short notice. CONTRACTOR shall promptly notify the ENGINEER of all changes in the listing.

## **5. SCOPE OF WORK**

### **5.1. GENERAL**

The intent of the Contract Documents as they apply to the Project is to prescribe and provide for the complete and finished performance and accomplishment, in every respect, of the entire contemplated Work indicated in the Contract Documents, relating directly to the Project. It shall be understood that the CONTRACTOR undertaking the execution of all or any part of such Work shall be required to perform in a craftsman-like manner and in strict compliance with Contract Documents, and to furnish and provide in connection therewith all transportation, labor, tools implements, equipment, materials, supplies, services and other items which are necessary or appurtenant to construct and complete the entire Project, including but not limited to all applicable codes, permits, ordinances, regulations, and laws.

### **5.2. CONSTRUCTION PROCEDURES AND PROTECTION**

#### **A. CONTRACTOR's Plant and Equipment.**

CONTRACTOR shall furnish modern plant and equipment as necessary to perform the Work in a manner satisfactory to the ENGINEER and in accordance with the Contract Documents, types and designs that comply with the requirements herein and with the requirements prescribed by Codes pertaining to wind and seismic forces at the place of the Project. Construction equipment or machinery that at any time produces unsatisfactory results shall be promptly repaired or replaced by the Contractor and as the ENGINEER may require.

#### **B. Use of Site.**

CONTRACTOR shall confine its equipment, the storage of materials and equipment, and the operations of those directly and indirectly employed by it to areas permitted by applicable Codes and the Contract Documents, and shall not unreasonably encumber the

site with materials and equipment. Nothing in the Contract Documents shall grant to the Contractor exclusive occupancy of the site of the Work and Project.

C. Overloading.

No part of the Work or new and existing structures, scaffolding, shoring, sheeting, construction machinery and equipment, or other permanent and temporary facilities shall be loaded with weights or subjected to stresses or pressures that endanger any of them. CONTRACTOR shall bear the cost of correcting damage caused by overloading or excessive stresses or pressures.

D. Use of Explosives.

CONTRACTOR shall comply with all laws, ordinances, regulations, codes, and orders governing the transportation, storage, and use of explosives, shall exercise extreme care not to endanger life or property, and shall be responsible for all injury or damage resulting from the use of explosives for or on the Work. No blasting shall be done in the vicinity of existing structures above or below the ground without the prior written consent of the owner thereof.

E. Cutting and Patching.

CONTRACTOR shall perform all cutting, fitting, or patching of the Work that may be required to make its several parts fit together properly and satisfactorily, and shall not endanger any Work, structures, adjacent property, workmen, or the public by cutting, excavating, or otherwise altering the Work or any part of it. CONTRACTOR shall restore all such cut or patched Work and improvements as approved by the ENGINEER.

F. Verification of Installed Work.

CONTRACTOR shall correct all defects in installed Work of the Contract before subsequent related or connected Work is applied or installed. Where the Contract Documents require a material or item of equipment to be applied or installed under the supervision, inspection, or direction of the supplier or manufacturer, or his representative, the supplier, manufacturer, or his representative shall inspect the applicable installed Work and issue a letter to the ENGINEER stating the corrections required to or approval of the installed Work before his material or equipment is installed or applied.

G. Manufacturers' Instructions.

Unless otherwise provided in the Contract Documents, CONTRACTOR shall apply, install, erect, connect, use, clean, condition, and operate manufactured articles, materials, and equipment in accordance with the various manufacturers' instructions. CONTRACTOR shall compare the requirements of the various manufacturers' instructions with the requirements of the Contract Documents, shall promptly notify the ENGINEER in writing of any difference between such requirements, and shall not proceed with any of the Work affected by such differences until an interpretation or clarification is issued.

CONTRACTOR shall bear all costs for any error in the Work resulting from its failure to so compare the various requirements and notify the ENGINEER of any such differences.

#### H. Public Convenience.

CONTRACTOR shall at all times so conduct its operations as to ensure the least possible obstruction and inconvenience to traffic and the general public and the residents in the vicinity of the Work, to protect persons and property, and to preserve access to driveways, house, and buildings. CONTRACTOR shall have under construction no greater amount of Work than it can properly perform with due regard to the rights of the public, and shall not create any public nuisance. No road, street, or highway shall be closed to the public except with the permission of the proper authorities. Where existing streets are not available as detours, CONTRACTOR shall permit traffic to safely pass through the Work with as little delay and inconvenience as possible, unless otherwise authorized by the ENGINEER. CONTRACTOR shall furnish competent flagmen whose sole duty shall be the directing of traffic through or around the Work when ordered by the ENGINEER, required by public authorities having jurisdiction, or required by law. At no time shall CONTRACTOR prevent free access to fire hydrants, water and gas main valves, manholes or vaults, or other utility facilities except as otherwise required to perform the Work and in compliance with all Codes and permits. CONTRACTOR shall make temporary provisions to ensure the use of walkways and sidewalks and the proper functioning of gutters, sewer and storm drain inlets, and ditches, which shall not be obstructed.

#### I. Protection.

CONTRACTOR shall take all precautions and furnish and maintain protection to prevent damage, injury, or loss to all employees and workmen on the Work and all other persons who may be affected thereby; all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of CONTRACTOR or any of its Subcontractors; and other improvements and property at the site or where Work is to be performed including buildings, trees and plants, pole lines, fences, guard rails, guide posts, culvert and project markers, signs, structures, conduits, pipe lines, and improvements within or adjacent to streets, rights of way, or easements, except those items required to be removed by the Contractor in the Contract Documents. The Contractor's protection shall include all the safety precautions required under General Conditions Section entitled "Safety Precautions and Emergencies" and other necessary forms of protection, and the notification of the owners of utilities and adjacent property.

Unless otherwise provided in the Contract Documents or unless otherwise cared for by the owner thereof, all water, gas, oil, or irrigation lines, all lighting, power, communication, or telephone conduits, all sewer and drainage lines and house connection lines, sprinkling systems, and other subsurface structures of any nature along the Work shall be maintained by CONTRACTOR at its expense, and shall not be disturbed, disconnected, or damaged by CONTRACTOR during the progress of the Work. CONTRACTOR shall install temporary pipes of adequate size to carry off sewage from any sewer facilities cut off by construction operations. Installation of temporary pipes shall be made immediately upon cutting of the existing facility, and no sewage shall be allowed to flow from any severed

facility upon the ground surface or in the trench excavation. Pipe used in temporary sewers may be clay, metal, concrete, or composition. Before completion of Work, CONTRACTOR shall replace all severed connections and restore to operating order the existing sanitary facilities with matching materials and construction. No liquid from any severed facility shall be allowed to flow upon the ground surface or in any excavation.

Except for those improvements and facilities required to be permanently removed by the Contract Documents, CONTRACTOR shall make satisfactory and acceptable arrangements with the appropriate owners and, at its expense, shall repair and restore all improvements, structures, property, utilities, and facilities disturbed, disconnected, or damaged as a result or consequent of its Work or the operations of those for whom he is responsible or liable, including that caused by trespass of any of them with or without his knowledge or consent, or by the transporting of workmen, materials, or equipment to or from the site.

### **5.3. ERRORS AND OMISSIONS**

The CONTRACTOR, as part of this Contract, shall agree not to take advantage of errors or omissions in the Contract Documents. It is the duty of the CONTRACTOR to promptly notify the ENGINEER in writing of any design, materials, or specified method that the CONTRACTOR believes may prove defective or insufficient. If the CONTRACTOR believes that a defect or insufficiency exists in design, materials or specified method and fails to promptly notify the ENGINEER in writing of this belief, the CONTRACTOR thereby waives any right to assert that defect or insufficiency in design, materials or specified method at any later date in any legal or equitable proceeding against MCSD, or in any subsequent arbitration or settlement conference between MCSD and the CONTRACTOR. The ENGINEER, upon receipt of any such notice, will promptly investigate the circumstances and give appropriate instructions to the CONTRACTOR. Until such instructions are given, any Work done by the CONTRACTOR after the CONTRACTOR becomes aware that a defect or insufficiency exists in design, materials or specified method which is directly or indirectly affected by such alleged defect or insufficiency in design, materials or specified method will be at the CONTRACTOR's own risk and the CONTRACTOR shall bear all costs arising therefrom. In the event the CONTRACTOR believes that the ENGINEER's instruction results in a change to the Contract Documents or Work requiring a change to the period of Contract performance or Contract Price, CONTRACTOR must submit a Request for Change in the time and manner set forth in the Section herein entitled Request for Change (Changes at CONTRACTOR's Request).

If the CONTRACTOR, either before commencing Work or in the course of the Work, finds any discrepancy between the Contract Documents, or the physical conditions at the worksite, or finds an error or omission on the Plans or in any survey, the CONTRACTOR shall promptly notify the ENGINEER in writing of such discrepancy, error or omission. If the CONTRACTOR observes that the Contract Documents are at variance with any applicable law, regulation, order, or decree, the CONTRACTOR shall promptly notify the ENGINEER in writing of such conflict. The ENGINEER, on receipt of such notice, will promptly investigate the circumstances and give appropriate instructions to the CONTRACTOR. Until

such instructions are given, Work done by the CONTRACTOR after the discovery of such error, discrepancy, or conflict which is directly or indirectly affected by such error, discrepancy, omission or conflict will be at the CONTRACTOR's own risk and the CONTRACTOR shall bear all costs arising therefrom. In the event the CONTRACTOR believes that the ENGINEER's instruction results in a change to the Contract Documents or Work requiring a change to the period of Contract performance or Contract Price, CONTRACTOR must submit a Request for Change in the time and manner set forth in the Section herein entitled Request for Change (Changes at CONTRACTOR's Request).

Any Work or material not herein specified or shown on the Contract Documents, but which by fair implication in the judgment of the ENGINEER, should be included therein, shall be accomplished or furnished by the CONTRACTOR as part of the Contract requirements.

#### **5.4. REQUEST FOR CHANGE (CHANGES AT CONTRACTOR'S REQUEST)**

##### **A. General**

The CONTRACTOR may request an equitable adjustment if it considers any Work which is demanded by the ENGINEER in writing to be "Extra Work" and outside the requirements of the Contract Documents or in variance to the same, or otherwise causes the CONTRACTOR to accelerate or decelerate the Work or causes a delay to the Work. Equitable adjustments may also be requested if the CONTRACTOR identifies what it believes to be errors or omissions of any kind, including design errors or omissions, in the Contract Documents or encounters a differing site condition that could not reasonably have been foreseen, and any such occurrence or direction materially changes the Contract Documents or Work and/or which may require a change to the period of performance or Contract Price (either additive or deductive). The CONTRACTOR shall within three (3) days after any such demand, instruction, ruling, occurrence, discovery, or decision is made, notify the ENGINEER in writing by way of a document entitled "Request for Change" (RFC). The RFC shall set out in specific detail all objections such as why the requested Work is not in the scope of the Contract Documents and the reasons therefore, and/or the reason why the required Work is outside the scope of the Contract Documents, the identification of the Contract Document, term, condition, or specification proposed to be altered, changed, added, or deleted, and why the CONTRACTOR believes additional compensation or time will or may be due as a result thereof.

Except for RFCs which are made in the manner and within the time stated above, the CONTRACTOR shall be deemed to have waived, and does by execution of the Contract knowingly waive all Claims for Extra Work, damages and extensions of time resulting from demand, instructions, rulings and decisions of the ENGINEER. Except for requests for equitable adjustment based on defective Specifications, no requests for equitable adjustment hereunder shall be allowed for any costs incurred more than 3 days before the CONTRACTOR gives written notice as required herein. In the case of defective Specifications for which MCS D is responsible, if there are any increased direct costs reasonably incurred by CONTRACTOR in attempting to comply with those defective Specifications, CONTRACTOR will be entitled to recovery of any such increased direct

costs if the Request for Change is made in accordance with the procedures set forth herein, Request for Change (Changes At CONTRACTOR's Request) and/or OWNER Initiated Changes. CONTRACTOR, however, is not relieved of its obligation at time of Bid to have reviewed the Contract Documents and identified any patent errors or omissions in the same; and it shall bear all costs arising from any such failure.

#### B. Request for Change Submissions; Cost and Schedule Proposals

All RFCs shall be dated, numbered sequentially, and shall describe the action or event which the CONTRACTOR believes may require equitable adjustment. The CONTRACTOR shall also provide a description of possible CONTRACTOR actions or solutions to minimize the cost of the RFC, and it shall provide a cost and schedule proposal for said Work based upon an estimate of the cost for the anticipated changed Work, and shall submit said price and time impact to the ENGINEER whose approval shall be secured before Work is started. The cost and schedule proposal shall include, at a minimum, the following:

1. A detailed cost breakdown of the changed Work organized and subtotaled by specification section in a spreadsheet format specified by the ENGINEER itemizing all costs associated with the Extra Work, deletion or revision, including material, labor, equipment, etc. in a manner evidencing the logical computation and allocation of costs, and the CONTRACTOR must also include all necessary back-up documentation including quantities, labor man-hours, unit prices, and Supplier and Subcontractor quotations to support said estimate, and any other data, information and/or documentation required by the ENGINEER. Costs for preparing cost or schedule proposals are not compensable.
2. If an adjustment to the Contract period of performance is requested, the delay must be substantiated and documented by the CONTRACTOR. In accordance with the schedule requirements in the Specifications, an accurately updated Project schedule proving time impacts and actual delay to critical path activity is required, unless otherwise directed in writing by the ENGINEER, and shall be accompanied by any and all documentation as more particularly specified herein, General Conditions, Extension of Time for Delay. The CONTRACTOR shall also include the identification of labor, materials and/or other cost items including overhead and Subcontractor costs, which have been or may be added, deleted or wasted by such delay, and a statement that the CONTRACTOR is maintaining records which allows the separately identifiable direct costs due to the delay, and those not incurred as a result of the delay, to be readily identifiable and segregated.
3. In addition, the CONTRACTOR shall include with its cost and/or schedule proposal a certification, executed by a duly authorized representative of the CONTRACTOR, stating the following, or the RFC shall be considered incomplete and shall not be accepted by MCSD:

“I certify that (1) the Request for Change is made in good faith, (2) I have reviewed all supporting documentation and data, which is included herewith, and it is accurate and complete, (3) I have determined from my independent review of the Request for Change that the same is meritorious, and that the amount and/or time extension requested accurately reflects the Contract adjustment for which I believe MCSD is liable; and (4) I am duly authorized to certify the Request for Change on behalf of the CONTRACTOR.”

4. CONTRACTOR shall submit three printed copies of the complete proposal along with an electronic copy of the proposal on a compact disc in a file format acceptable to MCSD.

Extra Work shall be priced by CONTRACTOR and paid by MCSD consistent with the allowable costs set forth in the Section herein entitled “Contract Price Adjustments and Payment.”

Upon receipt of the CONTRACTOR’s RFC, the ENGINEER shall review the same and shall promptly advise the CONTRACTOR in writing of the final decision. The final decision shall be binding, subject however to the approval of the Board of Directors or General Manager, to the extent the final decision changes the Contract Documents and a Change Order is required. If additional information is needed to evaluate the Request for Change, the ENGINEER may at its sole discretion request that the CONTRACTOR submit such additional information or documentation as may be needed to evaluate the RFC. By issuing any request for additional information, the ENGINEER shall not be deemed to have made a determination as to the merit of the CONTRACTOR’s Request for Change or as to the nature of the Work in question, and in no event shall it be deemed a direction to proceed with said Work. The CONTRACTOR shall submit any further information or documentation requested by the ENGINEER, whose approval shall be secured before Work is started. In the event negotiations are necessary to determine an appropriate cost and/or schedule adjustment to the Contract, the CONTRACTOR shall negotiate in good faith with the MCSD.

#### C. Authority to Direct Extra Work

The ENGINEER may, when in the best interest of MCSD issue a Change Order to the CONTRACTOR to proceed with the Extra Work including the Work identified in the RFC in advance of its cost and schedule proposal submission. MCSD reserves the right to reject any requests for equitable adjustment for Extra Work or for additional payment requested as a result of extending the Work under the Bid prices which has not been approved by the ENGINEER in the manner herein provided.

When the price for Extra Work, deletions or other revisions cannot be agreed upon, or the CONTRACTOR fails or refuses to negotiate in good faith with respect to the same, MCSD may issue a unilateral change using its independent estimate and time impact analysis, as more particularly specified in these General Conditions, Contract Price Adjustments and

Payments. MCSD may also direct such Work on a time and materials or force account basis.

To the extent the ENGINEER directs Extra Work to be performed on a time and materials or force account basis, such Extra Work shall be performed by the CONTRACTOR, and compensated by MCSD, in the time and manner set forth in General Conditions Section entitled, "Contract Price Adjustments and Payments," Sub-section D thereto, "Time & Material and Force Account Work."

In the event the CONTRACTOR disagrees with any findings made by the ENGINEER as it concerns entitlement to a Change Order, or any portion thereof, additional compensation under the Contract, or adjustment to period of performance, CONTRACTOR shall proceed with the Claims procedures set forth herein. CONTRACTOR also agrees to diligently proceed with the performance of the Contract, including the delivery of goods or providing of services in accordance with ENGINEER's instructions. CONTRACTOR's failure to diligently proceed in accordance with ENGINEER's instructions shall be considered a material breach of the Contract.

#### D. Minor Changes

Changes in the Work not materially affecting the efficiency or usability of the finished facility, which do not involve extra or lesser cost, and are not inconsistent with the intent of the Contract Documents or detrimental to the Project or to the interests of MCSD, may be granted by the ENGINEER to facilitate the Work of the CONTRACTOR when such changes are requested, in writing, and submitted to the ENGINEER for approval. In the event such changes are granted in writing by the ENGINEER, the changes shall be made without additional cost to MCSD. The CONTRACTOR will be responsible for all costs associated with future changes or conflicts that are caused by the CONTRACTOR's requested change. It shall be understood that nothing herein shall be construed as granting permissive rights to the CONTRACTOR to demand acceptance of such requested changes.

### **5.4. OWNER INITIATED CHANGES**

#### A. General

MCSD reserves and shall have the right, without invalidating the Contract and without notice to the Surety(ies), to have changes made within the general scope of the Contract Documents consisting of Extra Work, deletions or other revisions. The signing of the Contract Documents by the CONTRACTOR will be deemed to be an agreement on its part to perform Extra Work, as and when ordered by the ENGINEER.

Upon decision of MCSD to have Extra Work performed, the ENGINEER will so inform the CONTRACTOR, acquainting the CONTRACTOR with the essential details of the Extra Work and issue a Request for Proposal ("RFP"). The CONTRACTOR shall thereupon, and within three (3) days, prepare a proposal for said Extra Work based upon an estimate of cost and submit said price and time impact analysis to MCSD whose

approval shall be secured before Extra Work is started. The ENGINEER may, when in the best interests of MCSD, order the CONTRACTOR to proceed with the Extra Work in advance of proposal submission. MCSD reserves the right to reject any Claims for Extra Work or for additional payment claimed as a result of extending the Work under the Bid prices which have not been approved by the ENGINEER in the manner herein provided.

#### B. Cost and Schedule Proposal

The CONTRACTOR's proposal must include, at a minimum, the items identified in the Section entitled "Request For Change (Changes At CONTRACTOR's Request)," sub-section B.1 through B.4.

Extra Work shall be priced by CONTRACTOR and paid by MCSD consistent with the allowable costs set forth in the Section herein entitled "Contract Price Adjustments and Payment."

The ENGINEER shall review the CONTRACTOR's RFP submission of costs and/or delays and shall promptly advise the CONTRACTOR in writing of the final decision as to the adjustment to the Contract Price and/or period of performance, if any, to be made in the Contract Documents. The CONTRACTOR shall submit any further information or documentation requested by the ENGINEER, whose approval shall be secured before Extra Work is started. In the event negotiations are necessary to determine an appropriate cost and/or schedule adjustment to the Contract, the CONTRACTOR shall negotiate in good faith with MCSD. The ENGINEER's final decision shall be binding, subject however to the approval of the Board of Directors or General Manager, to the extent the final decision changes the Contract Documents and a Change Order is required.

#### C. Authority to Direct Extra Work

The ENGINEER may, when in the best interests of MCSD, order the CONTRACTOR to proceed with the Extra Work in advance of its cost and schedule proposal submission. MCSD reserves the right to reject any Claims for Extra Work or for additional payment claimed as a result of extending the Work under the Bid prices which has not been approved by the ENGINEER in the manner herein provided.

When the price for Extra Work, deletions or other revisions cannot be agreed upon, or the CONTRACTOR fails or refuses to negotiate in good faith with respect to the same, MCSD may issue a unilateral change using its independent estimate and time impact analysis, as more particularly specified in these General Conditions, Contract Price Adjustments and Payments. MCSD may also direct such Extra Work on a time and materials or force account basis.

To the extent the ENGINEER directs Extra Work to be performed on a time and materials or force account basis, such Extra Work shall be performed by the CONTRACTOR, and compensated by MCSD, in the time and manner set forth in General Conditions Section

entitled, "Contract Price Adjustments and Payments," "Time & Material and Force Account Work."

In the event the CONTRACTOR disagrees with any findings made by MCSD as it concerns adjustment to Contract Price or period of performance, CONTRACTOR shall proceed with the Claims procedures set forth herein. CONTRACTOR also agrees to diligently proceed with the performance of the Contract, including the delivery of goods or providing of services in accordance with MCSD's instructions. CONTRACTOR's failure to diligently proceed in accordance with MCSD's instructions shall be considered a material breach of the Contract.

#### D. Minor Changes

The ENGINEER may order in writing minor changes in the Work not involving an increase or decrease in the Contract Price, not involving a change in the time for completion, and not inconsistent with the Contract Documents or the purposes for which the Work is being constructed. If the CONTRACTOR believes that any order for minor changes in the Project involves changes in the Contract Price or time for completion, the CONTRACTOR shall not proceed with the minor changes so ordered and shall within three (3) days of the receipt of such order notify ENGINEER in writing of the estimate of the changes in the Contract Price and period of performance believed to be appropriate, and in the manner more particularly set forth herein at Request for Change (Changes At CONTRACTOR's Request).

### 5.5. CLAIMS

#### A. Claims Subject to Public Contract Code Section 20104, et seq.

For any Claim subject to Public Contract Code Section 20104 et seq., for Three Hundred Seventy-Five Thousand Dollars (\$375,000) or less, MCSD and CONTRACTOR shall comply with Public Contract Code Section 20104, et seq., for resolution.

#### B. Notice of Claim

Notwithstanding California Public Contract Code Section 20104.2(a), all Claims shall be filed with MCSD within twenty (20) days of MCSD's decision, act or omission which gives rise to the Claim, or prior to Final Completion, whichever occurs first. This notice requirement is specifically authorized by California Public Contract Code Section 20104.2(a). Unless such Claim is made and filed as herein prescribed, the Claim shall be forfeited and invalidated and the CONTRACTOR shall not be entitled to any relief, damages and/or payment in connection therewith. The presentation of such Claim, however, shall not be deemed evidence of any liability for the alleged damage on the part of MCSD or MCSD agent.

C. Claims Not Subject to Public Contract Code Section 20104, et seq.

For any Claim, including any disagreement between the parties as to the merits, amount or remedy arising from the Project or Contract Documents not subject to Public Contract Code Section 20104, et seq., the provisions of Public Contract Code Section 20104, et seq., are hereby incorporated and shall apply to all such Claims except as follows:

1. The time period in which the Claim shall be filed with MCSD as set forth in Section 20104.2(a) shall be within twenty (20) days of MCSD's decision, act or omission which gives rise to the Claim, or prior to Final Completion, whichever occurs first.
2. MCSD's 60 day response period set forth in Section 20104.2(c) (1) shall be extended to 90 days from receipt of the Claim.

D. For all Claims submitted by the CONTRACTOR, CONTRACTOR shall include all documentation necessary to substantiate the Claim, which includes, but is not limited to all documentation required to be submitted with the initial Request for Change, pursuant to the General Conditions, Request for Change (Changes At CONTRACTOR's Request), OWNER Initiated Changes and/or Extension of Time for Delay, as applicable, plus any additional documentation or narrative that may have been inadvertently omitted from the initial submission to MCSD and/or ENGINEER, including an explanation as to why said documentation or narrative was not previously included, and any and all documentation, written narratives or other evidence addressing and/or responding to the basis for rejection of the initial Claim including a Request for Change, either in whole or in part, as provided by the ENGINEER and/or MCSD.

E. Pending the final resolution of any Claims arising under, related to or involving this Contract, CONTRACTOR agrees to diligently proceed with the performance of this Contract, including the delivery of goods or providing of services in accordance with MCSD's instructions. CONTRACTOR's failure to diligently proceed in accordance with MCSD's instructions shall be considered a material breach of the Contract.

## **5.6. DISPUTES**

A. For all Claims, including any and all disagreements between the parties as to the merits, amount or remedy arising out of an issue in controversy pertaining to the Project and/or Contract Documents, which remain unresolved after the CONTRACTOR submitted the same to the ENGINEER or MCSD for resolution in accordance with these General Conditions, Claims, the CONTRACTOR shall follow the disputes procedure as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code, unless otherwise specified by the Special Provisions. For purposes of those provisions, the running of the period of time within which a dispute must be filed shall be tolled from the time the CONTRACTOR submits its written Claim pursuant to Public Contract Code Section 20104.2(a) and these General Conditions, Claims, until the time that Claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

- B. Unless any dispute is made and filed as herein prescribed the dispute shall be forfeited and invalidated and the CONTRACTOR shall not be entitled to any relief, damages, and/or payment in connection therewith.
- C. Pending the final resolution of any dispute arising under, related to or involving this Contract, CONTRACTOR agrees to diligently proceed with the performance of this Contract, including the delivery of goods or providing of services in accordance with MCSD's instructions. CONTRACTOR's failure to diligently proceed in accordance with MCSD's instructions shall be considered a material breach of the Contract.

## **6. PROSECUTION AND PROGRESS OF THE WORK**

### **6.1. PROGRESS OF THE WORK**

The CONTRACTOR shall not commence Work until a Notice to Proceed from MCSD has been received. After receipt of the Notice to Proceed, the CONTRACTOR shall commence Work, and shall thereafter diligently prosecute the same in accordance with the Construction Schedule to complete the Work within the specified time limits of the Contract.

### **6.2. TEMPORARY SUSPENSION OF WORK**

The ENGINEER shall have the authority to suspend the Work wholly or in part, for such period as deemed necessary, due to unsuitable weather, or to such other conditions as are considered unfavorable for the suitable prosecution of the Work, or for such time as deemed necessary due to the failure on the part of the CONTRACTOR to carry out instructions given, or to perform any provision of the Contract. The CONTRACTOR shall immediately comply with the written order of the ENGINEER to suspend the Work wholly or in part. The suspended Work shall be resumed when conditions are favorable and methods are corrected, as ordered by the ENGINEER.

If a suspension of Work is ordered by the ENGINEER due to the failure on the part of the CONTRACTOR to carry out orders given or to perform any provision of the Contract, the CONTRACTOR shall bear all costs associated with the suspension of Work and no extension of time for the completion of the Work shall be granted.

### **6.3. EXTENSION OF TIME FOR DELAY**

If the Work should be delayed at any time by Extra Work or by reason of a suspension ordered by MCSD or because of any other act of MCSD or its officers or employees without contributory fault or neglect on the part of the CONTRACTOR or its agents or employees or its Subcontractors and/or Suppliers or if the Work should be delayed by reason of strikes or abnormal force or violence of the elements or for any other unforeseeable cause beyond the control and without the fault or negligence of the CONTRACTOR, then the CONTRACTOR

may be entitled to an extension of time for completion of the Work equivalent to the time actually lost by such delay.

When any such delays are experienced by the CONTRACTOR and a time extension is requested, the CONTRACTOR shall submit to the ENGINEER, a written time impact analysis illustrating the effects of the change or delay on the current Contract completion date utilizing the Construction Schedule that is current at the time the change or delay is encountered within the time and manner specified herein, and in accordance with Request for Change (Changes At CONTRACTOR's Request) and MCSD Initiated Changes.

The CONTRACTOR shall, within three (3) days from the beginning of any such delay, or within a period of time otherwise agreed upon in writing by the ENGINEER, file a written request with MCSD for extension of time which if initiated by the CONTRACTOR shall be submitted in the form of a Request for Change, as specified herein, Request for Change (Changes At CONTRACTOR's Request) or if the change is initiated by MCSD by the issuance of a Request for Proposal. Failure to do so shall constitute a waiver thereof. Requests for extensions failing to include the information specified in this section or within the time specified above shall result in the forfeiture of the CONTRACTOR's right to receive any extensions of time requested. MCSD will ascertain the facts and the extent of the delay, and its findings of the facts thereon shall be final and conclusive.

Each time impact analysis shall include a Fragnet demonstrating how the CONTRACTOR proposes to incorporate the change or delay into the current Construction Schedule. The Fragnet shall include the sequence of new and/or existing activity revisions that are proposed to be added to the accepted Construction Schedule that is current at the time the change or delay is encountered.

Each time impact analysis shall demonstrate the estimated time impact based on the events of the delay, the anticipated or actual date of the changed Work performance, the status of construction at that point in time, and the event time computation of all activities affected by the change or delay. The event times used in analysis shall be those included in the latest update of the current Construction Schedule in effect at the time the change or delay was encountered. Time extensions will be granted only to the extent that demonstrated time adjustments for the activity or activities affected exceed the total or remaining float along the critical path of activities at the time of actual delay or changed Work performance. Pursuant to the float sharing requirements as described elsewhere in the Contract Documents, time extensions shall not be granted nor delay damages paid until a delay occurs which:

1. Is beyond the control and without the fault or negligence of the CONTRACTOR and its Subcontractors or Suppliers, at any tier; and,
2. Extends actual performance of the Work beyond the current Contract completion date and the most recent date predicted for completion of the Work on the accepted Construction Schedule update that is current as of the time of the delay.

A written request for an extension of time or the granting of an extension of time shall not, in itself, constitute a basis for any Claim against MCSD for additional compensation, or a waiver of MCSD'S right to strictly enforce the time provisions contained in the Contract Documents. Additionally granting of an extension of time shall not in itself constitute a basis for any Claim against MCSD for additional compensation. The CONTRACTOR hereby waives any Claim for additional compensation unless a Claim for additional compensation on account of such delay is filed at the time the request for extension of time is made.

The determination as to whether an extension of time will be granted will be made within sixty (60) days after receipt of a request from the CONTRACTOR as provided above. In the event the CONTRACTOR disagrees with any findings made by MCSD as it concerns adjustment to the period of performance, CONTRACTOR shall proceed with the Claims procedures set forth herein.

No revision to the accepted baseline schedule or updates shall be made without prior written approval from the ENGINEER.

Schedule revisions illustrating the influence of Change Orders and delays shall be incorporated into the Construction Schedule during the first update after agreement is reached.

Any extension of time shall not release the Sureties upon any Bond required under the Contract.

#### **6.4. LABOR COMPETENCY**

If any Subcontractor, site superintendent, foreman or person(s) employed by the CONTRACTOR shall fail or refuse to carry out the directions of the ENGINEER or shall appear to the ENGINEER to be incompetent, or to act in a disorderly or improper manner, that person(s) shall be discharged immediately on demand of MCSD and such person(s) shall not again be employed on the Project.

The CONTRACTOR shall bear all costs associated with such discharge of any Subcontractor, site superintendent, foreman or person(s) employed by the CONTRACTOR and such discharge shall not constitute a basis for any Claim against MCSD.

#### **6.5. USE PRIOR TO FINAL COMPLETION (BENEFICIAL OCCUPANCY)**

- A. MCSD shall have the right to Beneficially Occupy all or a portion of the Work at no additional cost to MCSD.
- B. If MCSD elects to Beneficially Occupy any completed or partially completed portions of the Work, the ENGINEER shall so document in writing the scope of Work of which it elects to take possession and an inspection shall be made by the CONTRACTOR and ENGINEER of said scope of Work. Based on such inspection, the ENGINEER will attempt to list all incomplete and/or deficient items of Work observed, and provide the CONTRACTOR with such a list. However, the absence of an item from the list shall not relieve the CONTRACTOR of responsibility to perform all of the Work in accordance with

the Contract Documents, and any and all areas so occupied will be subject to Final Inspection after the CONTRACTOR completes all punchlist items, before Final Completion. If such prior use by MCSD delays the progress of the Work or causes additional expense to the CONTRACTOR, the CONTRACTOR shall file a written request for extension of time and/or Extra Work.

- C. Until Final Acceptance of the Work, CONTRACTOR shall guarantee, through the provision and maintenance of sufficient warranties, the following: that the portions of the Work Beneficially Occupied shall perform at all times as part of a fully integrated system consisting of all elements which are being Beneficially Occupied; that the portions of the Work Beneficially Occupied are free from all defects due to faulty materials, equipment or workmanship; and that CONTRACTOR shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, including repairs of any damage to other parts of the system resulting from such defects. MCSD shall promptly give notice to the CONTRACTOR of observed defects. In the event that the CONTRACTOR fails to make adjustments, repairs, corrections or other work made necessary by such defects, MCSD may do so and charge the CONTRACTOR the cost incurred. The CONTRACTOR's warranty shall continue as to any corrected deficiency until the later of (1) the remainder of the original warranty period; or (2) one year after acceptance by MCSD of the corrected work. The Performance Bond and Payment Bond shall each remain in full force and effect through the warranty period.
- D. If MCSD's need to occupy the Work, or any portions thereof, prior to such time as the Work is complete is caused by the CONTRACTOR's failure to complete the Work within the period of performance, including due allowance for extensions of time made in accordance with the Contract Documents, if any, the CONTRACTOR shall bear any and all additional costs associated with completing the Work.

## **6.6. SUBSTANTIAL COMPLETION**

Substantial Completion of the Work means the Work has progressed to the point that MCSD can beneficially occupy or utilize the Work as a whole for the purpose for which it is intended, and the Work complies with applicable codes and regulations, including if required, issuance of certificates of occupancy, or certificate of suitability for use from the appropriate governmental agencies, as determined by the ENGINEER at his/her sole discretion.

When the CONTRACTOR considers that Substantial Completion has been achieved, the CONTRACTOR shall notify the ENGINEER that the Work is substantially complete to the required stage and is ready for inspection and shall include with its Notice of Substantial Completion of the Work a list of minor items, (including the CONTRACTOR's punch list) to be completed or corrected that would not affect Beneficial Occupancy or suitability for use.

After receipt of the CONTRACTOR's Notice of Substantial Completion of Work, the ENGINEER and CONTRACTOR, and any other representative as the ENGINEER deems appropriate, shall make an inspection of the Work to determine whether the Work has been completed in accordance with the Contract Documents and to review the CONTRACTOR's

punch list. If, in the ENGINEER's sole opinion, the Work has not achieved Substantial Completion, the parties shall cease the inspection and all costs incurred by MCSD as a result of the premature inspection shall be deducted from the payments due the CONTRACTOR. CONTRACTOR shall thereafter perform all remaining Work to reach Substantial Completion, and re-submit its Notice of Substantial Completion of Work. The inspection of the Work will re-commence as set forth above. If the Work has achieved Substantial Completion, a punch list shall be prepared by the ENGINEER and consist of those items listed by the CONTRACTOR to be completed or corrected as supplemented by those items observed during the inspection. Failure to include any items on the punchlist shall not alter the responsibility of the CONTRACTOR to complete all Work in accordance with the Contract Documents, nor shall the punch list amend the Contract Documents. All deficiencies and/or items identified on the punch list must be corrected within 30 days of said initial inspection conducted at the Substantial Completion phase, unless otherwise specified in writing by the ENGINEER.

## **6.7. FINAL COMPLETION AND FINAL ACCEPTANCE**

### **A. Final Inspection**

The CONTRACTOR shall notify the ENGINEER in writing when all punch list items have been completed, all Work is completed in accordance with the Contract Documents and all clean-up has been done. Clean-up shall be completed when all waste, materials, excess materials, tools, and equipment such as scaffolding, temporary structures, and unneeded facilities such as fencing and sanitary facilities are removed from the Project. The ENGINEER will then make Final Inspection for the purposes of ascertaining that the Work has been fully completed in accordance with the requirements of the Contract Documents.

### **B. Final Completion**

After the ENGINEER has made the Final Inspection and is satisfied that the Work has been completed in accordance with the Contract Documents, including all punch list items, and is satisfied that all submittals have been made and accepted, including, but not limited to all materials required by the Contract Documents and all As-Builts, Record Drawings by the CONTRACTOR, if required by the Contract, and any other required record documents have been completed and accepted, all Change Order Work has been completed and accepted by the ENGINEER, and all other requirements of the Contract Documents, except for any unexecuted Change Orders, possible future warranty and guarantee Work have been accomplished, the ENGINEER shall certify, in writing, the full completion of the Work and the date thereon.

### **C. Final Acceptance**

The Work, after achieving Final Completion, is subject to Final Acceptance by MCSD. Final Acceptance is defined herein as the "action taken by MCSD accepting the Work as fully completed after certification by the ENGINEER," and occurs in accordance with the following:

CONTRACTOR is required to provide adequate resources to fully support administrative Project close-out efforts identified in the Contract Documents including but not limited to execution of all Change Orders, agreement on all final quantities and all other activities specified herein titled "Final Completion and Final Acceptance," General Conditions section titled "Final Payment." Such support and completion of all administrative close-out activities as required herein must be provided within the timeframe(s) requested by MCSD and is condition precedent to Final Acceptance.

The ENGINEER shall, after certifying the date of Final Completion of the Contract, make a final estimate of the amount of Work done thereunder, and the General Manager or designee shall certify the value of such Work and the date of Final Completion. If the Board finds that the Work has been completed according to the Contract Documents, it shall establish the date of Final Acceptance, and find and declare the Work accepted pursuant to this Section, which shall be evidenced by a Notice of Completion.

A Notice of Completion shall be recorded with the Orange County Clerk Recorder's Office immediately after the Final Acceptance, and in no event later than 10 days from Final Acceptance.

Only upon Final Acceptance shall Final Payment be processed. Processing of Final Payment shall occur in accordance with the provisions herein titled "Final Completion and Final Acceptance." Final Completion and Final Acceptance are for purposes of issuing Final Payment, and neither shall act to relieve the CONTRACTOR from any of its obligations under the Contract Documents, and under no circumstances shall Final Acceptance of the Contract Work waive any rights related to claims by MCSD pertaining to warranties and guarantees, latent defects, indemnity, fraud on the part of the CONTRACTOR, gross mistakes on the part of the CONTRACTOR amounting to fraud, or as otherwise provided in the Contract Documents.

## **6.8. TIME OF COMPLETION**

The CONTRACTOR shall complete all or any designated portion of the Work called for under the Contract in all parts and requirements within the time set forth in the Contract Documents. If, at any time CONTRACTOR's critical path Work progress falls behind schedule, MCSD reserves the right to require the CONTRACTOR to work overtime to bring the Project back on schedule. Such overtime shall be at the CONTRACTOR's expense.

Failure of the CONTRACTOR to perform any covenant or condition contained in the Contract Documents within the time period specified shall constitute a material breach of this Contract entitling MCSD to terminate the CONTRACTOR's performance under the Contract unless the CONTRACTOR applies for, and receives, an extension of time in accordance with the procedures set forth in the section herein entitled Extension of Time for Delay, as well as any and all other remedies available to MCSD by law, in equity or pursuant to the provisions of this Contract.

Failure of MCSD to insist upon the performance of any covenant or condition within the time period specified in the Contract shall not constitute a waiver of the CONTRACTOR's duty to complete performance within the designated period unless the waiver is in writing.

MCSD's agreement to waive a specific time provision or to extend the time for performance shall not constitute a waiver of any other time provisions contained in the Contract Documents. Failure of the CONTRACTOR to complete performance promptly within the additional time authorized in the waiver or extension of time agreement shall constitute a material breach of this Contract entitling MCSD to terminate the CONTRACTOR's performance under the Contract and to any and all other legal or equitable remedies.

The CONTRACTOR shall not be assessed the cost of engineering and inspection during any delay in the completion of the Work caused by acts of God, acts of the public enemy, acts of the public utilities, delays caused by failure of a public agency or owner of a utility to provide for removal or relocation of existing main or trunkline utility facilities or other known utility facilities, fire, floods, earthquake, epidemic, quarantine restrictions, strikes, and unusually severe weather, or delays necessarily resulting from war or national or local emergencies, or delays of Subcontractors due to such causes; provided that the CONTRACTOR shall, within three (3) days from the beginning of any such delay, request an extension of time in accordance with the procedures set forth in this section and as specified in these General Conditions, Extension of Time for Delay. Such delays shall not entitle the CONTRACTOR to any additional compensation. The sole remedy of the CONTRACTOR shall be to seek an extension of time. MCSD shall ascertain the facts and the extent of the delay, and its findings of the facts thereon shall be final and conclusive.

## **7. PAYMENT FOR WORK**

### **7.1. PAYMENT - GENERAL**

Based on written estimates by the ENGINEER or on other evidence satisfactory to the General Manager, MCSD will make monthly progress payments for Work completed. Said progress payments will be based on an approved detailed breakdown of the Contract Price, which shall be furnished by the CONTRACTOR showing unit prices and quantities, as applicable.

Cost of materials will be based on Supplier's invoices. A complete list of invoices shall be presented to the ENGINEER by the CONTRACTOR prior to completion of each estimate. The CONTRACTOR must present to the ENGINEER written evidence substantiating that said purchase price has been paid in full.

Items shown in the detailed breakdown of the Contract Price as unit costs will be included in the progress payments based on the percentage completed for any particular item.

Each progress payment application shall show each Subcontractor and Supplier participating in the Work completed during the previous progress period and the dollar amount of such participation. If the CONTRACTOR disputes a Subcontractor's or Supplier's entitlement to a portion of the previous progress payment, the CONTRACTOR shall submit copies of all

communications between the CONTRACTOR and the Subcontractor explaining the CONTRACTOR's determination not to render payment to such Subcontractor or Supplier. Each progress payment application shall be accompanied by:

1. A conditional waiver and release upon progress payment pursuant to Civil Code Section 8132 for each Subcontractor and Supplier participating in the Work completed during the previous progress period which shall be in an amount no less than the dollar amount of such participation; and
2. A conditional waiver and release upon progress payment pursuant to Civil Code Section 8132 on behalf of the CONTRACTOR which shall be in an amount no less than the dollar amount of the total requested in the payment application.
3. Payment application, which includes a payment certification by the CONTRACTOR certifying that the Work for which payment is requested has been accomplished.

CONTRACTOR shall thereafter, within twenty (20) days of receipt of the payment from MCSD, complete an unconditional waiver and release upon progress payment pursuant to Civil Code Section 8134 for each Subcontractor and Supplier participating in the Work completed during the previous progress period and an unconditional waiver and release upon progress payment pursuant to Civil Code Section 8134 on behalf of the CONTRACTOR in an amount no less than the amount received from MCSD, and submit the same with CONTRACTOR's subsequent payment application.

## **7.2. PAYMENT – APPLICATIONS FOR PAYMENT**

MCSD will not accept payment applications from the CONTRACTOR more frequently than once every four weeks. CONTRACTOR shall submit payment applications to MCSD addressed as follows:

Midway City Sanitary District  
14451 Cedarwood Street  
Westminster, CA 92863  
Attention: Milo Ebrahimi, District Engineer

CONTRACTOR shall include the appropriate Project or Contract Number in the addressee information when submitting applications for payment to the ENGINEER.

Payment terms: net 30 days from receipt of properly submitted payment application.  
CONTRACTOR's payment application shall include, at a minimum:

1. Clear reference to MCSD's Project or Contract number, as well as MCSD's Project title, to which the payment application applies.
2. CONTRACTOR's payment application number, payment application date, as well as the Contract payment number the invoice represents; for example, CONTRACTOR's

submittal of its first payment application is payment number 1, its second payment application submittal is payment number 2, and so on. Any CONTRACTOR re-submittal/revision to a submitted payment application shall have a letter suffix (a, b, c, etc.) added to the payment number, signifying the payment application revision; for example, CONTRACTOR's first re-submittal of its first payment application shall be designated as payment for number "1a".

3. Clear reference to the payment schedule item(s) being invoiced and the appropriate milestone description of activities and/or Work related to the billing.
4. The itemized and total amount being invoiced (in U.S. dollars), less the amount of all contractual retention and deductions applicable for the invoiced amount (in U.S. dollars), and the resulting total net payment due.
5. The time period during which the Work was performed and for which the payment application is submitted.
6. Clear reference to the CONTRACTOR's Taxpayer ID Number.

### **7.3. CONTRACT PRICE ADJUSTMENTS AND PAYMENTS**

#### **A. General**

##### **1. Basis of Contract Price Adjustment – General**

The basis of a Contract Price adjustment for any change to the Contract Documents, consisting of Extra Work, deletion or other revision shall be determined as specified herein.

For all changes to the Contract Documents that result in a Contract Price adjustment, the CONTRACTOR shall submit a cost and schedule proposal in the time and manner specified in the Contract Documents, including General Conditions sections Request for Change (Changes at CONTRACTOR's Request) and MCSD Initiated Changes. The CONTRACTOR's proposal must include a detailed cost breakdown itemizing all costs and schedule impacts associated with the Work, including material, labor, equipment, etc., all necessary back-up documentation to support said estimate, and any other data required by the ENGINEER. Delay by CONTRACTOR in submitting any pricing information required herein or negotiating in good faith with MCSD with regard to costs proposals for Extra Work, deletions or other revisions will result in delays in Contract Price adjustment and/or payment to CONTRACTOR, and MCSD shall not be responsible for any such delays or damages incurred by the CONTRACTOR as a result thereof. Also, the failure of the CONTRACTOR to submit any pricing information required herein or the failure to negotiate in good faith will prevent the Contract Price adjustment and/or payment to the CONTRACTOR, and MCSD shall not be responsible for any such damages incurred by the CONTRACTOR as a result thereof.

Delays in negotiating an adjustment or in providing substantiating documentation may result in the issuance of a unilateral Change Order using MCSD's cost and schedule estimate.

Bilateral Change Order Execution. The execution of a bilateral Change Order is without reservation of right. The execution by MCSD and the CONTRACTOR shall be deemed to be an unconditional agreement to all Extra Work and adjustments to the Contract Price and Contract Duration related to the change.

No adjustments for Extra Work shall be valid unless submitted in writing by the CONTRACTOR and approved in writing by MCSD.

## 2. Allowable Costs for Extra Work – General

### a. Credit Items.

Where the CONTRACTOR or any tier Subcontractor's portion of a change involves credit items or deductive changes, the CONTRACTOR shall utilize the same markups utilized for additive changes in computing the value of the credit. Contract Duration savings/impacts may also be addressed as appropriate to accurately reflect the nature and impact of the credit item or deductive change on the Work.

### b. Performance and Payment Bond Costs.

Performance and Payment Bond costs associated with an adjustment shall be limited to the actual increase arising directly out of the Extra Work and will be paid upon receipt of surety premium invoice that is immediately due and payable by the CONTRACTOR. A copy of the Surety's invoice must be provided to document the change in cost of the Bonds.

### c. Bid & Proposal Costs.

MCSD does not compensate for Bid preparation or cost and schedule proposal preparation costs.

## B. Payment

### 1. Negotiated Price for Extra Work

#### a. General

MCSD will issue a Request for Proposal (RFP) requesting a cost and schedule proposal for the Extra Work in accordance with these General Conditions, MCSD Initiated Changes. The CONTRACTOR's substantiated cost and schedule proposal, which shall conform to the requirements herein and the Section herein

entitled MCSD Initiated Changes, must be provided within fifteen (15) days from issuance of a RFP in order to expedite negotiations. Alternatively, if the CONTRACTOR requests the change, the CONTRACTOR will submit a Request for Change which includes its substantiated cost and schedule proposal conforming to the requirements of the Section herein entitled Request for Change (Changes at CONTRACTOR's Request). MCSD may request that the CONTRACTOR certify the cost and schedule proposal. If warranted, MCSD may accept the CONTRACTOR's Bid price for lump sum or unit price amounts in the original or amended form and direct the CONTRACTOR to proceed with the Work. No costs for Extra Work shall be valid unless submitted in writing by the CONTRACTOR and approved in writing by MCSD.

b. Allowable Markup for Extra Work

The allowable markup for Extra Work performed by the CONTRACTOR and/or Subcontractor shall be determined in accordance with the provisions entitled, "Markup" herein, unless otherwise agreed to by MCSD.

2. Price for Extra Work on T&M Basis

When the price for the Extra Work cannot be agreed upon, MCSD may issue a unilateral change using its independent estimate and time impact analysis. MCSD may also direct such Work on a time and materials or force account basis.

Regarding allowable costs MCSD will use those identified above in Section A. MCSD will pay for the Extra Work based on the accumulation of allowable costs as provided herein.

3. Basis for Establishing Costs

a. Labor

The costs of labor will be the actual cost for wages of workers performing the Extra Work at the time the Extra Work is done, plus employer payments of payroll taxes, Worker's Compensation Insurance, liability insurance, health and welfare, pension, vacation, holiday, training, apprenticeship funds, and other direct costs, resulting from federal, state, or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. Payroll taxes shall be calculated on base wage only and not on fringe benefits. Fringe benefits shall be applied only to the straight-time component of cost and shall not apply to the premium-time component unless otherwise required by the California Labor Code.

MCSD will reimburse Worker's Compensation Insurance costs for Extra Work labor at the pure premium rate approved by the California State Insurance Commissioner at the time the Extra Work is completed.

The use of a labor classification that would increase the Extra Work cost will not be permitted unless the CONTRACTOR establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be submitted only when such costs are not included in the invoice for equipment rental. The labor cost for foremen shall be proportioned to all of their assigned Work and only that applicable to Extra Work will be paid.

Non-direct labor costs, including management personnel above foreman; office personnel (including clerical and other administrative staff); cost estimating; maintenance mechanics; incidental engineering and all other indirect costs of the Extra Work; and any other costs captured by CONTRACTOR's overhead costs, shall be considered part of markup specified in subsection below, and therefore are not recoverable as direct labor costs, unless the CONTRACTOR can demonstrate both that the costs (1) are not within the CONTRACTOR's overhead costs; and (2) occurred as part of or a direct result of the Extra Work.

Incidental engineering costs, referred to in the preceding paragraph, are considered non-direct labor costs, and include but are not limited to all time spent by engineers for RFI and RFC preparation, Change Order administration, preparation and coordination of shop drawings, attendance at meetings, inspections scheduling, estimating, drawing or manual preparation and revision, Claim preparation, submittal preparation and review, and mix and shoring design.

b. Materials

The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available and delivered to the job site in the quantities involved, plus sales tax, freight, and delivery.

MCSD reserves the right to approve materials and sources of supply, or to supply materials to the CONTRACTOR if necessary for the progress of the Work. No markup shall be applied to any material provided by MCSD.

c. Tools and Equipment

CONTRACTOR-owned equipment charges for Extra Work, or for delays in Work, shall be in accordance with the current State of California, Department of Transportation, Division of Construction of Labor Surcharge and Equipment Rental Rates, as follows:

- i. Working Equipment Rates, 100% of the price listed for the first shift each day and at 50% of that same hourly rate for the second and third shifts each day.
- ii. Standby Equipment Rates, 50% of the price listed.

Tools and equipment rented by the CONTRACTOR will be reimbursed at the actual invoiced amount applicable to the Extra Work. The CONTRACTOR will provide the applicable weekly or monthly rate for tools and/or equipment that will be used in long durations.

No payment will be made for the use of tools or equipment that has a replacement value of \$500 or less.

The reported rental time for equipment already at the worksite shall be the duration of its use on the Extra Work. This time begins when equipment is first put into actual operation on the Extra Work, plus the time required to move it from its previous site and back, or to a closer site.

No payment will be made for use of CONTRACTOR-owned or rented transportation vehicles (including job trucks) unless the vehicle is utilized (1) by personnel at or below the foreman level; and (2) exclusively in connection with performing Extra Work. In such event, the CONTRACTOR will only be entitled to payment for the pro-rata time the vehicle was actually used in connection with the Extra Work, as properly documented and demonstrated by the CONTRACTOR. All other use of CONTRACTOR-owned or rented transportation vehicles shall be considered part of CONTRACTOR's markup specified in subsection below.

d. Other Items

MCSD may authorize other items that may be required on the Extra Work, including labor, services, material, and equipment. These items must be different in their nature from those required for the Work, and be of a type not ordinarily available for the CONTRACTOR or Subcontractors.

Invoices describing all such items in detail shall be submitted with the request for payment.

e. Invoices

Suppliers' invoices for material, equipment rental and other expenditures shall be submitted with the request for payment. If the request for payment is not substantiated by invoices or other documentation, MCSD may establish the cost of the item involved at the lowest price which was current at the time of the report.

f. General Conditions Costs

No increase in the General Conditions costs shall be allowed for Extra Work unless:

- i. such change extends the Contract Duration; or

- ii. CONTRACTOR demonstrates that an increase in actual General Conditions costs were incurred directly and solely as a result of the Extra Work.

4. Markup

a. Work by CONTRACTOR

The following percentages shall be added to the CONTRACTOR’s costs and shall constitute the markup for all overhead and profits:

- i. Labor.....20%
- ii. Materials..... 15%
- iii. Equipment ..... 15%
- iv. Other Items and Expenditures.....15%

b. Work by Subcontractor

Subcontractors performing all or any part of the Extra Work shall apply the same percentages identified in Subsection B.4.a. above, “Work by CONTRACTOR,” which shall be added to the Subcontractor’s costs and shall constitute the markup for all overhead and profits.

MCSD will pay the CONTRACTOR one (1) additional markup of 5% of the Subcontractor’s compensation regardless of the number of intervening tiers of Subcontractors.

c. Contract Unit Prices

MCSD will not pay a markup for units with Unit Prices established in the Contract.

d. Other Costs Not Specifically Designated

The specified markups shall be deemed to include all items of expense not specifically designated and as substantiated as direct cost, indirect cost, or equipment rental in the Labor, Materials, Tools and Equipment, Other Items, and Invoices.

C. Daily Report by CONTRACTOR

When the price for the Extra Work cannot be agreed upon, the CONTRACTOR shall submit a daily report to the ENGINEER on forms approved by the ENGINEER. Included are applicable delivery tickets, listing all labor, materials, and equipment involved for the day, and other services and expenditures when authorized. Failure to submit the daily report by the close of the next working day may waive any rights for that day. An attempt shall be made to reconcile the report daily, and it shall be signed by the ENGINEER and

the CONTRACTOR. In the event of disagreement, pertinent notes shall be entered by each party to explain points that cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by Subcontractors or others shall be submitted through the CONTRACTOR. MCSD will complete its final review of related costs after receipt of all records, and MCSD reserves its right to correct any errors in said records pertaining to Extra Work, including but not limited to cost found as a result of any such review.

The report shall:

1. Show names of workers, classifications, and hours worked.
2. Describe and list quantities of materials used.
3. Show type of equipment, size, identification number, and hours of operation, including loading, transportation, and stand-by time, if applicable.
4. Describe other services and expenditures in such detail as the ENGINEER may require.

#### D. Time & Material and Force Account Work

Work performed on a time and materials or force account basis will be subject to a Not to Exceed (NTE) amount. The CONTRACTOR is to provide written notification to the ENGINEER when it has expended seventy-five percent (75%) of the NTE amount. The notification must contain a cost and schedule proposal for the remaining Extra Work or an estimate to complete with an explanation as to why the remaining Extra Work cannot be priced. MCSD may negotiate a fixed price for the remaining Extra Work or if the remaining Extra Work cannot be priced, it may increase the NTE amount. If there is disagreement as to whether the remaining Extra Work can be priced, MCSD may issue a unilateral Change Order based on its independent estimate. In addition to the daily records the CONTRACTOR is required to submit in accordance with Subsection C "Daily Report by CONTRACTOR" above, if a CONTRACTOR seeks additional time arising from the Extra Work, the CONTRACTOR shall also submit all documents supporting any alleged time impacts and associated costs in the time and manner required by General Conditions Section entitled, "Extensions of time for Delay," and in no event later than fifteen (15) days of completion of the Extra Work.

#### **7.4. INCREASE OR DECREASE IN UNIT QUANTITIES**

Increases or decreases in the quantity of a Unit (as defined herein as "a single item or group of items constituting a single unit which is identified as a Unit or Unit priced item in the Schedule of Prices"), as identified in the Schedule of Prices, will be determined by comparing, at the time of Final Completion, the actual or measured quantity of the Unit used to complete the Work with the estimated quantity of that Unit shown in the Schedule of Prices. If the actual or measured quantity of a Unit varies more than twenty-five percent (25%) above or below the estimated quantity of the Unit, an adjustment may be made upon demand of either party, and such adjustment will be made in accordance with these General Conditions, "Contract Price Adjustments and Payments." In determining the adjustment to the Contract Price, the CONTRACTOR must, at a minimum, demonstrate its actual price of the Units, supported by

documentation of Supplier/Subcontractor invoiced cost (not including overhead and profit). Said demand shall be made pursuant to these General Conditions, "OWNER Initiated Changes" and/or "Request for Change (Changes at CONTRACTOR's Request)."

The adjustment shall be based upon any increase or decrease in costs due solely to the variations in quantity of the Unit as provided herein. This Section shall not apply to variations in quantity due to a Change Order. Furthermore, when the actual or measured quantity of a Unit required to complete the Work is more than a twenty-five percent (25%) increase from the estimated quantity of the Unit, as shown in the Schedule of Prices, the actual or measured quantity of Units up to one hundred twenty-five percent (125%) of the estimated quantity will be paid at the Contract Unit Price shown in the Schedule of Prices.

If neither party makes a demand for an adjustment in Contract Unit Price for actual or measured quantities above one hundred twenty-five percent (125%) or less than seventy-five percent (75%) of the estimated quantity, MCSD will pay the CONTRACTOR the Contract Unit Price shown in the Schedule of Prices for each such Unit.

#### **7.5. SUSPENSION OF PAYMENTS**

If after written notice to the CONTRACTOR of deficiencies in Work, failure to comply with the Contract, failure to comply with the Construction Schedule, or failure to revise and keep current with the Construction Schedule, the ENGINEER shall recommend that all or a portion of payments due or to become due under the Contract be suspended until the CONTRACTOR corrects any such deficiency; the ENGINEER may suspend said payments until such deficiencies are corrected.

#### **7.6. MCSD'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION THEREOF**

In addition to the amount which MCSD may retain pursuant to the General Conditions, including but not limited to the section entitled Retained Funds, MCSD may withhold a sufficient amount or amounts from any payment otherwise due to the CONTRACTOR as in its judgment may be necessary to cover:

1. Payments which may be past due and payable for properly filed claims against the CONTRACTOR or any Subcontractors for labor or materials furnished in or about the performance of the Work under this Contract.
2. Estimated or actual costs for correcting defective Work not remedied.
3. Amounts claimed by MCSD as forfeiture due to delays or other offsets to the Contract completion caused by the CONTRACTOR.
4. MCSD may contact the CONTRACTOR's Surety and make them aware of the Contract deficiencies, delays and other Contract non-conformance.

MCS D may apply such withheld amount or amounts to the payment of such claims at its discretion. In so doing, MCS D shall be deemed the agent of the CONTRACTOR and any payments so made by MCS D shall be considered as a payment made under the Contract by MCS D to the CONTRACTOR, and MCS D shall not be liable to the CONTRACTOR for such payment made in good faith. Such payments may be made without prior judicial determination of the claim or claims. MCS D will render to the CONTRACTOR a proper accounting of such funds disbursed on behalf of the CONTRACTOR.

#### **7.7. STOP PAYMENT NOTICES**

MCS D will, at its option and at any time, retain out of any amounts due the CONTRACTOR, sums sufficient to cover claims plus twenty-five percent (25%) filed pursuant to Section 9350 et. seq. of the Civil Code of the State of California. The CONTRACTOR shall pay to MCS D, or MCS D may deduct from any such payments made by MCS D to the CONTRACTOR, all costs and expenses including but not limited to administrative and legal expenses incurred by MCS D in processing and/or defending against stop payment notices. The CONTRACTOR will use MCS D's current forms for release of stop payment notices.

#### **7.8. AUDIT ACCESS TO RECORDS**

- A. The CONTRACTOR shall maintain all books, records, documents, and other evidence directly pertinent to the performance of the Work under this Contract in accordance with generally accepted accounting principles and practices consistently applied, consistent with those principles set forth in Part 31 of Federal Acquisition Regulation, Contract Cost Principles and Procedures. The CONTRACTOR shall also maintain all financial information and data used by the CONTRACTOR in the preparation or support of any cost submissions, including the CONTRACTOR's original Bid, required for this Contract, or any Change Order, Claim or other request for equitable adjustment, and a copy of the cost summary or information submitted to MCS D. MCS D authorized representatives shall have access, upon twenty four (24) hours advanced, written notice at all times during normal business hours, to all such books, records, documents, financial information, and all other evidence for the purpose of inspection, audit, and copying. The CONTRACTOR shall, at no cost to MCS D, provide proper facilities for such access, inspection, and copying purposes. In the event it is determined, by way of an audit or other means, that the CONTRACTOR has been previously overpaid, MCS D shall have the right to deduct any such overpayment from the CONTRACTOR's next progress payment or the Final Payment, or the CONTRACTOR shall within 10 days after receiving notice from MCS D of any such overpayment reimburse MCS D in an amount equal to the overpayment, plus any applicable interest to which MCS D is entitled.
- B. The CONTRACTOR shall maintain cost accounting records, cost and pricing data and any other accounting evidence sufficient to properly reflect all direct and indirect costs of whatever nature pertaining the what CONTRACTOR has incurred, claims to have incurred, or anticipates it will incur in connection with the Contract Work and any and all Change Orders, Requests for Change and/or Claims, including but not limited to:

1. Direct costs of Contract item Work;
  2. Direct costs of changes and/or Extra Work in conformance with the provisions herein entitled Request for Changes (Changes at CONTRACTOR's Request), whether performed by the CONTRACTOR or others;
  3. Direct costs of changes and/or Extra Work in conformance with the provisions herein entitled or OWNER Initiated Changes, whether performed by the CONTRACTOR or others;
  4. Indirect costs of overhead.
- C. The CONTRACTOR agrees to make all items (A) through (H) of this section applicable to this Contract and all Change Orders, Claims, or other requests for equitable adjustments affecting the period of performance or price. The CONTRACTOR agrees to include items (A) through (H) of this section in all of the associated subcontracts and make these items applicable to all subcontracts, at any tier, in excess of \$10,000 and to make items (A) through (H) of this section applicable to all Change Orders, Claims, and other requests for equitable adjustment related to completion of the Work.
- D. Audits conducted under this Section shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency.
- E. The CONTRACTOR agrees to the disclosure of all information and reports resulting from access to records under items (A) through (H) of this section, to MCSD and other affected agencies.
- F. Records under Items (A) through (H) of the Section shall be maintained and made available during the performance of the Work under this Contract until 3 years past Final Payment, and until final settlement of all disputes, Claims, or litigation, whichever occurs later. In addition, those records which relate to any portion of this Contract, to any Change Order, to any dispute, to any litigation, to the settlement of any Claims arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until Final Payment or final resolution of such dispute, litigation, Claim, or exception, whichever occurs later.
- G. This right of access article applies to all financial records pertaining to the Contract and all Change Orders. In addition, this right of access applies to all records pertaining to all contracts, Change Orders, and Contract amendments:
1. To the extent the records pertain directly to Contract performance;
  2. If there is any indication that fraud, gross abuse, or corrupt practices may be involved;  
or

3. If the CONTRACTOR's performance under the Contract is terminated for default or convenience.

H. Access to records is not limited to the required retention periods. The authorized representatives of MCSD shall have access to records at any reasonable time for as long as the records are maintained.

### **7.9. RETAINED FUNDS; SUBSTITUTION OF SECURITIES**

From each progress payment MCSD shall retain five percent (5%) of the funds due the CONTRACTOR to assure satisfactory completion of the Contract. The cumulative amount retained as retention amounts shall be retained by MCSD until the Final Payment, and shall not exceed 5% of the Contract Price as amended or adjusted by Change Orders.

To ensure performance under the Contract Documents, the CONTRACTOR may, at its sole expense, substitute securities equivalent to the retention withheld by MCSD. Such securities shall be deposited with an escrow agent approved by MCSD, who shall then pay such retention to the CONTRACTOR. Upon satisfactory completion of the Work, the securities shall be returned to the CONTRACTOR. The CONTRACTOR shall be the beneficial owner of any security substituted for monies withheld and shall receive any accrued interest thereon. Securities eligible for investment shall include those listed in Government Code § 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the CONTRACTOR and MCSD. No such substitution shall be accepted until the escrow agreement, securities, and any other documents related to the substitution are executed by the CONTRACTOR and reviewed and accepted in writing by MCSD.

### **7.10. FINAL PAYMENT**

CONTRACTOR shall, prior to Final Acceptance, prepare and submit an application for Final Payment to MCSD, in a form and manner approved by the ENGINEER.

The Final Payment including retention shall not be due and payable until after Final Acceptance occurs as more particularly set forth in Section "Final Completion and Final Acceptance" herein, MCSD'S receipt of all documentation, records, and releases as required by the Contract and executed by the CONTRACTOR, and the expiration of thirty-five (35) days from the date of the recordation of Notice of Completion by MCSD.

If the CONTRACTOR fails to complete the Work as specified in the Contract Documents and if the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Project, including, but not limited to, all costs generated to insure or bond the Work of substituted contractors or Subcontractors utilized to complete the Work, such excess shall be paid to CONTRACTOR. If such costs exceed the unpaid balance, CONTRACTOR shall pay the difference to MCSD promptly upon demand. On failure of CONTRACTOR to pay, the Surety shall pay on demand by MCSD. Any portion of such difference not paid by

CONTRACTOR or Surety within thirty (30) days following the mailing of a demand for such costs by MCSD shall earn interest at the maximum rate authorized by California law.

It is mutually agreed between the parties to the Contract that no certificate given or payment made, under the Contract, shall be conclusive evidence of performance of the Contract, and no payment shall be construed to be an acceptance of any defective Work or improper materials.

The CONTRACTOR further agrees that the payment of the final amount due, under the Contract, and the adjustments and payments for any Work done in accordance with any alterations of the same, shall release MCSD, the Board of Directors and the CONSULTANT, and each of their directors, officers, employees, and agents, from any and all claims or liability on account of Work performed under the Contract or any alteration thereof.

## **8. MISCELLANEOUS**

### **8.1. GOVERNING LAW**

The Contract Documents have been negotiated between MCSD and the CONTRACTOR and shall be subject to and interpreted under the laws of the State of California.

By entering into the Contract, the CONTRACTOR consents and submits to the jurisdiction of the Courts of the State of California, County of Orange, over any action at law, suit in equity, and/or other proceeding that may arise out of the Contract Documents.