

**Big Bear Municipal Water District
REQUEST FOR PROPOSALS & SUPPORTING DOCUMENTS**

FOR
'West Ramp' Parking Lot Repair



Prepared by:

Big Bear Municipal Water District
40524 Lakeview Dr
P.O. Box 2863
Big Bear Lake, CA 92315

DATE: February 27, 2025

This RFP and Supporting Documents are the exclusive property of the Agency and shall not be used in any manner without prior consent of the Agency. Any reuse of these Documents by Others shall be at Other's sole risk and without liability to the Agency.

INSTRUCTIONS TO BIDDERS

1. **FORM OF BID.** Bids shall be made on the Bid forms found herein. Bidders shall include all forms and fill in all blank spaces, including inserting "N/A" (for not applicable) where necessary.
2. **PROJECT PLANHOLDER LIST.** The District's Project Planholder List will be compiled exclusively from the sign-in sheet at the Mandatory Job Walk on **Thursday, March 6, 2025 at 10AM starting at the Main Office Parking Lot followed by the West Ramp visit.** Any Bidder failing to sign-in at the Mandatory Job Walk will be excluded from Project Planholder List and their Bid Proposal will be rejected by the District as being non-responsive. The District will not have a third party maintain a bid registry/planholder list and will not distribute addenda directly to bidders/plan holders.
3. **SUBMITTAL OF BIDS.** Bids shall be submitted to the District in person, or by mail any time before the **Friday March 28, 2025 1PM** deadline. Any Bid which is attempted to be delivered or which is received after the stated time shall be deemed non-responsive and rejected. The Bidder shall have the sole and exclusive responsibility for ensuring that a Bid is received by the time stated herein. Any Bid that is incomplete, unclear, or that fails to fully comply with the applicable requirements set forth herein, including, but not limited to, use of the forms provided by the District, may be rejected as nonresponsive.
4. **OPENING OF BIDS.** All Bidders and members of the public may view bid results in the electronic procurement system after bid closing (the BBWWD website RFP page). The District reserves the right to change the originally scheduled Bid date and time to a later date and time by issuing an electronic Addendum to that effect. Any and all Bids received by the District on or before the deadline shall be accepted by the District on the date scheduled for the opening of Bids.

The public reading of Bids received by the District shall include the announcement of the name of each Bidder and the total amount of each Bidder's Bid, and any other information as the District may deem appropriate. The District may note any Bid irregularity at the time of announcement.
5. **BID AUTHORIZATION.** N/A
6. **AMENDED BIDS.** Unauthorized conditions, limitations or provisos attached to a Bid may cause the Bid to be deemed incomplete and non-responsive.
7. **WITHDRAWAL OF BID.** A Bidder may withdraw its Bid if they choose any time before the deadline. No Bidder may withdraw its Bid for a period of ninety (90) calendar days after the date set for the opening of Bids or until the District returns the Bid Security, subject to applicable California Law.

A Bid may be withdrawn without prejudice upon written request by the Bidder filed with the District Clerk before the Bid submission deadline. Bids must remain valid and shall not be subject to withdrawal for ninety (90) calendar days after the Bid opening date.

8. **BIDDER'S SECURITY.** Each Bid shall be accompanied by cash, a certified or cashier's check payable to the District, or a satisfactory Bid Bond in favor of the District executed by the Bidder as principal and an admitted surety insurer as Surety, in an amount not less than ten percent (10%) of the amount set forth in the Bid. The cash, check or Bid Bond shall be given as a guarantee that, if selected, the Bidder will execute the Contract in conformity with the Contract Documents and will provide the evidence of insurance and furnish the specified Bonds, within ten (10) Calendar Days after the date of delivery of the Contract Documents to the Bidder. In case of the Bidder's refusal or failure to do so, the District may award the Contract to the next lowest responsible bidder, and the cash, check, or Bond (as applicable) of the lowest Bidder shall be forfeited to the District to the extent permitted by law. No Bid Bond will be accepted unless it conforms substantially to the form provided in these Contract Documents.

9. **SCOPE OF WORK.** The Big Bear Municipal Water District is requesting bids from qualified companies for a parking lot repair project consisting of the following:

SITE: Duane Boyer- West Ramp Parking Lot Repair- 38925 North Shore Drive, Fawnskin, CA 92333: The Big Bear Municipal Water District is requesting proposals from qualified firms for new asphalt, asphalt repair and replacement (where necessary) and repair of damaged curbs, improve drainage to flow west, seal, and stripe services ("Services"), which shall be provided under the general direction of the General Manager or his or her designee. The following describes the specific scope of services as it relates to each task. The District is currently seeking to improve and repair the West Ramp parking lot and driveways by performing the work detailed below. **Facility map and striping layout can be seen on our website at <https://www.bbmwd.com/requests-for-proposals-environmental-notice-projects> .**

Site Preparation for Cracks

1. Site preparation requirements vary according to the sealing or filling method and materials chosen for the project. The following describes site preparation in further detail.
 - a) When routing or sawing is incorporated, cracks need to be cleaned and dried prior to application of the filler or sealant. When pavements are cracked extensively, routing or sawing of cracks may not be appropriate. Crack cutting becomes especially important in climates where crack movement is very high. Crack cutting allows more filler to be used and provides better control of the crack channel shape. Secondary cracks along the primary crack are not usually routed. Routing is generally not used in HMA or PCC pavements in California. Crack cutting and routing equipment includes vertical spindle routers, rotary impact routers, and random crack saws. Damage to the pavement should be kept to a minimum by

clean cutting. The use of carbide bits improves the quality of cutting and typically produces clean reservoir cuts. The following methods should be followed based on crack size defined below:

- i. Cracks 1/8 to 1/4 inch shall be flush filled; 3350' estimated.
- ii. Cracks 1/4 to 1 inch shall be filled using a combination reservoir with Band- Aid fill method. Backer Rods or sand fill may need to be used on larger deep cracks (where necessary). 6700' estimated.
- iii. Cracks larger than 1 inch shall be repaired using the method of 'open v-shape cuts' 24" x 4" deep and repave with hot mix asphalt. 100' estimated.

b) Debris left in a crack, resulting from sawing, routing, or pavement use will affect the adhesion of the sealant or filler. Debris also contaminates the sealing or filling material and reduces cohesion. Reduced adhesion or cohesion normally results in early failures. To avoid these contamination-related failures, sawed or routed cracks must be cleaned prior to being treated. Several cleaning methods can be used, including:

1. Air blasting
2. Hot air blasting
3. Sand blasting
4. Wire brushing

- a. Air blasting involves directing a concentrated stream of air into the crack or joint to blow it clean. Air blasting equipment is effective and efficient for cleaning cracks. Air blasting is not efficient for drying cracks. Should a crack require drying, hot air blasting should be used. Air pressure should be a minimum of 670 kPa (97 psi) with a flow of 0.07 m³ /s (2.5 ft³ /s). Air blasting equipment must be equipped with moisture and oil traps. Hot air blasting is done using a hot compressed air heat lance. While cleaning and drying the crack, hot air blasting also promotes enhanced bonding associated with the crack edges being warmed. Care must be taken to ensure that the pavement is not overheated or heated for excessive periods of time as this will result in unnecessary hardening of the asphalt binder in the pavement adjacent to the crack.
- b. Sand blasting involves directing a stream of sand entrained in compressed air into the crack. The abrasive nature of the sand cleans the crack or joint. Sandblasting, which is used for cleaning cracks in PCC pavements by many states, is an effective treatment. However, sandblasting is messy and typically requires a two-phase operation. The first operation is cleaning the joint surface; the second cleans the sand from the joint and its surroundings. On new PCC pavements, sand blasting is required to clean the surface prior to applying the sealant.
- c. Wire brushing or brooming involves the use of a wire broom stock or stiff standard broom to brush out the crack or joint. Wire brushing can be an

- effective cleaning method. Wire brushing may be done manually or using power driven brushes.
2. If the contractor should damage the edges of the specified area he/she will be required to expand the paving area at no expense to BBMWD. All edges of the specified repair shall be coated with SS1H tack oil. Asphalt must be finished to provide a smooth area. Finish paving must ride “smoothly” and to the satisfaction of the BBMWD representative. Existing edges of the specified areas are to remain free of all new asphalt.
 - a. Power-edge all vegetation away from edges of asphalt.
 - b. Thoroughly clean all asphalt areas to be seal coated so they are free of all dirt and debris.
 - c. Block off work areas while conducting their work, the night before so staff of the district know where to park the following business day as to not disrupt the construction schedule.
 3. Seal Coating
 - a. Apply commercial grade asphalt tar emulsion or equivalent which meets or exceeds all the requirements of Federal Government Specification RP-355E along with 2-5 lbs. of sand per gallon of sealer along with a modified latex hardening agent.
 - b. All seal coating work must be performed Monday through Friday ONLY 7AM – 6PM
 4. Striping
 - a. Restripe parking lot according to existing layout as seen on exhibits on <https://www.bbmwd.com/requests-for-proposals-environmental-notice-projects> , after sufficient curing time; minimum five (5) days, maximum thirty (30) days.
 - b. Striping shall be two (2) coated commercial grade acrylic traffic paint in the existing striping on the lot. Approximately 60,160 sq. ft. Contractor to provide exact amounts in bid documents.
 - c. All work must be performed Monday through Friday 7AM – 3:30PM.
 5. New asphalt
 - a. New asphalt to be in accordance with 2024 Greenbook section 203 practices including but not limited to; material, installation of aggregate base, tack coat, asphalt concrete pavement, seal coat, compaction, striping and markers.
 - b. New asphalt grade to be returned to original elevation to address existing Cal-Trans culvert drainage issues which will need to be diverted to the west.
 - c. Estimated new asphalt work 4,862 sq ft. Contractor to provide exact amounts in bid documents.
 6. Tree Trimming & Removal
 - a. Tree trimming will be required along the designated northwest perimeter of the parking lot; to include disposal.
 - b. Removal of non-native trees will be required during the discard of the west island; to include disposal.

10. QUANTITIES APPROXIMATE. Any quantities shown in the Bid form or elsewhere herein shall be considered as approximations listed to serve as a general indication of the amount of Work or materials to be performed or furnished, and as basis for the Bid comparison. The District does not guarantee that the actual amounts required will correspond with those shown. As deemed necessary or convenient, the District may increase or decrease the amount of any item or portion of Work or material to be performed or furnished or omit any such item or portion, in accordance with the Contract Documents.

11. PRE-BID QUESTIONS. All Bidder questions about the meaning or intent of the Contract Documents shall be directed to the District in writing by email to Jim Cummings at jcummings@bbmwd.net ("Pre-Bid Clarification Form"). Pre-Bid Questions and requests for clarifications must be submitted to the District by **4:00 P.M., Friday, March 14, 2025**. Bidders are solely responsible for submission of Pre-Bid Questions prior to such time/date; the District will not respond to Pre-Bid Questions submitted after such time/date. Responses to timely submitted Pre-Bid Questions will be in the form of Addenda posted at <https://www.bbmwd.com/requests-for-proposals-environmental-notice-projects>. No person is authorized to: (i) render an oral interpretation, correction or modification of any portion of the Contract Documents; or (ii) provide oral responses to Pre-Bid Questions. No Bidder may rely on any such oral interpretation, correction, modification or response.

Requests for clarification received after the date set forth above will be disregarded. Please indicate the Project and identification number in any request for clarification. Telephonic requests will not be taken. Any interpretation or correction of the Contract Documents will be made only by a written Addendum. No oral interpretation of any provision in the Contract Documents shall be binding.

12. ADDENDA. The District may, from time to time, issue Addenda to the Contract Documents. Bidders are responsible for ensuring that they have received all Addenda. Each Bidder is responsible for verifying that it has received all Addenda issued, if any. Bidders must acknowledge receipt of all Addenda, if any, in their bids. Failure to acknowledge receipt of all Addenda may cause a Bid to be deemed incomplete and non-responsive.

13. DISCREPANCIES IN BIDS. Each bidder shall set forth as to each item of Work, in clearly legible words and figures, a unit or line item Bid amount for the item in the respective spaces provided for this purpose.

In case of a discrepancy between the unit price and the extended amount set forth for the item, the unit price shall prevail. However, if the amount set forth as a unit price is ambiguous, unintelligible or uncertain for any cause, or is omitted, or if the unit price is the same amount as the entry in the "extended amount" column, then the amount set forth in the "extended amount" column for the item shall prevail in accordance with the following:

- A. As to lump sum items, the amount set forth in the “extended amount” column shall be the unit price.
- B. As to unit price items, the amount set forth in the “extended amount” column shall be divided by the estimated quantity for the item set forth in the Bid documents, and the price thus obtained shall be the unit price.

In case of discrepancy between words and figures, the words shall prevail.

- 14. COMPETENCY OF BIDDERS.** In evaluating Bidder responsibility, consideration will be given not only to the financial standing, but also to the general competency of the Bidder for the performance of the Project. Each Bidder shall set forth in the designated area of the Bid form a statement of its experience. No Contract will be executed with a Bidder that is not licensed and registered with the DIR in accordance with State law, and with any applicable specific licensing requirements specified in these Contract Documents. These licensing and registration requirements for Contractors shall also apply to all Subcontractors.
- 15. BIDDER’S EXAMINATION OF SITE AND CONTRACT DOCUMENTS.** Each Bidder must carefully examine the Project site and the entirety of the Contract Documents. Upon submission of a Bid, it will be conclusively presumed that the Bidder has thoroughly investigated the Work and is satisfied as to the conditions to be encountered and the character, quality, and quantities of Work to be performed and materials to be furnished. Upon Bid submission, it also shall be conclusively presumed that the Bidder is familiar with and agrees to the requirements of the Contract Documents, including all Addenda. No information derived from an inspection of records or investigation will in any way relieve the Contractor from its obligations under the Contract Documents nor entitle the Contractor to any additional compensation. The Contractor shall not make any claim against the District based upon ignorance or misunderstanding of any condition of the Project site or of the requirements set forth in the Contract Documents. No claim for additional compensation will be allowed which is based on a lack of knowledge of the above items. Bidders shall contemplate and include any and all increases in prices or wages as a result of, but not limited to minimum or prevailing wages, and the Consumer Price Index or any other such indices in its cost proposal, for the entire length of the Work as described herein. Any failure of the proposer to incorporate such price or wage increases in its cost proposal will not obligate the District to make any increases in not-to-exceed amounts during the term of the resultant agreement for the Work. Bidders assume all risks in connection with performance of the Work in accordance with the Contract Documents, regardless of actual conditions encountered, and waive and release the District with respect to any and all claims and liabilities in connection therewith, to the extent permitted by law.
- 16. TRADE NAMES OR EQUALS.** Requests to substitute an equivalent item for a

brand or trade name item must be made by written request submitted using the Request for Substitution Form no later than the date ten (10) calendar days prior to the Bid submission deadline. Requests received after this time shall not be considered. Requests shall clearly describe the product for which approval is requested, including all data necessary to demonstrate acceptability.

Pursuant to Public Contract Code Section 3400(c), the District has found that the following specific brands are required for the following particular material(s), product(s), thing(s), or service(s), **and no substitutions will be considered or accepted:**

ITEM:	REQUIRED BRAND:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

17. **DISQUALIFICATION OF BIDDERS.** No Person shall be allowed to make, file or be interested in more than one Bid for the Project, unless alternate Bids are specifically called for. A Person that has submitted a sub-bid to a Bidder, or that has quoted prices of materials to a Bidder, is not thereby disqualified from submitting a sub-proposal or quoting prices to other Bidders or from making a prime Bid. If there is a reason to believe that collusion exists among the Bidders, all affected Bids will be rejected.

18. **RETURN OF BID SECURITY.** The successful Bidder's Bid security shall be held until the Contract is executed. Bid security shall be returned to the unsuccessful Bidders within a reasonable time, which in any case shall not exceed ninety (90) Days after the successful Bidder has signed the Contract.

19. **AWARD OF CONTRACT.** The District reserves the right to reject any or all Bids or any parts thereof or to waive any irregularities or informalities in any Bid or in the bidding. The Contract award, if made, will be to the lowest responsible, responsive Bidder and is anticipated to occur within ninety (90) Days after the Bid opening. The Contract award may be made after that period if the selected Bidder has not given the District written notice of the withdrawal of its Bid.

20. **DETERMINATION OF LOWEST BID.** In accordance with Public Contract Code Section 20103.8, the lowest Bid shall be determined as follows:

Subject to the conditions of this Invitation of Bids, the District will award the contract, if an award is made, to the lowest responsive and responsible Bidder. In determining whether the Bidder is responsible, as set forth below:

- The lowest Bid shall be the lowest total of the Base Bid and those Alternates specifically identify as being used for the purpose of determining the Bid price. For purposes of this section, the Bid alternatives used for determining the Bid price are Alternates No. [Nos.].
- The lowest bid shall be the lowest Base Bid without consideration of the prices on the Additive and Deductive Alternate items.
- The lowest bid shall be the lowest total of the Base Bid and those Alternates that when taken in order from a specifically identified list of those items, and added to or subtracted from the Base Bid are less than or equal to the funding amount publicly disclosed by the District before the Bid opening.
- The lowest Bid shall be determined in a manner that prevents any information that would identify any Bidder or proposed Subcontractor or supplier from being revealed to the District before the ranking of all Bidders from lowest to highest has been determined, as follows:

Regardless of the method for determining the lowest price, the District can add to or deduct from the contract any of the additive or deductive items after the lowest Bid has been determined.

- 21. TRENCHING.** If the Project involves the construction of a pipeline, sewer, sewage disposal system, boring and jacking pits, or similar trenches or open excavations, which are five (5) feet deep or more, then each Bidder must submit, as a Bid item, adequate sheeting, shoring, and bracing, or an equivalent method, for the protection of life or limb, which shall conform to applicable safety orders. This final submission must be accepted by the District in advance of excavation and must include a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from caving ground during the excavation Work. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.
- 22. LISTING SUBCONTRACTORS; SELF-PERFORMANCE.** Each Bidder shall submit a list of the proposed Subcontractors on the Project, as required by the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100, et seq.). Contractor shall self-perform not less than 50% of the Work, in accordance with Section 3-2 of the Standard Specifications.
- 23. EXECUTION OF CONTRACT.** The selected Bidder shall execute the Contract in the form included in these Contract Documents within five (5) Calendar Days from the date of delivery of the Contract Documents to the Bidder. Additionally, the

selected Bidder shall also secure all insurance and Bonds as herein specified, and provide copies to the District, within five (5) Calendar Days from the date of delivery of the Contract Documents to the Bidder. Failure or refusal to execute the Contract or to conform to any of the stipulated requirements shall be just cause for the annulment of the award and forfeiture of the Bidder's security. In such event, the District may declare the Bidder's security forfeited to the extent permitted by law, and the District may award the Contract to the next lowest responsible Bidder or may reject all bids.

- 24. SIGNATURES.** The Bidder shall execute all documents requiring signatures and shall cause to be notarized all documents that indicate such a requirement. Bids submitted as joint ventures must so state and be signed by each joint venturer. The Bidder shall provide evidence satisfactory to the District, such as an authenticated resolution of its board of directors, a certified copy of a certificate of partnership acknowledging the signer to be a general partner, or a power of attorney, indicating the District of the person(s) signing the Bid to bind the Bidder to the Bid and any Contract arising therefrom. Alternatively, Bids submitted by corporations must be executed as specified in Corporations Code Section 313, and Bids submitted by partnerships must be executed by all partners comprising the partnership.
- 25. INSURANCE AND BONDS.** The Contractor shall not begin Work until it has given the District evidence of all required insurance coverage (including all additional insured endorsements), a Bond guaranteeing the Contractor's faithful performance of the Contract, and a Bond securing the payment of claims for labor and materials.
- 26. TELEPHONES.** Bidders are hereby notified that the District will not provide telephones for their use at the time of Bid submission.
- 27. INTERPRETATION OF CONTRACT DOCUMENTS.** Any Bidder that is in doubt as to the intended meaning of any part of the Contract Documents, or that finds discrepancies in or omissions from the Contract Documents, may submit to the District Engineer a written request for an interpretation or correction not later than ten (10) Days before the Bid submission deadline. Requests for clarification received after this date will be disregarded. Please indicate the Project and identification number in the request for clarification. Telephonic requests will not be taken. Any interpretation or correction of the Contract Documents will be made only by a written Addendum. No oral interpretation of any provision in the Contract Documents shall be binding.
- 28. TAXES.** Except as may be otherwise specifically provided herein, all sales and/or use taxes assessed by federal, State or local authorities on materials used or furnished by the Contractor in performing the Work shall be paid by the Contractor. The Bidder shall calculate payment for all sales, unemployment, pension and other taxes imposed by federal, State, and local law and shall include these payments in computing the Bid.

29. PREVAILING WAGES. Contractor shall pay prevailing wages to the extent required by Labor Code section 1771. Pursuant to Labor Code section 1773.2, copies of the prevailing rate of per diem wages are on file at District Hall and on the DIR website at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm> and will be made available to any interested party on request. Contractor shall provide a copy of prevailing wage rates to any staff or subcontractor hired and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with the provisions of all sections, including, but not limited to, Sections 1775, 1776, 1777.5, 1782, 1810, and 1813, of the Labor Code pertaining to prevailing wages.

End of Instructions to Bidders

PRE-BID CLARIFICATION FORM

PROJECT NAME:	'West Ramp' Parking Lot Repair
PROJECT NUMBER:	Cash Contract No. xxx
TO: Big Bear Municipal Water District, Jim Cummings EMAIL: Jcummins@bbmwd.net	

DATE:	
FROM:	EMAIL:
Document/Division Number:	DRAWING NUMBER:

REQUESTED CLARIFICATION:

Attach additional numbered sheets as necessary; however, only one (1) request shall be contained on each submitted form.

REQUEST FOR SUBSTITUTION

Pursuant to Public Contract Code Section 3400, Bidder submits the following request to substitute with the Bid that is submitted. I understand that if the request to substitute is not an “or equal” or is not accepted by the District and I answer “no” and that I will not provide the specified item, then I will be held non-responsive and my bid will be rejected. With this understanding, I hereby request substitution of the following designated material, product, thing, or service.

	Specification Section	Specified Item	Requested Substituted Item	Contractor Agrees to Provide Specified Item if request to Substitute is Denied (circle one)		District Decision (circle one)	
				Yes	No	Grant	Deny
1.				Yes	No	Grant	Deny
2.				Yes	No	Grant	Deny
3.				Yes	No	Grant	Deny
4.				Yes	No	Grant	Deny
5.				Yes	No	Grant	Deny
6.				Yes	No	Grant	Deny
7.				Yes	No	Grant	Deny
8.				Yes	No	Grant	Deny
9.				Yes	No	Grant	Deny
10				Yes	No	Grant	Deny

This Request Form must be accompanied by evidence as to whether the proposed substitution (1) is equal in quality, service, and ability to the Specified Item; (2) will entail no change in detail, construction, and scheduling of related work; (3) will be acceptable in consideration of the required design and artistic effect; (4) will provide no cost disadvantage to the District; (5) will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts; (6) will require no change of the construction schedule or milestones for the Project; and, (7) Contractor agrees to pay for any fees or additional plan check costs associated with this Substitution Request.

The undersigned states that the following paragraphs are correct:

The proposed Substitution does not affect the dimensions shown on the Drawings.

The undersigned will pay for changes to any building design, including architect, engineering, or other consultant design, detailing, plan check costs, and construction costs caused by the requested substitution.

The proposed substitution will have no adverse effect on other trades, the Contract Time, or specified warranty requirements.

Maintenance and service parts will be available for the proposed substitution.

In order for the District to properly review the substitution request, **within 15 calendar days prior** to the bid submission deadline, the Contractor shall provide samples, test criteria, manufacturer information, and any other documents, including the submissions that would ordinarily be required for Shop Drawings along with a document which provides a side by side comparison of key characteristics and performance criteria (often known as a CSI side by side comparison chart).

If Substitution Request is accepted by the District, Contractor is still required to provide a submittal for the substituted item and shall provide required schedule information (including schedule fragnet if applicable) for the substituted item. The approval by the District of the Substitution Request does not mean that the Contractor is relieved of Contractor's responsibilities for Submittals, Shop Drawings, and schedules if the Contractor is awarded the Project.

Bidder	
Signature:	Date

Title:	

Signature:	Date

Title:	

CHECKLIST FOR BIDDERS

The following information is required of all Bidders at the time of Bid submission and shall be completed:

- Proposal Form
- Bid Sheets
- Bid Bond
- Non-collusion Declaration Form
- Designated of Subcontractors List
- Bid Guarantee Form (if not submitting a Bid Bond)
- List of prior project references

Failure of the Bidder to provide all required information in a complete and accurate manner may cause the Bid to be considered non-responsive.

End of Checklist for Bidders

BID PROPOSAL

PROJECT: 'West Ramp' Parking Lot Repair

To: Big Bear Municipal Water District
PO BOX 2863
40524 Lakeview Drive
Big Bear Lake, CA 92315

Firm Name:
Authorized Representative:
Title:
Email Address:
Address:
District, State, and Zip Code:
Telephone:
Contractor License(s):
Department Industrial Relation No.:

The undersigned, as Bidder, declares that:

(1) this Bid is made without collusion with any other person and that the only persons or parties interested as principals are those named herein;

(2) the undersigned has carefully examined the Contract Documents (including all Addenda) and the Project site; and

(3) the undersigned has investigated and is satisfied as to the conditions to be encountered, the character, quality and quantities of Work to be performed, and the materials to be furnished.

Furthermore, the undersigned agrees that submission of this Bid shall be conclusive evidence that such examination and investigation have been made and agrees, in the event the Contract be awarded to it, to execute the Contract with the Big Bear Municipal Water District to perform the Project in accordance with the Contract Documents in the time and manner therein prescribed, and to furnish or provide all materials, labor, tools, equipment, apparatus and other means necessary so to do, except as may otherwise be furnished or provided under the terms of the Contract Documents, for the following stated unit prices or lump-sum price as submitted on the Bid herein.

Bidder acknowledges receipt of all addenda by each addendum number and its initials, as follows:

Addendum No.	Initials:
Addendum No.	Initials:
Addendum No.	Initials:
Addendum No.	Initials:
Addendum No.	Initials:

The undersigned submits as part of this Bid a completed copy of its Industrial Safety Record. This Safety Record includes all construction Work undertaken in California by the undersigned and any partnership, joint venture or corporation that any principal of the undersigned participated in as a principal or owner for the last five (5) calendar years and the current calendar year before the date of Bid submittal. Separate information is being submitted for each such partnership, joint venture, or corporate or individual Bidder. The undersigned may attach any additional information or explanation of data that it would like to be taken into consideration in evaluating the Safety Record. An explanation of the circumstances surrounding any and all fatalities is attached.

Accompanying this Bid is cash, a cashier's check, a certified check or a Bid Bond in an amount equal to at least ten percent (10%) of the total aggregate Bid price based on the quantities shown and the unit prices quoted. The undersigned further agrees that, should it be awarded the Contract and thereafter fail or refuse to execute the Contract and provide the required evidence of insurance and Bonds within five calendar (5) Days after delivery of the Contract to the undersigned, then the cash, check or Bid Bond shall be forfeited to the District to the extent permitted by law.

The undersigned certifies to have a minimum of three (3) consecutive years of current experience in the type of Work related to the Project and that this experience is in actual operation of the firm with permanent employees performing a part of the Work as distinct from a firm operating entirely by subcontracting all phases of the Work.

The undersigned also certifies to be properly licensed by the State as a contractor to perform this type of Work. The undersigned possesses California Contractor's License Number _____, Class _____, which expires on _____.

Bidder	
Signature: _____	Date _____
Title: _____	
Signature: _____	Date _____
Title: _____	

[Signatures of contractor must be notarized. Need two signatures if contractor is a corporation. Attach acknowledgement.]

BID SHEETS

Bidder Name: _____

PROJECT: 'West Ramp' Parking Lot Repair

In compliance with the Notice Inviting Bids, the undersigned hereby agrees to execute the Contract to furnish all labor, materials, equipment and supplies for the Project in accordance with the Contract Documents to the satisfaction and under the direction of the District Engineer.

PART A BASE AMOUNT:

ITEM NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICES	EXTENDED AMOUNT
1.	Mobilization (___% maximum of Total Bid Price)			\$	\$
2.				\$	\$
3.				\$	\$
4.				\$	\$
5.				\$	\$
6.				\$	\$
7.				\$	\$
TOTAL BASE AMOUNT					\$ _____

PART B- ALTERNATES **[DELETE, IF NOT USE]**

ADDITIVE OR DEDUCTIVE ITEM (if applicable):

ITEM NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICES	EXTENDED AMOUNT
1.				\$	\$
2.				\$	\$
3.				\$	\$
TOTAL ADDITIVE OR DEDUCTIVE ITEM:					\$ _____

Note: Items may be adjusted or deleted. Therefore, regardless of total actual volume (percentage) compared to estimated quantities, the unit prices provided above by the Bidder shall be applied to the final quantity when payment is calculated for these items. No adjustment in the unit prices will be allowed. The District reserves the right to not use any of the estimated quantities; and if this right is exercised, the Contractor will not be entitled to any additional compensation. Cost of all export of material shall be included in the above unit costs; no additional compensation will be granted for such expenses.

Pursuant to Public Contract Code Section 20103.8, the selection process selected does not preclude the District from using any of the additive alternates from the Contract after the lowest responsible responsive bidder has been determined.

Total Bid Price

_____ Written amount

\$ _____ Numerical amount

Bidder

Signature:

Date

Title:

Signature:

Date

Title:

[Signatures of contractor must be notarized. Need two signatures if contractor is a corporation. Attach acknowledgement.]

End of Bid Proposal Form

BID BOND

KNOW ALL PERSONS BY THESE PRESENTS that:

WHEREAS the Big Bear Municipal Water District (“District”), has issued an invitation for Bids for the Work described as follows: ‘West Ramp’ Parking Lot Repair

WHEREAS the Contractor “Principal” _____, desires to submit a Bid to District for the Work.

WHEREAS, Bidders are required to furnish a form of Bidder’s security with their Bids.

NOW, THEREFORE, we, the undersigned Principal, and Surety, _____ “Surety” a duly admitted surety insurer under the laws of the State of California:

as Surety, are held and firmly bound unto the District in the penal sum of _____ Dollars (\$ _____), being not less than ten percent (10%) of the total Bid price, in lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby bounded Principal is awarded the Contract for the Work by the District and, within the time and in the manner required by the bidding specifications, enters into the written form of Contract included with the bidding specifications, furnishes the required Bonds (one to guarantee faithful performance and the other to guarantee payment for labor and materials), and furnishes the required insurance coverage, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

In case suit is brought upon this instrument, Surety further agrees to pay all court costs incurred by the District in the suit and reasonable attorneys’ fees in an amount fixed by the court. Surety hereby waives the provisions of Civil Code Section 2845.

IN WITNESS WHEREOF, this instrument has been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

REQUIRED: This Bond must be dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached.

DATE: _____

PRINCIPAL'S SIGNATURE	
Contractor-Principal Name:	_____
By:	_____
	Signature (above)
Type or Print Name:	_____
Title:	_____
Note: Attach the Notary Public Acknowledgement of Principal's Signature	

SURETY'S SIGNATURE	
Surety's Name:	_____
By:	_____
	Signature of Attorney-in-Fact for Surety (above)

	Type or Print Name of Attorney-in-Fact:
Note: Attach (i) Attorney-In-Fact Certification; (ii) Notary Public Acknowledgment of Authorizing Signature on Attorney-Fact Certification; and (iii) Notary Public Acknowledgement of Attorney-In-Fact's Signature	

CONTACT INFORMATION FOR NOTICES TO THE SURETY	
Contact Name:	_____
Mailing Address:	_____
District, State, Zip	_____
Code:	_____
Email Address:	_____
Telephone No.:	_____

NON-COLLUSION DECLARATION FORM

Public Contract Code Section 7106

The undersigned declares:

I am the _____ (Title) of _____ (Company Name), the party making the foregoing Bid.

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

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

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

Bidder	
Signature: _____	Date _____
Title: _____	
Signature: _____	Date _____
Title: _____	

This form must be notarized.

DESIGNATED OF SUBCONTRACTORS

Public Contract Code Section 4104

List all Subcontractors who will perform Work or labor or render service to the Contractor in or about the construction of the Work or improvement, or a Subcontractor licensed by the State of California who, under subcontract to the Contractor, specially fabricates and installs a portion of the Work or improvement according to detailed drawings contained in the Plans and Specifications, in an amount in excess of one-half of one percent (0.5%) of the Contractor's total Bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of one percent (0.5%) of the Contractor's total Bid or \$10,000, whichever is greater. If all Subcontractors do not fit on this page, attach another page listing all information for all other Subcontractors.

1. As to any Work that Bidder fails to list, Bidder agrees to perform that portion itself or be subjected to penalty under applicable law.
2. If alternate bids are called for and Bidder intends to use Subcontractors different from or in addition to those Subcontractors listed for work under the base Bid, Bidder must list Subcontractors that will perform Work in an amount in excess of one half of one percent (1/2 of 1%) of Bidder's total Bid, including alternates.
3. In case more than one subcontractor is named for the same scope of Work, state the portion that each will perform.
4. Bidder need not list entities that are only vendors or suppliers of materials.
5. Bidder must provide the Contactor State License Board number ("CSLB No.") for all listed subcontractors.
6. Bidder must provide the Department of Industrial Relations registration number ("DIR No.") for all listed subcontractors.
7. If further space is required for the list of proposed subcontractors, additional sheets showing the required information, as indicated below, shall be attached hereto and made a part of this document.

I certify and declare under penalty of perjury under the laws of the State of California that the below information is complete, true, and correct.

Bidder

Signature:

Date

Title:

Signature:

Date:

Title:

DESIGNATED SUBCONTRACTORS LIST (CONTINUED)

Subcontractor Name:

Subcontractor Office, Mill or Shop Address (Street, District, Zip Code):

Subcontractor Trade or Portion of Work:

Subcontractor Contractor License(s)No/
Classification(s)/Certificate(s)

Department of Industrial Relations
Registration Number (DIR No.)

Subcontractor Name:

Subcontractor Office, Mill or Shop Address (Street, District, Zip Code):

Subcontractor Trade or Portion of Work:

Subcontractor Contractor License(s)No/
Classification(s)/Certificate(s)

Department of Industrial Relations
Registration Number (DIR No.)

Subcontractor Name:

Subcontractor Office, Mill or Shop Address (Street, District, Zip Code):

Subcontractor Trade or Portion of Work:

Subcontractor Contractor License(s)No/
Classification(s)/Certificate(s)

Department of Industrial Relations
Registration Number (DIR No.)

Subcontractor Name:

Subcontractor Office, Mill or Shop Address (Street, District, Zip Code):

Subcontractor Trade or Portion of Work:

Subcontractor Contractor License(s)No/
Classification(s)/Certificate(s)

Department of Industrial Relations
Registration Number (DIR No.)

Attach additional page(s) as required.

¹ The percentage of the total Bid shall represent the "portion of the work" for the purposes of Public Contract Code Section 4104(b).

BID GUARANTEE FORM

(Use only when not using a Bid Bond)

Accompanying this proposal is a cashier's check payable to the order of the Big Bear Municipal Water District or a certified check payable to the order of the "BBMWD" in an amount equal to ten percent (10%) of the base bid and alternates (\$_____).

The proceeds of this check shall become the property of the District, if, this proposal shall be accepted by the District, and the undersigned fails to execute a Contract with and furnish the sureties required by the District within the required time; otherwise, the check is to be returned to the undersigned.

Bidder

Signature: Date
Title:

Signature: Date:
Title:

Note: Use this form, in lieu of Bid Bond form, when a cashier's check or certified check is accompanying the bid.

CHECKLIST FOR EXECUTION OF CONTRACT

TO BE SUBMITTED BY SUCCESSFUL BIDDER:

The forms below must be signed and notarized if applicable.

- 2 Each – Agreement for Construction Service
- 2 Each – Labor & Materials Payment Bond (100% of the total contract value)
- 2 Each – Faithful Performance Bond (100% of the total contract value)
- Copy of the Company's W-9
- Copy of the Company's Insurance coverage documentation (as required in the Agreement)

LABOR AND MATERIALS PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS the Big Bear Municipal Water District, California ("DISTRICT"), awarded to _____ ("Principal") a contract for the work ("Contract") described as _____ ("Project"); and

WHEREAS, under the terms of the Contract, the Principal is required before entering upon the performance of the work under the Contract, to file a good and sufficient payment bond with the DISTRICT to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code;

NOW, THEREFORE, we, the undersigned Principal and Surety _____ ("SURETY"), a California admitted surety insurer, are held and firmly bound, by these presents, unto the DISTRICT and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the Contract and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the penal sum of _____ Dollars (\$ _____), lawful money of the United States, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to the work or labor performed under the Contract, which is attached hereto and incorporated herein by reference and any alteration and/or amendments thereof, made as therein provided, that the SURETY will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by DISTRICT in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Upon expiration of the time within which the California Labor Commissioner may serve a civil wage and penalty assessment against the Principal, any of its subcontractors, or both the Principal and its subcontractors pursuant to Labor Code Section 1741 (and as amended), and upon expiration of the time within which a joint labor management committee may commence an action against the Principal, any of its subcontractors, or both the Principal and its subcontractors pursuant to Labor Code Section 1771.2 (and as amended), if the condition of this Bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

The SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or the specifications accompanying the same, or of the work to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, amendment, extension of time, alteration, or modification of the Contract or the specifications accompanying the same, or of the work to be performed thereunder.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and SURETY, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

The prevailing party on any dispute (whether legal, equitable, or otherwise) regarding the interpretation, enforcement, and respective rights and obligations under this bond shall be entitled to recovery of reasonable attorney's fees and costs (including but not limited to consultant's and/or expert fees and costs)

IN WITNESS HEREOF, we have hereto set our hands and seals on this _____ day of _____, 20__.

NOTE:

1. All signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached.
2. DATE OF BOND MUST NOT BE BEFORE DATE OF CONTRACT.
3. Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.

PRINCIPAL'S SIGNATURE	
Contractor/Principal Name:	_____
By:	_____
	Signature (above)
Type or Print Name:	_____
Title:	_____
Note: Attach the Notary Public Acknowledgement of Principal's Signature	

SURETY'S SIGNATURE

Surety's Name: _____

By: _____

Signature of Attorney-in-Fact for Surety (above)

Type or Print Name of Attorney-in-Fact:

Note: Attach (i) Attorney-In-Fact Certification; (ii) Notary Public Acknowledgment of Authorizing Signature on Attorney-Fact Certification; and (iii) Notary Public Acknowledgement of Attorney-In-Fact's Signature

CONTACT INFORMATION FOR NOTICES TO THE SURETY

Contact Name: _____

Mailing Address: _____
District, State, Zip
Code: _____

Email Address: _____

Telephone No.: _____

FAITHFUL PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the Big Bear Municipal Water District, California ("DISTRICT"), awarded to _____, ("Principal") a contract for the work ("Contract") described as _____ ("Project") in the amount of _____ Dollars (\$ _____) ("Penal Sum"); and,

WHEREAS, the Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract;

NOW, THEREFORE, we, the undersigned Principal and Surety, _____ ("SURETY"), a California admitted surety insurer, are held and firmly bound, by these presents, unto the DISTRICT for one hundred percent (100%) of the total amount payable by the DISTRICT under the terms of the Contract, lawful money of the United States of America, for payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal, its heirs, executors, administrators, successors, assigns, and subcontractors, shall in all things stand to and abide by and well and truly keep and perform all the undertakings, terms, covenants, conditions, and agreements in the Contract which is attached hereto and incorporated herein by reference and any alteration and/or amendments thereof, made as therein provided, including, but not limited to, the provisions regarding Contract duration and liquidated damages, all within the time and in the manner therein designated in all respects according to their true intent and meaning, and shall indemnify and save harmless the DISTRICT, its officers, agents and employees, of and from any and all loss, damage, and expense, including costs and reasonable attorney's fees, from which the DISTRICT, its officers, agents and employees, may sustain by reason of Principal's failure to do so, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period of one year after the acceptance of the work by DISTRICT, during which time if Principal shall fail to make full, complete, and satisfactory repair and replacements and totally protect the DISTRICT from loss or damage made evident during the period of one year from the date of completion of the work, and resulting from or caused by defective materials or faulty workmanship, the above obligation in Penal Sum thereof shall remain in full force and effect. The obligation of SURETY hereunder shall continue so long as any obligation of Principal remains.

Whenever Principal shall be, and is declared by the DISTRICT to be, in default

under the contract, the DISTRICT having performed the DISTRICT's obligations thereunder, the Surety shall promptly remedy the default in a manner mutually agreeable to both DISTRICT and SURETY in one of the following manners:

1. Immediately deposit with District such amount as District may reasonably estimate as the cost of completing all of Principal's obligations; or
2. SURETY's takeover of the performance obligations to complete the Contract by entering into an agreement with a completion contractor with terms and conditions consistent with the original contract between DISTRICT and Principal; or
3. SURETY shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by SURETY of the lowest responsive and responsible bidder, prepare a contract between such bidder and the DISTRICT (to the DISTRICT's satisfaction), and make available as work progresses sufficient funds to pay the cost of completion less the balance of that contract price, but not exceeding, including other costs and damages for which SURETY may be liable hereunder, the Penal Sum.

The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Principal by the DISTRICT under the Contract and any modifications thereto, less the amount previously properly paid by the DISTRICT to the Principal.

SURETY expressly agrees that the DISTRICT may reject any contractor or subcontractor, which may be proposed by SURETY in fulfillment of its obligations in the event of default by the Principal. SURETY shall not utilize Principal in completing the Contract nor shall Surety accept a bid from Principal for completion of the work if the DISTRICT, when declaring the Principal in default, notifies Surety of the DISTRICT's objection to Principal's further participation in the completion of the work.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the DISTRICT named herein or the successors or assigns of the DISTRICT.

The SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration or modification of the Contract or Project documents, or of the work to be performed thereunder, shall in any way affect its obligations on this bond; and it does hereby waive notice of any change, amendment, extension of time, alteration or modification of the Contract or Project documents or of work to be performed thereunder.

The prevailing party on any dispute (whether legal, equitable, or otherwise) regarding the interpretation, enforcement, and respective rights and obligations under this Performance Bond shall be entitled to recovery of reasonable attorney's fees and costs (including but not limited to consultant's and/or expert fees and costs).

IN WITNESS HEREOF, we have hereto set our hands and seals on this _____ day of _____, 20__.

NOTE:

1. This Bond must be executed in duplicate and dated.
2. All signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached.
3. DATE OF BOND MUST NOT BE BEFORE DATE OF CONTRACT.
4. Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.

PRINCIPAL'S SIGNATURE	
Principal Name:	_____
By:	_____
	Signature (above)
Type or Print Name:	_____
Title:	_____
Note: Attach the Notary Public Acknowledgement of Principal's Signature	

SURETY'S SIGNATURE	
Surety's Name:	_____
By:	_____
	Signature of Attorney-in-Fact for Surety (above)
Type or Print Name of Attorney-in-Fact:	_____
Note: Attach (i) Attorney-In-Fact Certification; (ii) Notary Public Acknowledgment of Authorizing Signature on Attorney-Fact Certification; and (iii) Notary Public Acknowledgement of Attorney-In-Fact's Signature	

CONTACT INFORMATION FOR NOTICES TO THE SURETY	
Contact Name:	_____
Mailing Address:	_____
District, State, Zip Code:	_____
Email Address:	_____
Telephone No.:	_____

(SAMPLE) AGREEMENT FOR CONSTRUCTION SERVICES
BETWEEN BIG BEAR MUNICIPAL WATER DISTRICT AND
[CONTRACTOR NAME]

FOR

‘West Ramp’ Parking Lot Repair

THIS AGREEMENT FOR CONSTRUCTION SERVICES (“**Agreement**”) is made and entered into on [DATE] (“**Effective Date**”), by and between the Big Bear Municipal Water District, a California municipal corporation and [CONTRACTOR NAME AND CORPORATE STATUS] (“**Contractor**”). District and Contractor may be referred to, sometimes individually or collectively, as “**Party**” or “**Parties.**” Contractor’s State License Number is [License No.] and DIR Registration Number is [DIR No.]

RECITALS

A. District desires a public works project for ‘East Ramp’ Parking Lot Repair (“**Project**”) and issued a Notice Inviting Bids dated May 31, 2023 for the Project.

B. Bids for the Project were received, publicly opened, and declared on the date specified in said notice, or as otherwise accepted and processed through those procedures and approvals authorized under the Big Bear Municipal Water District Municipal Code.

C. District accepted the bid of Contractor dated [BID DATE] pursuant to legal requirements and selected Contractor for the Project.

D. District desires to retain Contractor, on an independent contractor basis, for the Project, as more particularly described below.

E. Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

F. Pursuant to the Big Bear Municipal Water District Municipal Code and California state law, District has authority to enter into and execute this Agreement.

G. The Parties desire to formalize the selection of Contractor for performance of the services and desire that the terms of that performance be as particularly defined and described herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

ARTICLE 1. CONTRACTOR SERVICES

1.1 Scope of Work.

The Contractor shall perform all of the work, furnish all labor, materials, equipment, tools, utility services, and transportation, and comply with all of the specifications and requirements (collectively referred to herein as the “**services**” or “**work**” hereunder) in the Contract Documents for **‘West Ramp’ Parking Lot Repair**(“**Project**”). All such work shall be performed in a good and workmanlike manner, as reasonably determined by the District, and shall be performed in compliance with all local, state, and federal laws and regulations. By entering into this Agreement, Contractor acknowledges that there may be other contractors on the site whose work will be coordinated with that of its own. Contractor expressly agrees that it will cooperate with other contractors and will do nothing to delay, hinder, or interfere with the work of other separate contractors, the District, the Project Manager, architects, inspectors, engineers, or utilities. As used herein, “**Contract Documents**” refers to all of the following documents, all of which are component parts of this Agreement as if herein set out in full or attached hereto:

- A. Notice of Inviting Bids, Bid Forms & Instructions to Bidders
- B. Scope of Work, if any
- C. Plans for the Project, if any
- D. Project Construction Schedule
- E. General Specifications and Provisions, if any
- F. Special Provisions for the Project, if any
- G. Standard Specifications
- H. Technical Specifications
- I. Addendum(s) as issued
- J. Contractor’s Signed Bid Proposal and Information Required of Bidder
- K. Designated Subcontractors List, if any
- L. Bid Bond, Performance Bond, Labor & Materials Payment Bond, and any other Bonds as required by this Agreement
- M. Insurance Certificates and Written Endorsements
- N. Notice to Proceed (issued by the District)
- O. Notice of Completion (issued by the District at final completion of the project)

P. Guaranty Form

Q. All Changes Orders properly authorized after execution of Agreement.

The Contract Documents are incorporated into this Agreement and made part hereof. In the event of any conflict between the terms of the Contract Documents and this Agreement, the terms of this Agreement shall govern.

1.2 Incorporation of Greenbook.

The provisions of the 2018 Edition of the Standard Specifications for Public Works Construction, as updated by errata, (“**Greenbook**”) are incorporated herein as the Standard Specifications, except as explicitly modified herein or by the Contract Documents. In the event of any conflict between the provisions of the Greenbook and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Labor and Wage Laws.

(a) Public Work. The Parties acknowledge that the work to be performed under this Agreement is a public work as defined in Labor Code section 1720 and that this Agreement is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations (“**DIR**”) implementing such statutes. The work performed under this Agreement is subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.

(b) Registration with DIR. Pursuant to Labor Code section 1771.1, Contractor and all subcontractors must be registered with, and pay an annual fee to, the DIR prior to and during the performance of any work under this Agreement.

(c) Prevailing Wages. Contractor shall pay prevailing wages to the extent required by Labor Code section 1771. Pursuant to Labor Code section 1773.2, copies of the prevailing rate of per diem wages are on file at District Hall and on the DIR website at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm> and will be made available to any interested party on request. By initiating any work under this Agreement, Contractor acknowledges receipt of a copy of the DIR determination of the prevailing rate of per diem wages, and Contractor shall post a copy of the same at each job site where work is performed under this Agreement. If this Agreement is subject to the payment of federal prevailing wages under the Davis-Bacon Act (40 U.S.C. § 3141 *et seq.*), then Contractor shall pay the higher of either the state or federal prevailing wage applicable to each laborer.

(d) Penalty for Failure to Pay Prevailing Wages. Contractor shall comply with and be bound by the provisions of Labor Code sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to the District, forfeit the sum of \$200 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Contractor or by any subcontractor.

(e) Payroll Records. Contractor shall comply with and be bound by the provisions of Labor Code section 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Labor Code section 1776; certify and make such payroll records available for inspection as provided by Labor Code section 1776; and inform the District of the location of the records. Contractor shall submit all required reporting and records directly to the DIR.

(f) Apprentices. Contractor shall comply with and be bound by the provisions of Labor Code sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, section 200 *et seq.* concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Contractor shall provide District with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Agreement, Contractor and each of its subcontractors shall submit to the District a verified statement of the journeyman and apprentice hours performed under this Agreement.

(g) Eight-Hour Work Day. Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code section 1810.

(h) Penalties for Excess Hours. Contractor shall comply with and be bound by the provisions of Labor Code section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to the District, forfeit twenty-five dollars (\$25) for each worker employed in the performance 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 Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half (1½) times the basic rate of pay.

(i) Workers' Compensation. California Labor Code sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. In accordance with the provisions of California Labor Code section 1861 and Section 5.1 and 5.2 of this agreement, Contractor 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 contract.”

(j) Contractor's Responsibility for Subcontractors. For every subcontractor who will perform work under this Agreement, Contractor shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720)

of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for work under this Agreement. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

1.4 Compliance with Law.

All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of District and any federal, state or local governmental agency having jurisdiction in effect at the time services are rendered. District, and its elected and appointed officers, employees, agents, designated volunteers, attorneys, successors and assigns shall not be liable at law or in equity for failure of Contractor to comply with this Section.

1.5 Licenses, Permits, Fees and Assessments.

Contractor has California State Contractor's License Board License Classification [LICENSE CLASS], No. [LICENSE NO.] and shall maintain said license and obtain and maintain, at its sole cost and expense, such licenses, permits, registrations, and approvals as may be required by law for the performance of the services required by this Agreement. 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 services required by this Agreement, and shall indemnify, defend and hold harmless District, its officers, employees or agents of District, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against District hereunder.

1.6 Familiarity with Work.

By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the Scope of Work to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder.

1.7 Discovery of Unknown Conditions.

(a) Pursuant to Public Contract Code section 7104, Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any: (i) material Contractor believes may be hazardous waste as defined in Section 25117 of the Health & Safety Code required to be removed to a Class I, II, or III disposal site in accordance with existing law; (ii) subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids on the project; or (iii) unknown physical conditions at the site of any unusual nature, different materially from those

ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

(b) District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work, shall issue a change order in accordance with this Agreement.

(c) In the event that a dispute arises between District and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by the Agreement, but shall proceed with all work to be performed under the Agreement. Contractor shall retain any and all rights provided either by contract or by law, which pertain to the resolution of disputes and protests between the contracting Parties.

1.8 Unidentified Utilities.

To the extent required by Government Code section 4215, District will compensate Contractor for the cost of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating utility facilities not identified by District in the Contract Documents with reasonable accuracy, and for equipment on the project necessarily idled during such work. Nothing herein shall be deemed to require District to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the project site can be inferred from the presence of other visible facilities, such as buildings, meters, and junction boxes, on or adjacent to the site of the construction; provided, however, nothing herein shall relieve District from identifying main or trunklines in the plans and specifications. If Contractor, while performing the work, discovers utility facilities not identified by District in the plans or specifications, Contractor shall immediately notify District and the utility in writing. This Agreement is subject to Government Code sections 4216 through 4216.9. Contractor must notify utilities and obtain an identification number before excavation or be subject to liability for damages to subsurface installations. Pursuant to Government Code Sections 4216 through 4216.9, the methods used and costs involved to locate existing elements, points of connection and all construction methods are Contractor's sole responsibility. Accuracy of information furnished, as to existing conditions, is not guaranteed. Contractor, at its sole expense, must make all investigations necessary to determine locations of existing elements, which may include, without limitation, contacting U.S.A. alert and other private underground locating firm(s), and/or utilizing potholes, specialized locating equipment and/or hand trenching.

1.9 Trench Excavation.

Pursuant to Labor Code section 6705, if this Agreement is for more than \$25,000 and requires the excavation of any trench or trenches five feet or more in depth, Contractor shall submit, in advance of such excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. The plan shall be reviewed and accepted by the District, or a registered civil or structural engineer employed by the District to whom authority has

been delegated, prior to the excavation. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. This section shall not be deemed to allow the use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders. This subsection shall not be construed to impose tort liability on the District or any of its employees. Full compensation for sheeting, shoring, bracing, sloping, and all other provisions required for worker protection shall be considered as included in the contract price shown in the appropriate Bid item, and no additional compensation will be allowed therefor.

1.10 Protection and Care of Work and Materials.

The Contractor shall adopt reasonable methods, including providing and maintaining storage facilities, during the life 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 caused by District's own negligence. Stored materials shall be reasonably accessible for inspection. Contractor shall not, without District's consent, assign, sell, mortgage, hypothecate, or remove equipment or materials which have been installed or delivered and which may be necessary for the completion of the work.

1.11 Warranty.

Contractor warrants all work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) calendar days after being notified in writing by the District of any defect in the work or non-conformance of the work to the Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act as soon as requested by the District in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair, remove and/or replace any portions of the work (or work of other contractors or subcontractors) damaged by its defective work or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor's obligation hereunder to correct defective work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as the District may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the District, regardless of whether or not such warranties and guarantees have been transferred or assigned to the District by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the District. In the event that Contractor fails to perform its

obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the District, the District shall have the right to correct and replace any defective or non-conforming work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the District for any expenses incurred hereunder upon demand.

1.12 Additional Work and Change Orders.

(a) District shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Work or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless an authorized written change order is first given by the District to the Contractor, incorporating therein any adjustment in (i) the Compensation Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor ("Change Order"). All Change Orders must be signed by the Contractor and District's authorized representative, prior to commencing the extra work thereunder.

(b) Any increase in compensation of up to [CONTINGENCY PERCENTAGE] of the Compensation Sum or any increase in the time to perform of up to [CONTINGENCY TERM] calendar / working days and which are not detrimental to the Work or to the interest of the District, may be approved by the District's Director of Public Works or District Engineer, or either of their designees. Any greater increases, taken either separately or cumulatively, must be approved by the District Council.

(c) Any adjustment in the Compensation Sum for a Change Order must be in accordance with the rates set forth in the Contractor's Bid. If the rates in the Contractor's Bid do not cover the type of work in the Change Order, the cost of such work shall not exceed an amount agreed upon in writing and signed by Contractor and District's General Manager or either of their designees. If the cost of the Change Order cannot be agreed upon, the District will pay for actual work of the Change Order completed, to the satisfaction of the District, as follows:

(i) Labor: The cost of labor shall be the actual cost for wages of workers and subcontractors performing the work for the Change Order at the time such work is done. The use of labor classifications that would increase the cost of such work shall not be permitted.

(ii) Materials and Equipment: The cost of materials and equipment shall be at cost to Contractor or lowest current price which such materials and equipment are reasonably available at the time the work is done, whichever is lower.

(iii) If the cost of the extra work cannot be agreed upon, the Contractor must provide a daily report that includes invoices for labor, materials and equipment costs for the work under the Change Order. The daily report must include: list of names of workers, classifications, and hours worked; description and list of quantities of materials used; type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable; description of other District authorized services and expenditures in such detail as the District may require. Failure to submit a daily report by the close of the next

working day may, at the District's sole and absolute discretion, waive the Contractor's rights for that day.

(d) It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Work. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Work may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor. District may in its sole and absolute discretion have similar work done by other contractors.

(e) No claim for an increase in the Compensation Sum or time for performance shall be valid unless the procedures established in this Section are followed.

1.13 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements," attached hereto as **Exhibit B** and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit B and any other provisions of this Agreement or the Bid Documents, the provisions of Exhibit B shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Compensation Sum.

Subject to any limitations set forth in this Agreement, District agrees to pay Contractor the amount of [REDACTED] as set forth in Contractor's Bid attached hereto as **Exhibit A** and incorporated herein by this reference ("**Compensation Sum**"). Subject to any additions or deductions that may be made by Change Order or amendment, and any penalties or damages that may be assessed against Contractor, Contractor shall receive a total compensation no greater than, including reimbursement of Contractor's expenses, an amount not to exceed the contingency amount of [REDACTED] plus the Compensation Sum for a total of [**CONTRACT NOT-TO-EXCEED AMOUNT (BID+CONTINGENCY)**] ("**Contract Sum**") for completion of the work.

2.2 Invoices.

(a) Each month Contractor shall furnish to District an original invoice for all work performed during the preceding month using the form attached hereto as **Exhibit E** and incorporated herein by this reference. By submitting an invoice for payment under this Agreement, Contractor is certifying compliance with all provisions of the Agreement.

(b) All invoices shall include a copy of Contractor's Certified Payroll and proof that Certified Payroll has been submitted to the DIR. Contractor shall also submit a list of the prevailing wage rates (including federal prevailing wage rates, if applicable) for all employees and subcontractors providing services under this Agreement, as applicable, with Contractor's first invoice. If these rates change at any time during the term of the Agreement, Contractor shall submit a new list of rates to the District with its first invoice following the effective date of the rate change.

2.3 Payment.

(a) Payments Made by District. District shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by District, District will cause Contractor to be paid any progress payment generally within thirty (30) calendar days of receipt of Contractor's correct and undisputed invoice; however, Contractor acknowledges and agrees that due to District warrant run procedures, the District cannot guarantee that payment will occur within this time period. In the event that District does not cause Contractor to be paid any progress payment within thirty (30) calendar days of receipt of an undisputed and properly submitted invoice and provided the Project is for construction, Contractor shall be entitled to the payment of interest to the extent allowed under Public Contract Code section 20104.50. In the event any charges or expenses are disputed by District, the original invoice shall be returned by District to Contractor, not later than seven (7) calendar days after receipt by the District, for correction and resubmission. Returned invoices shall be accompanied by a document setting forth in writing the reasons why the payment request was rejected. Review and payment by the District of any invoice provided by the Contractor shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

(b) Payments Made by Contractor to Subcontractors. Contractor shall remit payments owed to subcontractors within fifteen (15) calendar days after receiving payments by District if payments are owed by Contractor to any subcontractor qualifying as a small business enterprise, and within thirty (30) calendar days if payments are owed by Contractor to any subcontractor other than a small business enterprise.

2.4 Retention.

Pursuant to Section 9203 of the Public Contract Code, District will deduct a five percent (5%) retention from all progress payments, which shall be released to Contractor no later than sixty (60) calendar days from completion of the work. In the event of a dispute between District and Contractor, District may withhold from the final payment an amount not to exceed one hundred fifty percent (150%) of the disputed amount.

2.5 Waiver.

Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

2.6 Substitution of Securities.

(a) In conformance with the State of California Public Contract Code section 22300, Contractor may substitute securities for any monies withheld by the District to ensure performance under this Agreement.

(b) At the request and expense of Contractor, Contractor has the option of establishing an escrow account with a state or federally chartered bank which shall serve as an escrow agent, for Contractor's direct deposit of securities as a substitute for retention earnings required to be withheld by the District. Upon Contractor's completion of its obligations hereunder, as evidenced by the District's acceptance of the work pursuant to Section 3.4 hereof, the escrow agent shall return the securities to Contractor. The escrow agent shall notify the District within ten (10) calendar days after deposit of the securities. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention. Securities shall be held in the name of the District and shall designate Contractor as the beneficial owner. Alternatively, on written request of Contractor, the District shall make payments of the retention earnings directly to the escrow account.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Schedule of Performance.

Contractor shall complete the Project within [DAYS] calendar / working days ("Contract Time") after receiving a "Notice to Proceed" from the District in accordance with any schedule contained in or required to be provided by the Proposal or Contract Documents, and any revisions thereof approved by the District in writing. All of Contractor's work on the Project shall be completed within durations established for the individual activities as set forth in the Contract Documents, and any revisions thereof approved by the District in writing. Time is of the essence. If the work is not completed within said time periods, liquidated damages shall apply. The term of this Agreement shall expire one (1) year following District's acceptance of the Project.

3.2 Liquidated Damages.

Pursuant to Government Code section 53069.85, if work is not completed in strict compliance with Section 3.1 of this Agreement or in strict accordance with the schedule of performance provided by any schedule contained in or required to be provided by the Contract Documents (such deadlines collectively referred to herein as "Agreement Deadlines"), it is understood, acknowledged and agreed that the District will suffer damage. It is therefore agreed that the Contractor and its sureties shall pay to the District the sum of \$250.00 for each and every calendar day of delay beyond the completion date in Section 3.1 of this Agreement, or beyond any completion schedule, construction schedule or Project milestones established in or pursuant to the Contract Documents, or beyond the time indicated in the Contract Documents for any individual activity to be performed pursuant to the Agreement. Contractor expressly understands, acknowledges and agrees that such liquidated damages can and shall be imposed if the Contractor does not meet each and every aspect of any activity schedule, completion schedule, construction schedule or Project milestones established in or pursuant to the Contract Documents. If the District accepts work or makes any payment under this Agreement after a default by reason of delays, the acceptance of such work and/or payment(s) shall in no respect constitute a waiver or modification of any provisions regarding Agreement Deadlines, a completion schedule, the Project schedule or the accrual of liquidated damages. In the event the same is not paid, the Contractor further agrees that the District may deduct the amount thereof from any money due or that may become due the Contractor under the Agreement. This Section does not exclude recovery of damages under provisions of the Contract Documents, and is expressly in addition to the District's ability to seek

other damages. To the extent required by Government Code section 4215, Contractor shall not be assessed liquidated damages for delay in completion of the work when such delay was caused by the failure of the District or owner of a utility to provide for removal or relocation of utility facilities.

3.3 Force Majeure.

The time period(s) specified in the Section 3.1 and pursuant to this Agreement for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the District, (with the express exception of delays arising from the impact of COVID-19 and its variants to the extent such impact is foreseeable or should have reasonably been foreseeable), if the Contractor shall within ten (10) calendar days of the commencement of such delay notify the Project Manager in writing of the causes of the delay. The Project Manager shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Project Manager such delay is justified. The Project Manager's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Contractor be entitled to recover damages against the District for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Final Acceptance.

Acceptance of the Project shall only be by action of the District. Neither the acceptance nor any prior inspections or failure to inspect shall constitute a waiver by District of any defects in the work. From and after acceptance, the Project shall be owned and operated by District. As a condition to acceptance, Contractor shall certify to District in writing that all of the work has been performed in strict conformity with the Agreement and that all costs have been paid or supplied to District for security required herein, satisfactory to District, guaranteeing such performance.

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Contractor.

Contractor's ownership, management and licensing is tied to specific principal representatives ("Principals") who are designated as [PRINCIPAL NAMES, TITLES, WORK PHONE AND WORK EMAIL]. The Principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of the Project Manager. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this

Agreement. Contractor shall notify (and, as required by law, secure District approval in regards to subcontractors before changes in Contractor's subcontractors, of) District of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Contractor.

Contractor shall have no authority to bind District in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against District, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by District. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of District. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to District's employees. Contractor expressly waives any claim Contractor may have to any such rights.

4.3 Project Manager.

The **Project Manager** shall be designated by the District's Director of Public Works or District Engineer. It shall be the Contractor's responsibility to assure that the Project Manager is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by District to the Project Manager. Unless otherwise specified herein, any approval of District required hereunder shall mean the approval of the Project Manager. The Project Manager shall have authority, if specified in writing by the District's Director of Public Works or District Engineer, to sign all documents on behalf of the District required hereunder to carry out the terms of this Agreement.

4.4 Independent Contractor.

Neither District, nor any of its officers, employees or agents, shall have any control over the manner or means by which Contractor, or its officers, employees, agents or subcontractors, perform the services required herein, except as otherwise set forth herein. Contractor shall perform all services required herein as an independent contractor of District and shall remain under only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it, or any of its officers, employees, agents or subcontractors, are officers, employees or agents of District. District shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor. Contractor shall not incur or have the power to incur any debt, obligation or liability whatever against District, or bind District in any manner. Contractor represents and warrants that the personnel used to provide services to District pursuant to this Agreement shall at all times be under Contractor's exclusive control and direction. No District employee benefits shall be available to Contractor, its officers, employees, agents or subcontractors, in connection with the performance of this Agreement. District shall not be liable for compensation or indemnification to Contractor, its officers, employees, agents or subcontractors, for injury or sickness arising out of performing services hereunder. In the event that Contractor or any officer, employee, agent, or subcontractor of Contractor providing services

under this Agreement claims or is determined by a federal or state agency, a court of competent jurisdiction, or the California Public Employees' Retirement System, to be classified as other than an independent contractor for District, then Contractor shall indemnify, defend, and hold harmless District for the payment of any and all assessed fines, penalties, judgments, employee and/or employer contributions, and any other damages and costs assessed to District as a consequence of, or in any way attributable to, the assertion that Contractor, or any officer, employee, agent, or subcontractor Contractor used to provide services under this Agreement, is/are employees of District.

4.5 Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the District to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the District and in compliance with the Subletting and Subcontracting Fair Practices Act, Public Contract Code section 4100, *et seq.* Contractor shall be responsible for ensuring compliance by any subcontractor or lower tier subcontractor under it with this Agreement, all state and federal laws, codes and regulations, and municipal ordinances and regulations of District. All subcontractors shall obtain, at its or Contractor's expense, such licenses, permits, registrations and approvals (including from the District) as may be required by law for the performance of any services or work under this Agreement. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of District. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be voidable at the option of District. No approved transfer shall release the Contractor, or any surety or insured of Contractor, of any liability hereunder without the express consent of District.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

Prior to commencement of any services under this Agreement, and without limiting Contractor's indemnification obligation to District, Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to District, for the duration of the Agreement, primary policies of insurance of the type and amounts below, as marked by checkmark, issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by District, which shall cover all elected and appointed officers, employees, agents, designated volunteers, and attorneys of District. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work. District reserves the right at any

time during the term of the Agreement to change the amounts and types of insurance required by giving Contractor ninety (90) calendar days advance written notice of such change. If such change results in substantial additional cost to Contractor, District and Contractor may renegotiate Contractor's compensation solely in regards to insurance coverage.

(a) General liability insurance. A policy of commercial general liability insurance, with coverage at least as broad as Insurance Services Office ("ISO") form CG 00 01, written on a per occurrence basis for bodily injury, personal injury and property damage. Defense costs must be paid in addition to limits. Coverage for an additional insured shall not be limited to its vicarious liability. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted. Limits shall be no less than \$5,000,000 per occurrence for all covered losses, and no less than \$10,000,000 general aggregate, for bodily injury, personal injury and property damage, and a \$10,000,000 completed operations aggregate. Contractor must maintain a policy of commercial general liability insurance for as long as there is a statutory exposure to completed operations claims.

(b) Automobile liability insurance. A policy of comprehensive automobile liability insurance, at least as broad as ISO form CA 00 01, written on a per occurrence basis covering bodily injury and property damage in an amount not less than \$1,000,000 combined single limit for each accident. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.

(c) Workers' compensation insurance. Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000). A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California (statutory limits) as well as a policy of employer's liability insurance (with limits of at least \$1,000,000), which shall each indemnify, insure and provide legal defense for Contractor against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Contractor in the course of carrying out the work or services contemplated in this Agreement. In addition, Contractor shall require each subcontractor to similarly maintain a policy of worker's compensation insurances and employer's liability insurance in according with the laws of the State of California for all of the subcontractor's employees.

(d) Builder's Risk Insurance. Contractor shall maintain, from upon commencement of work and through the entire duration of the Project until only the District has an insurable interest, Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions or provisional limit provisions. All subcontractors (excluding those solely responsible for design work) of any tier and suppliers shall be included as additional insureds as their interests may appear. Contractor shall not be required to maintain property insurance for any portion of the Project following transfer of control thereof to District. The policy shall contain a provision that all proceeds from the Builder's Risk policy shall be made payable to the District. The District will act as a fiduciary for all other interests in the Project. Policy shall be provided for replacement value on an "all risk" basis for the completed value of the Project. There shall be no coinsurance penalty or provisional limit provision in any such policy. The policy must

include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) ordinance or law coverage for contingent rebuilding, demolition, and increased costs of construction; (5) transit coverage (unless insured by the supplier or receiving contractor), with sub-limits sufficient to insure the full replacement value of any key equipment item; (6) ocean marine cargo coverage insuring any Project materials or supplies, if applicable; (7) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Project site or any staging area. If the Project does not involve new or major reconstruction, then at the option of District, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the work, including during transit, installation, and testing at the Project site.

(e) □Pollution Liability Insurance. Contractor shall maintain Environmental Impairment Liability insurance, written on a Contractor's Pollution Liability form or other form acceptable to District providing coverage for liability arising out of sudden, accidental, and gradual pollution and remediation. The policy limit shall be no less than \$5,000,000 per claim and \$10,000,000 in the aggregate. All activities contemplated in this Agreement shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.

(f) Excess Liability and Umbrella Liability Insurance. Excess liability insurance and/or umbrella liability insurance may be used to satisfy the obligations herein. If excess liability insurance is used then the policy shall meet all the requirements herein and be at least as broad as the primary coverages set forth herein. Such policy shall: 1) include a drop down feature requiring the policy to respond if primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason; 2) be payable on behalf of wording as opposed to reimbursement; 3) have concurrency of effective dates with primary policies; 4) "follow form" to the underlying primary policies; and, 5) provide insureds, under primary policies required herein, shall be insureds under the excess liability policy.

5.2 General Insurance Requirements.

(a) Proof of Insurance, Enforcement and Notice. No work or services under this Agreement shall commence until both Contractor has provided District with insurance certificates, endorsement forms and appropriate insurance binders, signed by a person authorized by the Insurer to bind coverage on its behalf, evidencing the above insurance coverages, as well as said documentation is approved by District. District reserves the right to inspect complete, certified copies of, and endorsements to, all required insurance policies, at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to District. In the event any insurance policy required under this Agreement is cancelled or amended (and the insurance policy is not replaced pursuant to

subsection (b) below), or does not comply with Article 5, then: 1) District has the right but not the duty to obtain insurance required herein and any premium paid by District will be promptly reimbursed by Contractor or District will withhold amounts sufficient to pay premium from Contractor payments; or, 2) District, notwithstanding any other provisions of this Agreement, may immediately terminate this Agreement. Contractor shall give District prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required insurance policies.

(b) Cancellation/Amendment. All of herein required policies of insurance shall provide the insurance may not be amended or cancelled by insurer or any Party hereto without providing thirty (30) calendar days prior written notice (with exception of ten (10) calendar days prior written notice for nonpayment of premium) to District. In the event any of said policies of insurance are amended or cancelled, Contractor shall, five (5) business days prior to the cancellation date, submit new evidence of insurance, or reinstatement of policy, in conformance with this Agreement to District.

(c) Additional Insureds. All of the above policies shall name District and its elected and appointed officers, employees, agents and designated volunteers ("**District Parties**") as additional insureds and such coverage shall contain no special limitations on the scope of protection afforded to District and District Parties. A severability of interests provision must apply for all additional insureds ensuring that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability, and policies of insurance shall not contain any cross-liability exclusions.

(d) Primary, Subrogation, Contribution and Coverage. All of the above policies of insurance shall be primary insurance. The insurers for above policies, Contractor and any subcontractors are all deemed hereof to waive all rights of subrogation and contribution they may have against District or District Parties, and their respective insurers, and all insurance policies required herein shall be endorsed to waive such rights. Any insurance maintained by District or District Parties will apply in excess of, and not contribute with, Contractor's insurance. If Contractor maintains broader coverage and/or higher limits than the minimum amounts provided herein, District requires and shall be entitled to the broader coverage and/or higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to District and District Parties. None of the coverages required herein will be in compliance with this Agreement if they include any limiting endorsement of any kind that has not been first submitted to District and approved of in writing. Requirements of specific coverage features or limits contained herein are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any Party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

(e) Limitations, Self- Insured Retention and Deductibles. Contractor agrees that requirements of Article 5 shall not be construed as limiting in any way the extent to which Contractor may be held responsible for the payment of damages to any persons or property resulting from Contractor's activities or the activities of any person or persons for which Contractor is otherwise responsible nor shall it limit Contractor's indemnification liabilities as

provided in Section 5.3. All insurance policies must specify that where the primary insured does not satisfy any self-insured retention, any additional insured may satisfy the self-insured retention (without impairment of obligation of primary insured under this Agreement to satisfy any self-insured retention). Any deductibles or self-insured retentions must be declared to and approved by District. At District's option, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects District and District Parties, or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, attorneys' fees, defense expenses and claims.

(f) Completed operations coverage. Completed operations coverage shall extend a minimum of three 1 year after project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the policy must include work performed "by or on behalf" of the insured. Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer.

(g) Pass through clause. Contractor agrees to ensure that its subconsultants, subcontractors, and any other party involved with the Project who is brought onto or involved in the project by Contractor, provide the same minimum insurance coverage and endorsements required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of Article 5 of this Agreement. Contractor agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the Project will be submitted to District for review.

5.3 Indemnification.

(a) General Obligations. Contractor agrees, to the maximum extent permitted by law, to indemnify, defend and hold harmless District and its elected and appointed officers, employees, agents, designated volunteers, attorneys, successors and assigns (each an "**Indemnitee**" and collectively, "**Indemnitees**") against, and will hold and save them and each of them harmless from, whether actual or threatened, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities (herein "**Claims or Liabilities**") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable (each an "**Indemnitor**" and collectively, "**Indemnitors**"), or arising from Indemnitors' reckless or willful misconduct, or arising from Indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith: 1) Contractor will defend any action or actions filed or threatened in connection with any such Claims or Liabilities, or at option of Indemnitee(s) will reimburse and pay for all costs and expenses, including legal costs and attorneys' fees, incurred by Indemnitee(s) in connection therewith; and, 2) Contractor will promptly pay any judgment rendered against Indemnitee(s) for any such Claims or Liabilities, and will save and hold Indemnitee(s) harmless therefrom.

(b) Further Provisions. The indemnity obligation herein shall be binding on

successors, assigns and heirs of Contractor and shall survive termination of this Agreement. Contractor shall incorporate similar indemnity agreements as provided herein with its subcontractors, and if Contractor fails to do so Contractor shall be fully responsible to indemnify District hereunder therefor. Failure of District and/or District Parties (collectively "District" for solely this Section 5.2(b)) to monitor compliance with any of the indemnification provisions herein shall not be a waiver hereof. The indemnification provisions herein do not apply to claims or liabilities occurring as a result of District's sole negligence, active negligence or willful misconduct, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from District's negligence. The indemnification provided herein includes Claims or Liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Indemnitors in the performance of professional services hereunder. Payment of invoices by District is not a condition precedent to enforcement of the indemnity obligation herein. In the event of any dispute between Contractor and District, as to whether liability arises from the sole negligence, active negligence or willful misconduct of District, Contractor will be obligated to pay for District's defense until either such time as a final judgment has been entered adjudicating, or agreement between the Parties is reached determining, District as solely negligent, actively negligent or responsible for willful misconduct. Contractor will not be entitled in the absence of such a determination or agreement to any reimbursement of defense costs including but not limited to attorneys' fees, expert fees and costs of litigation. In instances where District is shown to have been actively negligent and/or engaged in willful misconduct, and where District's active negligence and/or willful misconduct accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence and/or willful misconduct of District. District may offset against the amount of any fees due to Contractor under this Agreement any amount due to District from Contractor as a result of Contractor's failure to promptly pay to District any reimbursement or indemnification arising under Section 5.2 of this Agreement. Such offset, if any, does not satisfy any amount, greater than the offset, due to District from Contractor.

5.4 Notification of Third-Party Claims.

Pursuant to Public Contract Code Section 9201, the District has full authority to compromise or otherwise settle any claim relating to this Agreement at any time. District shall timely notify Contractor of the receipt of any third-party claim relating to the work under this Agreement. District shall be entitled to recover from Contractor its reasonable costs incurred in providing such notification.

5.5 Performance and Payment Bonds.

Concurrently with execution of this Agreement, unless otherwise expressly provided in the bid documents, Contractor shall deliver to the District all of the following bonds:

(a) A performance bond securing the faithful performance of this Agreement, in an amount not less than 100% of the Compensation Sum.

(b) A payment bond, securing the payment of all persons furnishing labor and/or materials in connection with the work under this Agreement, in an amount not less than 100% of the Compensation Sum.

All bonds shall be on the applicable forms provided in **Exhibit C** and **Exhibit D** attached hereto and incorporated herein by this reference. The bonds shall each contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his/her power of attorney. The bonds shall be unconditional and remain in force during the entire term of the Agreement until released pursuant to Section 5.7 hereof.

5.6 Sufficiency of Surety.

Bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated “A” or better in the most recent edition of Best’s Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better. If the District determines that the work to be performed under this Agreement creates an increased or decreased risk of loss to the District, the Contractor agrees that the minimum limits of the bonds may be changed accordingly upon receipt of written notice from the District’s Risk Manager. If such change results in substantial additional cost to Contractor, District and Contractor may renegotiate Contractor’s compensation solely in regards to bond coverage.

5.7 Release of Securities.

District shall release the performance bond and payment bond when the following have occurred:

- (a) Contractor has made a written request for release and provided evidence of satisfaction of all other requirements under both the forms of the applicable bond attached to this Agreement as well as Article 5 of this Agreement;
- (b) the Project has been accepted; and
- (c) after passage of the time within which lien claims are required to be made pursuant to applicable laws; if lien claims have been timely filed, District shall hold the payment bond until such claims have been resolved, Contractor has provided statutory bond, or otherwise as required by applicable law.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Contractor shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies, certified and accurate copies of payroll records in compliance with all applicable laws, or other documents relating to the disbursements charged to District and services performed hereunder (the “**books and records**”), as shall be necessary to perform the services required by this Agreement and enable the Project Manager to evaluate the performance of such services. Any and all such books and records shall be maintained in accordance with generally accepted accounting principles, including but not limited to in accordance with the requirements of Labor Code section 1776, shall be complete and detailed, and shall be readily accessible. The Project Manager shall have full and free access to such books and records at all times during normal business hours of District, including the right to inspect, copy, audit and make records and transcripts. Such books and records shall be maintained either for a

period of no less than three (3) years following completion of the services hereunder, or for such period of time as required by applicable law, whichever period of time is longer. District shall have access to such books and records in the event any audit is required. In accordance with Government Code section 8546.7 records of both the District and the Contractor shall be subject to examination and audit by the Auditor General for a period of three (3) years after final payment. Contractor shall fully cooperate with the District in providing access to any and all Contractor books and records, and any other applicable documents, if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

6.2 Reports.

Contractor shall periodically submit written reports to the Project Manager concerning performance of the services, upon request, and/or as necessary for Project Manager to be informed of both performance of services as well as any decisions which must be made by District or Project Manager. Contractor hereby acknowledges that the District is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein, Contractor shall promptly notify the Project Manager of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the “**documents and materials**”) prepared (regardless of whether complete or incomplete) by Contractor, its officers, employees, agents and subcontractors in the performance of this Agreement shall be the property of District and shall be delivered to District upon request of the Project Manager or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by District of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the District’s sole risk and without liability to Contractor, and Contractor’s guarantee and warranties shall not extend to such use, reuse or assignment. Contractor may retain copies of such documents and materials under express condition that Contractor agrees such documents and materials are the sole property of District. All subcontractors shall provide for assignment to District of any documents and materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify District for all damages resulting therefrom. Moreover, Contractor with respect to any documents and materials that may qualify as “works made for hire” as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed “works made for hire” for the District.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Contractor in its performance of this Agreement shall be considered confidential, unless such information is in the

public domain. Contractor shall not release or disclose any such information or work product to persons or entities other than District without prior written authorization from the Project Manager.

(b) No news releases, including photographs, public announcements, or confirmations of the same, of any part of the work, shall be made without prior written authorization from District. Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Project Manager or unless requested by the District Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Contractor immediately gives District notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then District shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys’ fees, caused by or incurred as a result of Contractor’s conduct.

(d) As concerning, regarding or related to, in any way, this Agreement and the work performed thereunder: a) Contractor shall immediately notify District should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder; b) District retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding; and, c) Contractor agrees to cooperate fully with District and to provide District with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by District to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Orange, State of California.

7.2 Default of Contractor.

(a) It is District's right to suspend or terminate this Agreement upon the occurrence of any of the following events by default of Contractor: (1) Contractor refuses or fails to perform the work required under this Agreement with diligence to ensure timely completion of the Project pursuant to Section 3.1; (2) Contractor fails to comply with the provisions of this Agreement; (3) Contractor violates any ordinance, regulation, state or federal law which applies

to its performance under this Agreement; (4) Contractor files bankruptcy or otherwise becomes insolvent; (5) Contractor makes a general assignment for the benefit of creditors; (6) a trustee or receiver is appointed for the Contractor or his property; (7) Contractor repeatedly fails to supply sufficient skilled workers or suitable materials or equipment; (8) Contractor has abandoned the work or the Project, and/or; (9) Contractor disregards proper directives of the architect, inspector, or Project Manager under the Contract Documents. It will be at District's sole discretion to allow Contractor to remedy each cause for the termination without waiving District's right to terminate this Contract or restricting any other right or remedy under this Contract or law.

(b) In the event that Contractor is in default for cause under the terms of this Agreement, District shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate or suspend this Agreement immediately by written notice to Contractor. If the Project Manager determines that Contractor is in default in the performance of any of the terms or conditions of this Agreement, the Project Manager shall cause to be served upon Contractor a written notice of the default. Contractor shall have ten (10) calendar days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that Contractor fails to cure its default within such period of time, the District shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

(c) Contractor shall be liable for damages sustained by District from the termination of the Agreement under this Section 7.2, including, but not limited to, all cost necessary for repair and completion of the work. District shall have the right to withhold monies otherwise payable to Contractor until the Project is complete. If District incurs additional costs, expenses, or other damages due to the failure of Contractor to perform the work pursuant to this Agreement, said expenditures shall be deducted from the amounts withheld (and if such deduction does not fully compensate District for said expenditures, then Contractor remains fully liable for the remaining balance owed to District). Should there be a balance of monies held after all expenses have been paid, the balance will be paid to Contractor upon completion of the Project.

7.3 Suspension or Termination.

The District may at any time, for any reason (including but not limited to for District's convenience, environmental considerations, or when it is in the best interests of the District), with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon Contractor at least ten (10) calendar days prior written notice. Upon receipt of said notice, Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the District suspends a portion of this Agreement such suspension shall not make void or invalidate the remainder of this Agreement. Upon termination, Contractor shall be entitled to compensation for completion of any portion of the Project accepted by District up to the effective date of termination unless any portion of the Project is accepted by District after termination in which event Contractor shall be paid for such completed portion. Upon receipt of a termination notice, Contractor shall immediately discontinue the work and placement of orders for materials, facilities and supplies in connection with the performance of this Agreement, unless otherwise directed in the notice. Contractor shall promptly deliver to District all completed work, including plans, as-builts, forms, reports, and products. Any dispute regarding the amount owed

to Contractor shall not diminish the right of District to receive and use such documents or materials. Contractor shall not be entitled to any claim or lien against District for any additional compensation or damages in the event of termination of this Agreement.

7.4 Dispute Resolution Process.

In the event of any dispute or controversy with the District over any matter whatsoever, the Contractor shall not cause any delay or cessation in or of work, but shall proceed with the performance of the work in dispute. The Contractor shall retain any and all rights provided that pertain to the resolution of disputes and protests between the Parties. The disputed work will be categorized as an “unresolved dispute” and payment, if any, shall be as later determined as set forth below. The Contractor shall keep accurate, detailed records of all disputed work, claims and other disputed matters.

Section 20104 *et seq.* of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial-supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 *et seq.* and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

For purposes of these procedures, “claim” means a separate demand by the Contractor, after the District has denied Contractor’s timely and duly made request for payment for extra work and/or a time extension, for (A) a time extension, (B) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Agreement and payment of which is not otherwise expressly provided for or the Contractor is not otherwise entitled to, or (C) an amount the payment of which is disputed by the District.

The following requirements apply to all claims to which this section applies:

(a) Claim Submittal. The claim shall be in writing and include the documents necessary to substantiate the claim. Claims governed by this procedure must be filed on or before the date of final payment. Nothing in this section is intended to extend the time limit or supersede notice requirements otherwise provided in the Agreement for the filing of claims, including all requirements pertaining to compensation or payment for extra work, disputed work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

(b) Supporting Documentation. The Contractor shall submit all claims in the following format:

(i) Summary of the claim, including references to the specific Contract Document provisions upon which the claim is based.

(ii) List of documents relating to claim: (a) Specifications, (b) Drawings, (c) Clarifications (Requests for Information), (d) Schedules, and (e) Other.

(iii) Chronology of events and correspondence related to the claim.

- (iv) Statement of grounds for the claim.
- (v) Analysis of the claim's cost, if any.
- (vi) Analysis of the claim's time/schedule impact, if any.

(c) District's Response. Upon receipt of a claim pursuant to this section, District shall conduct a reasonable review of the claim and, within a period not to exceed 45 calendar days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 calendar days after the District issues its written statement.

(i) If the District needs approval from the District Council to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the District Council does not meet within the 45 calendar days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the District shall have up to three days following the next duly publicly noticed meeting of the District Council after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

(ii) Within 30 calendar days of receipt of a claim, the District may request in writing additional documentation supporting the claim or relating to defenses or claims the District may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of District and the Contractor.

(iii) The District's written response to the claim, as further documented, shall be submitted to the Contractor within 30 calendar days (if the claim is less than \$50,000, within 15 calendar days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

(d) Meet and Confer. If the Contractor disputes the District's written response, or the District fails to respond within the time prescribed, the Contractor may so notify the District, in writing, either within 15 calendar days of receipt of the District's response or within 15 calendar days of the District's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the District shall schedule a meet and confer conference within 30 calendar days for settlement of the dispute.

(e) Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the District shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 calendar days after the District issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the District and the Contractor sharing the associated costs equally.

The District and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing, unless the Parties agree to select a mediator at a later time.

(i) If the Parties cannot agree upon a mediator, each Party shall select a mediator and those mediators shall select a qualified neutral third Party to mediate with regard to the disputed portion of the claim. Each Party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

(ii) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the Parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(iii) Unless otherwise agreed to by the District and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

(iv) All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

(f) District's Responses. The District's failure to respond to a claim from the Contractor within the time periods described in this section or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the District's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility of qualifications of the Contractor. District's failure to respond shall not waive District's rights to any subsequent procedures for the resolution of disputed claims.

(g) Government Code Claims. If following the mediation, the claim or any portion remains in dispute, the Contractor must comply with the claim procedures set forth in Government Code section 900 *et seq.* prior to filing any lawsuit against the District. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, construction claims, and/or changed conditions, including any required mediation, have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the District may be filed. A Government Code claim must be filed no earlier than the date that Contractor completes all contractual prerequisites to filing a Government Code claim, including any required mediation. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted. For purposes of Government Code section 900 *et seq.*, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim to the District until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation that does not result in a complete resolutions of all claims.

(h) Civil Actions for Claims of \$375,000 or Less. The following procedures are established for all civil actions filed to resolve claims totaling \$375,000 or less:

(i) Within 60 calendar days, but no earlier than 30 calendar days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both Parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the procedures in this Section. The mediation process shall provide for the selection within 15 calendar days by both Parties of a disinterested third person as mediator, shall be commenced within 30 calendar days of the submittal, and shall be concluded within 15 calendar days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both Parties. If the Parties fail to select a mediator within the 15-day period, either Party may petition the court to appoint the mediator.

(ii) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(iii) Upon stipulation of the Parties, arbitrators appointed for these purposes shall be experienced in construction law, and, upon stipulation of the Parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the Parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division.

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

7.5 Waiver.

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by District of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. Contractor acknowledges and agrees that any actual or alleged failure on the part of District to inform Contractor of non-compliance with any requirement of this Agreement imposes no additional obligations on District nor does it waive any rights hereunder. Payment to Contractor for work

performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

7.6 Rights and Remedies Are 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.

7.7 Unfair Business Practices Claims.

Pursuant to Public Contract Code section 7103.5, in entering into this Agreement, Contractor offers and agrees to assign to the District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials related to this Agreement. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor without further acknowledgment by the Parties.

7.8 Legal Action. In addition to any other rights or remedies, and as consistent with this Agreement and applicable law, 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. Notwithstanding any contrary provision herein, Contractor shall file a statutory claim pursuant to Government Code sections 905 *et seq.* and 910 *et seq.*, in order to pursue a legal action under this Agreement.

7.9 Attorneys' Fees. If either Party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing Party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and a Party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, consultants' fees, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. Such fees and costs shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. INDIVIDUAL LIABILITY, CONFLICTS AND NON-DISCRIMINATION

8.1 Non-liability of District Officers and Employees.

No officer or employee of the District shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the District or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of District or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Project Manager. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of District in the performance of this Agreement.

District, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict of interest exists upon sending Contractor written notice describing the conflict. 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 affects their 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. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class. Contractor shall require the foregoing covenants to be placed in agreements with all subcontractors.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Provisions Required By Law.

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either Party, the contract shall forthwith be physically amended to make such insertion or correction.

9.2 Notices.

Any notice or other communication either Party desires or is required to give to the other Party or any other person in regards to this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not

limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, in the case of District addressed to the name and title of the Project Manager, at Big Bear Municipal Water District, 30111 Crown Valley Parkway, Laguna Niguel, CA 92677, and in the case of Contractor, to the person(s) at the address designated on the execution page of this Agreement. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.3 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement, headings used, or any other rule of construction which might otherwise apply.

9.4 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.5 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the Parties as to the Agreement. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement, and this Agreement supersedes and cancels any and all prior and contemporaneous negotiations, arrangements, agreements and understandings, if any, between the Parties, concerning this Agreement, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing, approved by the Contractor and by the District, and consistent with the Laguna Niguel Municipal Code. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.6 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder 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.

9.7 No Undue Influence.

Contractor declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of District in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of District has or will receive

compensation, directly or indirectly, from Contractor, or from any officer, employee or agent of Contractor, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling District to remedies for default in Section 7.2 and any and all remedies at law or equity.

9.8 Unauthorized Aliens.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against District for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse District for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by District.

9.9 Corporate Authority.

The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party 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 said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first-above written.

DISTRICT:

BIG BEAR MUNICIPAL WATER DISTRICT, a California municipal corporation

Jared Cheek, General Manager

ATTEST:

Brittany Lamson, Assistant General Manager

CONSULTANT:

_____, a _____

By: _____

Name:

Title:

By: _____

Name:

Title:

Address: _____

Two corporate officer signatures required when Contractor is a corporation, with one signature required from each of the following groups: 1) Chairperson of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. (Cal. Corp. Code § 313.) APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY

GENERAL PROVISIONS

SECTION 0. GENERAL PROVISIONS DEFINED

0-1 STANDARD SPECIFICATIONS

The 2018 edition of “Standard Specifications for Public Works Construction” (“Standard Specifications”), as amended by the Contract Documents, is incorporated into the Contract Documents by this reference. The Work described herein shall be done in accordance with the provisions of the Standard Specifications, as amended by the Contract Documents.

0-2 NUMBERING OF SECTIONS

The number of sections and subsections in these General Provisions are compatible with the numbering in the Standard Specifications.

0-3 SUPPLEMENTATION OF STANDARD SPECIFICATIONS

The Sections that follow supplement, but do not replace, the corresponding provisions in Part 1 (General Provisions) of the Standard Specifications, except as otherwise indicated herein. In the event of any conflict between the Standard Specifications and these General Provisions, these General Provisions shall control.

SECTION 1. GENERAL, TERMS, DEFINITIONS, ABBREVIATIONS, UNITS OF MEASURE, AND SYMBOLS

1-2 TERMS AND DEFINITIONS

Whenever in the Standard Specifications or in the Contract Documents the following terms are used, they shall be understood to mean the following:

1. Agency – The Big Bear Municipal Water District.
2. Board – The Board of Directors of the Big Bear Municipal Water District.
3. Contract Documents – As defined in Standard Specifications Section 1-2, but also including these General Provisions.
4. Engineer – The District Engineer, acting either directly or through properly authorized agents. Such agents shall act within the scope of the duties entrusted to them.
5. Inspector – An authorized representative of the District, assigned by the District to make inspections of Work performed by or materials supplied by the Contractor.
6. Laboratory – A laboratory authorized by the District to test materials and Work involved in the Contract.
7. Notice of Completion – The notice authorized by Civil Code Section 9204.

8. Project – See Work.
9. Submittal – Any drawing, calculation, specification, product data, samples, manuals, requests for substitutes, spare parts, photographs, survey data, traffic control plans, record drawings, Bonds or similar items required to be submitted to the District under the terms of the Contract.

1-3.3 Institutions

The institutions listed in Section 1-3.3 of Part 1 of the Standard Specifications shall be supplemented by the list below:

	Abbreviation	Word or Words
AAN		American Association of Nurserymen
AGCA		Associated General Contractors of America
APWA		American Public Works Association
CRSI		Concrete Reinforcing Steel Institute
CSI		Construction Specifications Institute
NEC		National Electric Code
NFPA		National Fire Protection Association
SSS		State of California Standard Specifications, Latest edition, Department of Transportation
SSP		State of California Standard Plans, Latest edition, Department of Transportation

1-7.2 CONTRACT BONDS

The Faithful Performance Bond shall remain in force until the date of recordation of the Notice of Completion and the end of all warranty periods set forth in the Contract Documents.

The Labor and Materials Bond shall remain in force until expiration of the time within which the California Labor Commissioner may serve a civil wage and penalty assessment against the principal, any of its subcontractors, or both the principal and its subcontractors pursuant to Labor Code Section 1741, and until the expiration of the time within which a joint labor management committee may commence an action against the principal, any of its subcontractors, or both the principal and its subcontractors pursuant to Labor Code Section 1771.2.

All Bonds must be submitted using the required forms, which are in the Contract Documents.

SECTION 2. SCOPE OF THE WORK

2.2 PERMITS

Before starting any construction work, the Contractor will be required to obtain all necessary permits from the District, which may include obtaining a no fee encroachment permit for Work within the public right-of-way, as well as all other permits required from all other agencies. Should this Project require construction of trenches or excavations which are five (5) feet or deeper and into which a person is required to descend, the Contractor shall obtain a Cal/OSHA permit and furnish the District with a copy before Work can commence on this Project. Contractor shall bear all cost for fees for all agencies except for the District's permit fees.

2-4 COOPERATION AND COLLATERAL WORK

The Contractor shall be responsible for coordinating all Work with the District's street sweeping, trash pick-up, and street maintenance contractors, emergency services departments, utility companies' crews, and others when necessary. Payment for conforming to these requirements shall be included in other items of Work, and no additional payment shall be made thereof.

The Contractor shall recognize that during the course of the contract other activities and operations will be conducted by District forces and other contractors. The Contractor may be required to modify, curtail or aid in certain operations and shall promptly comply with any request by the Inspector to cooperate. It is possible that extent of these requests may cause additional expense to the Contractor. Any adjustment shall be processed with the District contractually, such as by way of RFI or change orders.

2-5.4 Haul Routes

Subsection 2-5.4 of Part 1 of the Standard Specifications shall be deleted and replaced as follows: The Contractor must obtain the District Engineer's approval before using any haul routes. Further detail requirements for haul traffic are delineated in the Special Provisions.

2-7 CHANGES INITIATED BY THE AGENCY

2-7.1 General.

The District reserves the right, without notice to the Surety, to increase or decrease the quantity of any item or portion of the Work described in the Contract Documents or to alter or omit portions of the Work so described, as may be deemed necessary or expedient by the District Engineer, without in any way making the Contract void. Such

increases, alterations or decreases of Work shall be considered and treated as though originally contracted for, and shall be subject to all the terms, conditions and provisions of the original Contract. The Contractor shall not claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease, alteration or omission of any kind of Work to be done.

2-8 EXTRA WORK

New and unforeseen work will be classified as Extra Work only when the Work is not covered and cannot be paid for under any of the various items or combination of items for which a Bid price appears on the Bid. The Contractor shall not do any Extra Work except upon written order from the District Engineer.

SECTION 3. CONTROL OF THE WORK

3-1 ASSIGNMENT

Any purported assignment without written consent of the District shall be null, void, and of no effect, and the Contractor shall hold harmless, defend and indemnify the District and its officers, officials, employees, agents and representatives with respect to any claim, demand or action arising from or relating to any unauthorized assignment.

If the District opts to consent to assignment, the District's consent shall be contingent upon: (1) a letter from the Surety agreeing to the assignment and assigning all of the Bonds to the assignee without any reduction, or the assignee supplying all new Bonds in the amounts originally required under the Contract Documents; and (2) the assignee supplying all of the required insurance in the amounts required in the Contract Documents.

Until the Surety assigns all of the Bonds or the assignee supplies all of the new Bonds, and until the assignee supplies all of the required insurance, an assignment otherwise consented to in writing by the District shall not be effective. Even if the District consents to assignment, no assignment shall relieve the Contractor of liability under the Contract.

3-5 INSPECTION

The Contractor shall arrange and pay for all off-site inspection of the Work required by any ordinance or governing authorities. The Contractor shall also arrange and pay for other inspections, including tests in connection therewith, as may be assigned or required.

3.7 CONTRACT DOCUMENTS

3-7.1 General

In addition to the requirements under Section 3-7.1 in the Standard Specifications, the Contractor shall maintain a control set of Plans and Specifications on the Project site at all times. All final locations determined in the field, and any deviations from the Plans and Specifications, shall be marked in red on the control set to show the as-built conditions.

This control set of Plans shall also be edited for all Addenda, Requests for Information, Change Orders, field changes not involving cost, and any other variation that occurred during construction. Upon completion of all Work, the Contractor shall return the control set to the District Engineer. Final payment will not be made until this requirement is met.

Where a work feature is shown on the drawings or identified in the Specifications but is not specifically indicated as an item in the Bid sheets, and there is no ambiguity regarding the requirement to construct, install, or construct and install that work feature, the Contractor is required to complete the work feature. All costs to the Contractor for constructing, installing, or both constructing and installing such a work feature shall be included in the Bid.

3-7.2 Precedence of the Contract Documents

With regard to Section 3-7.2 in the Standard Specifications, the General Provisions shall control over the Special Provisions, and the Notice Inviting Bids and Instructions to Bidders (in that order) shall control over the Bid, such that the order of precedence shall be as follows:

- 1) Permits issued by regulatory agencies with jurisdiction.
- 2) Change Orders and Supplemental Agreements, whichever occurs last.
- 3) Contract/Agreement.
- 4) Addenda.
- 5) Notice Inviting Bids.
- 6) Instructions to Bidders.
- 7) Bid/Proposal.
- 8) General Provisions.
- 9) Special Provisions.
- 10) Plans.
- 11) Standard Plans.
- 12) Standard Specifications.
- 13) Reference Specifications.

3-9 SUBSURFACE DATA

If the District or its consultants have made investigations of subsurface conditions in areas where the Work is to be performed, such investigations shall be deemed made only for the purpose of study and design. If a geotechnical or other report has been prepared for

the Project, the Contractor may inspect the records pertaining to such investigations subject to and upon the conditions hereinafter set forth. The inspection of the records shall be made in the office of the District Engineer. It is the Contractor's sole responsibility to determine whether such investigations exist, and the District makes no affirmative or negative representation concerning the existence of such investigations.

The records of any such investigations are made available solely for the convenience of the Contractor. It is expressly understood and agreed that the District, the District Engineer, their agents, consultants or employees assume no responsibility whatsoever with respect to the sufficiency or accuracy of any investigations, the records thereof, and the interpretations set forth therein. No warranty or guarantee is expressed or implied that the conditions indicated by any such investigations or records are representative of those existing in the Project area. The Contractor agrees to make such independent investigations and examination as necessary to be satisfied of the conditions to be encountered in the performance of the Work.

The Contractor represents that it has studied the Plans, Specifications and other Contract Documents, and all surveys and investigation reports of subsurface and latent physical conditions, has made such additional surveys and investigations as necessary for the performance of the Work at the Compensation Price in accordance with the requirements of the Contract Documents, and that it has correlated the results of all such data with the requirements of the Contract Documents. No claim of any kind shall be made or allowed for any error, omission or claimed error or omission, in whole or in part, of any geotechnical exploration or any other report or data furnished or not furnished by the District.

3-10 SURVEYING

3-10.1 General

The Contractor shall verify all dimensions on the drawings and shall report to the District any discrepancies before proceeding with related Work. The Contractor shall perform all survey and layout Work per the benchmark information on the Project Plans. All surveying Work must conform to the Professional Land Surveyors' Act (Business and Professions Code Section 8700 *et seq.*). All Project surveying notes and "cut-sheets" are to be provided to the District after the completion of each surveying activity and all final surveying notes shall be provided before final payment to the Contractor.

Construction stakes shall be set and stationed by Contractor at its expense. Unless otherwise indicated in the Special Provisions, surveying costs shall be included in the price of items bid. No separate payment will be made. Re-staking and replacement of construction survey markers damaged as a result of the Work, vandalism, or accident shall be at the Contractor's expense.

3-11 CONTRACT INFORMATION SIGNS

The names addresses and specialties of the Contractor, Subcontractors, architects or engineers may **not** be displayed on any signage within the public right-of-way. This signage prohibition includes advertising banners hung from truck beds or other equipment.

3-12 WORKSITE MAINTENANCE

3-12.1 General.

Clean-up shall be done as Work progresses at the end of each day and thoroughly before weekends. The Contractor shall not allow the Work site to become littered with trash and waste material but shall maintain the same in a neat and orderly condition throughout the construction operation. Materials which need to be disposed shall not be stored at the Project site but shall be removed by the end of each Working Day. If the job site is not cleaned to the satisfaction of the District Engineer, the cleaning will be done or contracted by the District and shall be back charged to the Contractor and deducted from the Contract Price.

The Contractor shall promptly remove from the vicinity of the completed Work, all rubbish, debris, unused materials, concrete forms, construction equipment, and temporary structures and facilities used during construction. Final acceptance of the Work by the District will be withheld until the Contractor has satisfactorily complied with the foregoing requirements for final clean-up of the Project site.

3.12.4 Storage of Equipment and Materials.

3-12.4.1 General

The Contractor shall make arrangements for storing its equipment and materials. The Contractor shall make its own arrangements for any necessary off-site storage or shop areas necessary for the proper execution of the Work. Approved areas within Work site may be used for temporary storage; however, the Contractor shall be responsible for obtaining any necessary permits from the District. In any case, the Contractor's equipment and personal vehicles of the Contractor's employees shall not be parked on the traveled way or on any section where traffic is restricted at any time.

The Contractor shall deliver, handle, and store materials in accordance with the manufacturer's written recommendations and by methods and means that will prevent damage, deterioration, and loss including theft. Delivery schedules shall be controlled to minimize long-term storage of products at the Project site and overcrowding of construction spaces. In particular, the Contractor shall provide delivery and installation

coordination to ensure minimum holding or storage times for materials recognized to be flammable, hazardous, easily damaged, or sensitive to deterioration, theft, and other sources of loss.

Storage shall be arranged to provide access for inspection. The Contractor shall periodically inspect to assure materials are undamaged and are maintained under required conditions.

All costs associated with the clean-up and storage required to complete the Project shall be the sole responsibility of the Contractor.

3-12.4.2 Storage in Public Streets

The first sentence of Section 3-12.4.2 shall not be incorporated and shall instead be replaced with the following:

Construction materials and equipment shall not be stored in Streets, roads, or highways unless otherwise specified in the Special Provisions or approved by the District Engineer.

3-13 COMPLETION, ACCEPTANCE, AND WARRANTY

3-13.1 Completion.

The Contractor shall complete all Work under the Contract within the Contract Time set forth in the Agreement with the construction activities anticipated to begin on [Date].

3-13.2 Acceptance

The Project will not be considered complete and ready for District Council direction to staff regarding recordation of the Notice of Completion until all required Work is completed, the Work site is cleaned up in accordance with Section 3-12 of Part 1 of the Standard Specifications and the Special Provisions, and all of the following items have been received by the District Engineer:

- 1) A form of Notice of Completion, with all information required by the California Civil Code;
- 2) All written guarantees and warranties;
- 3) All “as-builts”;
- 4) Duplicate copies of all operating instructions and manufacturer’s operating catalogs and data, together with such field instructions as necessary to fully instruct District personnel in correct operation and maintenance procedures for all equipment installed listed under the electrical, air conditioning, heating, ventilating and other trades. This data and instructions shall be furnished for

all equipment requiring periodic adjustments, maintenance or other operation procedures.

The Contractor shall allow at least seven (7) Working Days' notice for final inspection. Such notice shall be submitted to the District Engineer in writing.

3-13.3 Warranty

For the purposes of the calculation of the start of the warranty period, the Work shall be deemed to be completed upon the date of recordation of the Notice of Completion. If that direction is contingent on the completion of any items remaining on a punchlist, the Work shall be deemed to be completed upon the date of the District Engineer's acceptance of the final item(s) on that punchlist.

The Contractor shall repair or replace defective materials and workmanship as required in this Section 3-13.3 at its own expense. Additionally, the Contractor agrees to defend, indemnify and hold the District harmless from claims of any kind arising from damage, injury or death due to such defects.

The parties agree that no certificate given shall be conclusive evidence of the faithful performance of the Contract, either in whole or in part, and that no payment shall be construed to be in acceptance of any defective Work or improper materials. Further, the certificate or final payment shall not terminate the Contractor's obligations under the warranty herein. The Contractor agrees that payment of the amount due under the Contract and the adjustments and payments due for any Work done in accordance with any alterations of the same, shall release the District, the District Council and its officers and employees from any and all claims or liability on account of Work performed under the Contract or any alteration thereof.

SECTION 4. CONTROL OF MATERIALS

4-1 GENERAL

The Contractor and all Subcontractors, suppliers, and vendors shall guarantee that the Work will meet all requirements of this Contract as to the quality of materials, equipment, and workmanship.

4-4 TESTING

Except as elsewhere specified, the District shall bear the cost of testing materials and workmanship that meet or exceed the requirements indicated in the Standard Specifications and the Special Provisions. The cost of all other tests, including the retesting of material or workmanship that fails to pass the first test, shall be borne by the Contractor.

4-6 TRADE NAMES

If the Contractor requests to substitute an equivalent item for a brand or trade name item, the burden of proof as to the comparative quality and suitability of alternative equipment or articles or materials shall be upon the Contractor, and the Contractor shall furnish, at its own expense, all information necessary or related thereto as required by the District Engineer.

SECTION 5. LEGAL RELATIONS AND RESPONSIBILITIES

5-3 LABOR

5-3.1 Public Work

The Contractor acknowledges that the Project is a “public work” as defined in Labor Code Section 1720 *et seq.* (“Chapter 1”), and that this Project is subject to (a) Chapter 1, including without limitation Labor Code Section 1771 and (b) the rules and regulations established by the Director of Industrial Relations (“DIR”) implementing such statutes. The Contractor shall perform all Work on the Project as a public work. The Contractor shall comply with and be bound by all the terms, rules and regulations described in (a) and (b) as though set forth in full herein.

5-3.2 Copies of Wage Rates

Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Project are on file at District Hall and will be made available to any interested party on request. By initiating any Work, the Contractor acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and the Contractor shall post such rates at each job site covered by these Contract Documents.

The Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty paid to the District, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to these Contract Documents by the Contractor or by any Subcontractor.

5-3.3 Payroll Records

The Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires the Contractor and each Subcontractor to (1) keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776, (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. The Contractor has ten (10) days in which to comply subsequent to receipt of a written notice requesting these records, or as a penalty to the District, the Contractor shall forfeit one hundred dollars (\$100) for each Day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

The Contractor and each Subcontractor shall comply with and be bound by the provisions of Labor Code Section 1771.4(a)(3), which requires that each Contractor and each Subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner at least monthly, in a format prescribed by the Labor Commissioner.

5-3.4 Hours of Labor

The Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. The Contractor shall comply with and be bound by Labor Code Section 1810. The Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty paid to the District, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Project 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 (1) 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 Labor Code. Pursuant to Labor Code Section 1815, work performed by employees of the Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

5-3.5 Apprentices

The Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Code of Regulations Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects. The Contractor shall be responsible for compliance with these Sections for all apprenticeable occupations. Before commencing Work on this Project, the Contractor shall provide the District with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) Days after concluding Work, Contractor and each of its Subcontractors shall submit to the District a verified statement of the journeyman and apprentice hours performed under this Contract.

5-3.6 Debarment or Suspension

The Contractor shall not perform Work with any Subcontractor that has been debarred or suspended pursuant to California Labor Code Section 1777.1 or any other federal or State law providing for the debarment of contractors from public works. The Contractor and Subcontractors shall not be debarred or suspended throughout the duration of this Contract pursuant to Labor Code Section 1777.1 or any other federal or State law providing for the debarment of contractors from public works. If the Contractor or any Subcontractor becomes debarred or suspended during the duration of the Project, the Contractor shall immediately notify the District.

5-3.7 Registration with the DIR

In accordance with Labor Code Sections 1725.5 and 1771.1, no contractor or subcontractor shall be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Section 1725.5.

5-3.8 Compliance Monitoring and Posting Job Sites

This Project is subject to compliance monitoring and enforcement by the DIR. The Contractor shall post job site notices, as prescribed by regulation.

5-3.9 Subcontractors

For every Subcontractor who will perform Work on the Project, the Contractor shall be responsible for such Subcontractor's compliance with Chapter 1 and Labor Code Sections 1860 and 3700, and the Contractor shall include in the written Contract between it and each Subcontractor a copy of the provisions in this Section 5-3 of the General Provisions and a requirement that each Subcontractor shall comply with those provisions. The Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure Subcontractor's compliance, including without limitation, conducting a periodic review of the certified payroll records of the Subcontractor and upon becoming aware of the failure of the Subcontractor to pay its workers the specified prevailing rate of wages. The Contractor shall diligently take corrective action to halt or rectify any failure.

5-3.10 Prevailing Wage Indemnity

To the maximum extent permitted by law, the Contractor shall indemnify, hold harmless and defend (at the Contractor's expense with counsel reasonably acceptable to the District) the District, its officials, officers, employees, agents and independent contractors serving in the role of District officials, and volunteers from and against any demand or

claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed in Section 5-3 of the General Provisions by any Person (including the Contractor, its Subcontractors, and each of their officials, officers, employees and agents) in connection with any Work undertaken or in connection with the Contract Documents, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses. All duties of the Contractor under this Section 5-3.10 shall survive expiration or termination of the Contract.

5-4 INSURANCE

5-4.1 General

The first paragraph of Section 5-4.1 of Part 1 of the Standard Specifications shall not be incorporated and shall instead be replaced with the following:

The Contractor shall provide and maintain insurance naming the District, its elected and appointed officials, officers, employees, attorneys, agents, designated volunteers, and independent contractors in the role of District officials as insureds or additional insureds regardless of any inconsistent statement in the policy or any subsequent endorsement whether liability is attributable to the Contractor or the District. The insurance provisions shall not be construed to limit the Contractor's indemnity obligations contained in the Contract. The District will not be liable for any accident, loss, or damage to the Work before completion, except as otherwise specified in Section 6-5.

5-4.2 General Liability Insurance

The Contractor shall at all times during the term of the Contract carry, maintain, and keep in full force and effect the insurance referenced in Section 5-4 of Part 1 of the Standard Specifications, as modified below.

5-4.2.1 Additional Insureds

The District, its elected and appointed officials, officers, employees, attorneys, agents, designated volunteers, and independent contractors in the role of District officials, shall be the insured or named as additional insureds covering the Work, regardless of any inconsistent statement in the policy or any subsequent endorsement, whether liability is attributable to the Contractor or the District.

5-4.2.2 No Limitation on Indemnity

The insurance provisions shall not be construed to limit the Contractor's indemnity obligations contained in these Contract Documents.

5-4.2.3 Replacement Insurance

The Contractor agrees that it will not cancel, reduce or otherwise modify the insurance coverage. The Contractor agrees that if it does not keep the required insurance in full force and effect, and such insurance is available at a reasonable cost, the District may take out the necessary insurance and pay the premium thereon, and the repayment thereof shall be deemed an obligation of the Contractor and the cost of such insurance may be deducted, at the option of the District, from payments due the Contractor. This shall be in addition to all other legal options available to the District to enforce the insurance requirements.

5-4.2.4 Certificates of Insurance with Original Endorsements

The Contractor shall submit to the District certificates of insurance with the original endorsements, both of which reference the same policy number, for each of the insurance policies that meet the insurance requirements, not less than one (1) day before beginning of performance under the Contract. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Endorsements may be executed on the District's standard forms titled "Additional Insured Endorsement," copies of which are provided in the Contract Documents, or on any other form that contains substantially the same terms and is approved by the District's Risk Manager. In any case, the endorsements must specifically name the Big Bear Municipal Water District and its elected and appointed officials, officers, employees, attorneys, agents, designated volunteers, and independent contractors in the role of District officials as insureds or additional insureds. Current insurance certificates and endorsements shall be kept on file with the District at all times during the term of this Contract. The District reserves the right to require complete, certified copies of all required insurance policies at any time.

5-4.2.5 Subcontractors

The Contractor shall ensure all Subcontractors and their employees are listed as additional insureds on all of the Contractor's insurance.

5-4.5 Insurance Requirements not Limiting

If the Contractor maintains broader coverage and/or higher limits than the minimums required in this Section 5-4, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.

5.7 SAFETY

TEMPORARY CONSTRUCTION SAFETY FENCING: The Contractor shall provide security/safety fencing to completely enclose open excavations and/or the work area(s). The temporary security/safety panel fencing shall remain in place unless workers are present and construction operations are in progress during which time the Contractor shall provide equivalent security. All temporary security/safety panel fencing shall be a minimum of 6' tall and 12' long framing, 36" base stands, frame and chain link shall be galvanized/zinc coated and conform to ASTM A302-06, chain link fabric 11ga. All temporary security/safety panel fencing shall be provided with green resilient HDPE polyethylene windscreen securely attached.

5-7.8 Steel Plate Covers

5-7.8.1 General

The Contractor shall cover all openings, trenches and excavations at the end of each Work Day with steel plate covers.

Section 5-8 is hereby added to Section 1 of Part 1 of the Standard Specifications, as follows:

5-8 INDEMNIFICATION

5-8.1 Contractor's Duty

(a) General Obligations. Contractor agrees, to the maximum extent permitted by law, to indemnify, defend and hold harmless District and its elected and appointed officers, employees, agents, designated volunteers, attorneys, successors and assigns (each an "Indemnitee" and collectively, "Indemnitees") against, and will hold and save them and each of them harmless from, whether actual or threatened, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities (herein "**Claims or Liabilities**") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable (each an "Indemnitor" and collectively, "Indemnitors"), or arising from Indemnitors' reckless or willful misconduct, or arising from Indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith: 1) Contractor will defend any action or actions filed or threatened in connection with any such Claims or Liabilities, or at option of Indemnitee(s) will reimburse and pay for all costs and expenses, including legal costs and attorneys' fees, incurred by Indemnitee(s) in connection therewith; and, 2) Contractor will promptly pay any judgment rendered against Indemnitee(s) for any such Claims or Liabilities, and will save and hold Indemnitee(s)

harmless therefrom.

(b) Further Provisions. The indemnity obligation herein shall be binding on successors, assigns and heirs of Contractor and shall survive termination of this Agreement. Contractor shall incorporate similar indemnity agreements as provided herein with its subcontractors, and if Contractor fails to do so Contractor shall be fully responsible to indemnify District hereunder therefor. Failure of District and/or District Parties (collectively "District" for solely this Section 5.2(b)) to monitor compliance with any of the indemnification provisions herein shall not be a waiver hereof. The indemnification provisions herein do not apply to claims or liabilities occurring as a result of District's sole negligence, active negligence or willful misconduct, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from District's negligence. The indemnification provided herein includes Claims or Liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Indemnitors in the performance of professional services hereunder. Payment of invoices by District is not a condition precedent to enforcement of the indemnity obligation herein. In the event of any dispute between Contractor and District, as to whether liability arises from the sole negligence, active negligence or willful misconduct of District, Contractor will be obligated to pay for District's defense until either such time as a final judgment has been entered adjudicating, or agreement between the Parties is reached determining, District as solely negligent, actively negligent or responsible for willful misconduct. Contractor will not be entitled in the absence of such a determination or agreement to any reimbursement of defense costs including but not limited to attorneys' fees, expert fees and costs of litigation. In instances where District is shown to have been actively negligent and/or engaged in willful misconduct, and where District's active negligence and/or willful misconduct accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence and/or willful misconduct of District. District may offset against the amount of any fees due to Contractor under this Agreement any amount due to District from Contractor as a result of Contractor's failure to promptly pay to District any reimbursement or indemnification arising under Section 5.2 of this Agreement. Such offset, if any, does not satisfy any amount, greater than the offset, due to District from Contractor.

5-8.2 Civil Code Exception

Nothing in this Section 5-8 shall be construed to encompass Indemnitees' sole negligence or willful misconduct to the limited extent that the underlying Contract is subject to Civil Code Section 2782(a) or the District's active negligence to the limited extent that the underlying Contract Documents are subject to Civil Code Section 2782(b), provided such sole negligence, willful misconduct or active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction.

5-8.3 Nonwaiver of Rights

Indemnitees do not and shall not waive any rights that they may possess against the Contractor because the acceptance by the District, or the deposit with the District, of any insurance policy or certificate required pursuant to these Contract Documents. This indemnity provision is effective regardless of any prior, concurrent, or subsequent active or passive negligence by Indemnitees and shall operate to fully indemnify Indemnitees against any such negligence.

5-8.4 Waiver of Right of Subrogation

The Contractor, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Indemnitees, while acting within the scope of their duties, from all Claims arising out of or incident to the activities or operations performed by or on behalf of the Contractor regardless of any prior, concurrent or subsequent active or passive negligence by Indemnitees.

5-8.5 Survival

The provisions of this Section 5-8 shall survive the term and termination of the Contract, are intended to be as broad and inclusive as is permitted by the law of the State, and are in addition to any other rights or remedies that Indemnitees may have under the law. Payment is not required as a condition precedent to an Indemnitee's right to recover under this indemnity provision, and an entry of judgment against the Contractor shall be conclusive in favor of the Indemnitee's right to recover under this indemnity provision.

SECTION 6. PROSECUTION AND PROGRESS OF THE WORK

6-1 CONSTRUCTION SCHEDULE AND COMMENCEMENT OF THE WORK

6-1.1 Construction Schedule

One (1) week before the scheduled pre-construction meeting, the Contractor must submit to the District Engineer for review and approval the construction schedule required by the first paragraph of Section 6-1.1. The Contractor shall make revisions as required by the District Engineer. The schedule must account for all subcontract work, as well as the work of the Contractor, submittals, coordination with the other contractors performing concurrent work and the Traffic Control Plan.

The Contractor shall update this Construction Schedule when directed by the District Engineer, or when:

- 1) A Change Order significantly affects the Contract completion date or the

sequence of construction approach or activities; or

- 2) The actual sequence of the Work, or the planned sequence of the Work, is changed and does not conform to the Contractor's current accepted Project construction schedule.
- 3) The Contractor shall submit an updated construction schedule with its monthly invoice every month. Progress payments shall be contingent upon the receipt of monthly updated construction schedules.

6-1.1.1 Pre-Construction Conference

Approximately [Days] working Days before the commencement of Work at the site, a pre-construction conference will be held at the District and shall be attended by the Contractor's Project manager, its on-site field superintendent, and any Subcontractors that the Contractor deems appropriate. Attendance by the Contractor and any Subcontractors designated is mandatory.

Contractor shall submit its twenty-four (24) hour emergency telephone numbers to the District Engineer for approval a minimum of two (2) working Days before the pre-construction conference. Unless previously submitted to the District Engineer, the Contractor shall bring to the pre-construction conference copies of each of the following:

- 1) Construction Schedule.
- 2) Procurement schedule of major equipment and materials and items requiring long lead time.
- 3) Shop drawing/sample submittal schedule.
- 4) Preliminary schedule of values (lump sum price breakdown) for progress payment purposes.
- 5) Written designation of the on-site field superintendent and the Project manager. Both daytime and emergency telephone numbers shall be included in the written designation.

The purpose of the conference is to designate responsible personnel and establish a working relationship. The parties will discuss matters requiring coordination and establish procedures for handling such matters. The complete agenda will be furnished to the Contractor before the meeting date. The Contractor shall be prepared to discuss all of the items listed below.

- 1) The Contractor's construction schedule.
- 2) Notification of local residents before starting any Work and keeping them informed throughout the Project.
- 3) Procedures for transmittal, review, and distribution of the Contractor's submittals.
- 4) Processing applications for payment.

- 5) Maintaining record documents.
- 6) Critical Work sequencing.
- 7) Maintaining sewage service during construction, including proposed by-passes.
- 8) NPDES requirements, if any.
- 9) Field decisions and Change Orders.
- 10) Use of Project site, office and storage areas, security, housekeeping, and the District's needs.
- 11) Major equipment deliveries and priorities.
- 12) Traffic control.
- 13) Any other item that the District representative states is relevant to the meeting.

6-1.1.2 Weekly Progress Meetings

Progress meetings will be held each week during the course of the Project. The meeting location, day of the week and time of day will be mutually agreed to by the District and the Contractor. The Contractor shall provide a two (2) week "look ahead" schedule for each meeting. The construction manager will preside at these meetings and will prepare the meeting agenda, meeting minutes and will distribute minutes to all persons in attendance. As the Work progresses, if it is determined by agreement of the attendees, that weekly meetings are not necessary, the weekly progress meetings may be changed to bi-weekly progress meetings.

6-1.2 Commencement of the Work

The Contractor shall not begin any construction activity at the site before the issuance of the Notice to Proceed. Any Work that is done by the Contractor in advance of the Notice to Proceed shall be considered as being done at the Contractor's own risk and responsibility, and as a consequence will be subject to rejection.

Section 6-1.3 is hereby added to Section 6 of Part 1 of the Standard Specifications, as follows:

6-1.3 Working Days And Hours

The Contractor shall do all Work between the hours of 7 a.m. to 4:30 p.m., Monday through Friday. No Work will be allowed on Weekends, District holidays defined as New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Floating Holiday, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Thanksgiving Friday, Christmas, Day After Christmas, or holidays designated by the Department of Industrial Labor for the applicable crafts.

In addition, no Work will be allowed on any special election Day that may be declared. Should a special election Day be declared, a time extension of one (1) Working Day will be granted for each such Day.

A permit may have other hours or Days for the Contractor to do the Work, and those hours and Days shall supersede any hours and Days written in this Section.

Whenever the Contractor is permitted or directed to perform night Work or to vary the period during which Work is performed during the Working Day, the Contractor shall give twelve (12) hours' notice to the District Engineer so that inspection may be provided. A charge may be made to the Contractor for approved overtime or weekend inspections requested by the Contractor.

No jackhammering activities will be permitted before 9:00 a.m.

6-4 DELAYS AND EXTENSIONS OF TIME

6-4.1 General.

Unless otherwise agreed in writing, an adjustment to the Contract time by reason of a Change Order shall be agreed to at the time the Change Order is issued and accepted by Contractor. If the Change Order does not reserve the right of the parties, or either of them, to seek an adjustment to the Contract time, then the parties forever relinquish and waive such right and there shall be no further adjustments to the Contract time.

6-4.2 Extensions of Time

In the event it is deemed appropriate by the District to extend the time for completion of the Work, any such extension shall not release any guarantee for the Work required by the Contract Documents, nor shall any such extension of time relieve or release the Sureties on the Bonds executed. In executing such Bonds, the Sureties shall be deemed to have expressly agreed to any such extensions of time. The amount of time allowed by an extension of time shall be limited to the period of the delay giving rise to the same as determined by the District. Notwithstanding any dispute which may arise in connection with a claim for adjustment of the Contract time, the Contractor shall promptly proceed with the Work.

6-4.3 Payment for Delays

Notwithstanding any other terms and conditions of the Contract Documents, the District shall have no obligation whatsoever to increase the Compensation Sum or extend the time for delays.

Unless compensation and/or markup is agreed upon by the District, the Contractor agrees that no payment of compensation of any kind shall be made to the Contractor for damages or increased overhead costs caused by any delays in the progress of the Contract,

whether such delays are avoidable or unavoidable or caused by any act or omission of the District or its agents. Any accepted delay claim shall be fully compensated for by an extension of time to complete the performance of the Work.

This Section shall not apply to compensable delays caused solely by the District. If a compensable delay is caused solely by the District, the Contractor shall be entitled to a Change Order that: (1) extends the time for completion of the Contract by the amount of delay caused by the District; and (2) provides equitable adjustment, as determined by the District, to the Contractor.

6-8 TERMINATION OF THE CONTRACT FOR CONVENIENCE

The following sentence is added to Section 6-8:

In no event (including termination for impossibility or impracticability, due to conditions or events beyond the control of the District, for any other reason or for no reason) shall the total amount of money to Contractor exceed the amount which would have been paid to Contractor for the full performance of the services described in the Contract.

6-9 LIQUIDATED DAMAGES

For the purposes of the calculation of the start of the liquidated damages, the Work shall be deemed to be completed when the same has been completed in accordance with the Plans and Specifications therefor and to the satisfaction of the District Engineer, and the District Engineer has certified such completion in accordance with Section 3-13.1 of Part 1 of the Standard Specifications.

The Contractor will pay the District the sum of \$250 per calendar day for each day of delay beyond the Contract Time as Liquidated Damages. In the event Liquidated Damages are not paid, the Contractor further agrees that the District may deduct such amount thereof from any money due. This shall not be construed as preventing the District from the recovery of other damages under the Contract Documents.

SECTION 7. MEASUREMENT AND PAYMENT

7.3 PAYMENT

7.3.1 General

The unit and lump sum prices to be paid shall constitute full compensation for all labor, equipment, materials, tools and incidentals required to complete the Project as outlined in these Contract Documents and as directed by the District Engineer. In accordance with Public Contract Code Section 7107, if no claims have been filed and are still pending, the amount deducted from the final estimate and retained by the District will be paid to the Contractor except such amounts as are required by law to be withheld by properly

executed and filed notices to stop payment, or as may be withheld for any other lawful purposes.

7-3.2 Partial and Final Payment

7-3.2.1 Monthly Closure Date and Invoice Date

For purposes of Section 7-3.2, the monthly closure date shall be the last Day of each month. A measurement of Work performed and a progress estimate of the value thereof based on the Contract and of the monthly payment shall be prepared by the Contractor and submitted to the District Engineer before the tenth (10th) Day of the following month for verification and payment consideration.

7-3.2.2 Payments

The District shall make payments within thirty (30) Days after receipt of the Contractor's undisputed and properly submitted payment request, including an updated construction schedule pursuant to Section 6-1.1 of the General Provisions. The District shall return to the Contractor any payment request determined not to be a proper payment request as soon as practicable, but not later than seven (7) Days after receipt, and shall explain in writing the reasons why the payment request is not proper.

7-3.2.3 Retention

The District shall withhold not less than five percent (5%) from each progress payment. However, at any time after fifty percent (50%) of the Work has been completed, if the District Board finds that satisfactory progress is being made, it may, at its discretion, make any of the remaining progress payments in full for actual Work completed. The District shall withhold not less than five percent (5%) of the Compensation Sum from the Final Payment Amount (defined in Section 7-3.2.4) until at least thirty-five (35) days after recordation of the Notice of Completion, or recordation of a notice of completion or cessation, but not later than the period permitted by Public Contract Code Section 7107.

7-3.2.4 Final Invoice and Payment

Whenever the Contractor shall have completely performed the Contract in the opinion of the District Engineer, the District Engineer shall notify the District Clerk that the Contract has been completed in its entirety. The Contractor shall then submit to the District Engineer a written statement of the final quantities of Contract items for inclusion in the final invoice. Upon receipt of such statement, the District Engineer shall check the quantities included therein and shall authorize a payment amount, which in the District Engineer's opinion shall be just and fair, covering the value of the total amount of Work done by the Contractor, less all previous payments and all amounts to be retained under the provisions of the Contract Documents ("Final Payment Amount"). The District

Engineer shall then request that the District accept the Work and that the District Clerk be authorized to file, on behalf of the District in the office of the County Recorder, a Notice of Completion of the Work herein agreed to be done by the Contractor. In addition, the final payment will not be released until the Contractor returns the control set of Plans and Specifications showing the redlined as-built conditions.

7-3.2.5 Substitute Security

In accordance with Public Contract Code Section 22300, the Contractor may request that it be permitted to substitute securities in lieu of having retention withheld by the District from progress payments when such payments become due or, in the alternative, the Contractor may request that the District make payments of earned retentions directly to an agreed upon designated escrow agent at the Contractor's expense. If the Contractor selects either one of these alternatives, the following shall control.

7.3.2.5.1 Substitution of Securities for Performance Retention

At some reasonable time before any progress payment would otherwise be due and payable to the Contractor in the performance of Work under these Contract Documents, the Contractor may submit a request to the District in writing to permit the substitution of retentions with securities equivalent to the amount estimated by the District ("estimated amount of retention") to be withheld. The Contractor shall deposit such securities with the District or may, in the alternative, deposit such securities in escrow with a State or federally chartered bank in California, as the escrow agent, at the Contractor's expense. Such securities will be the equivalent or greater in value of the estimated amount of retention.

If the Contract is modified by written Modifications or Change Orders or the Contractor otherwise becomes entitled to receive an amount more than the Contract Price at the time the securities are deposited, the Contractor shall, at the request of the District, deposit with the District or escrow agent, whichever is applicable, additional securities within a reasonable time so that the amount of securities on deposit with the District or escrow agent is equivalent or greater in value than the amount of retention the District would otherwise be entitled to withhold from progress payments due or to become due to the Contractor as the Work progresses.

The District shall withhold any retention amount that exceeds the security amount until the additional securities are deposited and, if the deposit is with an escrow agent, the District has confirmation from that escrow agent of the new total value of securities. Upon satisfactory completion of the Contract, which shall mean, among other things, that the District is not otherwise entitled to retain proceeds from progress payments as elsewhere provided in the Contract or under applicable law, the securities shall be returned to the Contractor.

The District shall, within its sole discretion, determine whether the amount of the securities on deposit with the District or escrow agent is equal to or greater than the amount of estimated retention of progress payments that could otherwise be held by the District if the Contractor had not elected to substitute same with securities.

7-3.2.5.2 Deposit of Retention Proceeds with an Escrow Agent

As an alternative to the substitution of securities, as provided above, or the District otherwise retaining and holding retention proceeds from progress payments, the Contractor may request the District to make payments of retentions earned directly to an escrow agent with the same qualifications as required in Section 7-3.2.5.1 above and at the expense of the Contractor.

At its sole expense, the Contractor may direct the investment of such retention payments into only such securities as mentioned in Section 7-3.2.5.4 below and shall be entitled to interest earned on such investments on the same terms provided for securities deposited by the Contractor.

Upon satisfactory completion of the Contract, which shall mean when the District would not otherwise be entitled to withhold retention proceeds from progress payments had the Contractor not elected to have such proceeds deposited into escrow, the Contractor shall be allowed to receive from the escrow agent all securities, interest and payments deposited into escrow pursuant to the terms of this Section.

The Contractor shall pay to each Subcontractor, not later than ten (10) Days of receipt of payment, the respective amount of interest earned, net of costs attributed to retention withheld from each Subcontractor, on the amount withheld to ensure performance of the Contractor.

7-3.2.5.3 Subcontractor Entitlement to Interest

If the Contractor elects to receive interest on any moneys withheld in retention by the District, then the Subcontractor shall receive the identical rate of interest received by the Contractor on any retention moneys withheld from the Subcontractor by the Contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the Subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the Subcontractor.

If the Contractor elects to substitute securities in lieu of retention, then, by mutual consent of the Contractor and the Subcontractor, the Subcontractor may substitute securities in exchange for the release of moneys held in retention by the Contractor.

The Contractor shall pay each Subcontractor, not later than ten (10) Days after receipt of escrow moneys, the amount owed to each Subcontractor from the moneys plus the respective amount of interest earned, net of costs attributed to the retention held from each Subcontractor, on the amount of retention withheld to ensure performance of the Subcontractor.

7-3.2.5.4 Securities Eligible for Investment

Securities eligible for investment shall include those listed in Government Code Section 16430, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed upon between the Contractor and the District.

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

7-3.2.5.5 Escrow Agreement for Security Deposits in Lieu of Retention

The escrow agreement that shall be used for the deposit of securities in lieu of retention shall substantially conform to the form prescribed in Public Contract Code Section 22300(f).

7-3.2.5.6 Inconsistencies with Prevailing Statutory Requirements

If there is any inconsistency between or differences in Public Contract Code Section 22300 and the terms of this provision, or any future amendments thereto, Section 22300 shall control.

Section 7-3.9 is hereby added to Section 7-3 of Part 1 of the Standard Specifications, as follows:

7-3.9 AUDIT

The District or its representative shall have the option of inspecting and/or auditing all records and other written materials used by the Contractor in preparing its billings to the District as a condition precedent to any payment to the Contractor or in response to a construction claim or a Public Records Act (Government Code Section 6250 *et seq.*) request.

The Contractor will promptly furnish documents requested by the District at no cost. Additionally, the Contractor shall be subject to State Auditor examination and audit at the request of the District or as part of any audit of the District, for a period of three (3) years after final payment under the Contract.

The Contractor shall include a copy of this Section 7-3.9 in all contracts with its Subcontractors, and the Contractor shall be responsible for immediately obtaining those records or other written material from its Subcontractors upon a request by the State Auditor or the District. If the Project includes other auditing requirements, those additional requirements will be listed in the Special Provisions.

SECTION 8 FACILITIES FOR AGENCY PERSONNEL

8-1 General

No field offices for District personnel shall be required; however, District personnel shall have the right to enter upon the Project at all times and shall be admitted to the offices of the Contractor to use the telephone, desk and sanitary facilities provided by the Contractor for its own personnel.

Section 9 is hereby added to Part 1 of the Standard Specifications, as follows:

SECTION 9. ADDITIONAL TERMS

9-1 NONDISCRIMINATORY EMPLOYMENT

The Contractor shall not unlawfully discriminate against any individual based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation or military and veteran status. The Contractor understands and agrees that it is bound by and will comply with the nondiscrimination mandates of all statutes and local ordinances and regulations.

9-3 CONTRACTOR'S RESPONSIBILITY FOR WORK

Until the final acceptance of the Work by the District Council in accordance with Section 3-13.2 of the General Provisions, the Contractor shall have the charge and care thereof and shall bear the risk of injury or damage to any part of the Work by the action of the elements, criminal acts, or any other cause. The Contractor shall rebuild, repair, restore and make good all injuries or damages to any portion of the Work occasioned by any cause before its completion and acceptance and shall bear the expense thereof, except for such injuries or damages arising from the sole negligence or willful misconduct of the District, its officers, agents or employees. In the case of suspension of Work from any cause whatever, the Contractor shall be responsible for all materials and the protection of Work already completed, shall properly store and protect them if necessary, and shall provide suitable drainage and erect temporary structures where necessary.

9-4 PROCEDURE IN CASE OF DAMAGE TO PUBLIC PROPERTY

Any portions of curb, gutter, sidewalk or any other District improvement damaged by the Contractor during the course of construction shall be replaced by the Contractor at its own cost. The cost of additional replacement of curb, gutter or sidewalk in excess of the estimated quantities shown in the Bid form and Specifications, and found necessary during the process of construction (but not due to damage resulting from carelessness on the part of the Contractor during its operation), shall be paid to the Contractor at the unit prices submitted in his or her Bid.

9-5 REMOVAL OF INTERFERING OBSTRUCTIONS

The Contractor shall remove and dispose of all debris, abandoned structures, tree roots and obstructions of any character encountered during the process of excavation. It is understood that the cost of any such removals are made a part of the unit price bid by the Contractor under the item for excavation or removal of existing Work.

9-6 SOILS ENGINEERING AND TESTING

A certified material testing firm may be retained by the District to perform materials tests during the Contractor's entire operation to ascertain compliance with the Contract requirements. The District shall be responsible for the first series of tests. If the initial tests do not meet the Contract requirements, the Contractor shall bear the cost of all subsequent tests.

If the District requires other tests or more specific requirements for testing regarding this Project, those details will be included in the Special Provisions.

9-7 ACCESS TO PRIVATE PROPERTY

Unless otherwise stated in the Special Provisions, the Contractor shall be responsible for all fees and costs associated with securing permission to access private property for any portion of the Project.

9-9 CLAIM DISPUTE RESOLUTION

In the event of any dispute or controversy with the District over any matter whatsoever, the Contractor shall not cause any delay or cessation in or of Work, but shall proceed with the performance of the Work in dispute. The Contractor shall retain any and all rights provided that pertain to the resolution of disputes and protests between the parties. The Disputed Work will be categorized as an "unresolved dispute" and payment, if any, shall be as later determined by mutual agreement or a court of law. The Contractor shall keep accurate, detailed records of all Disputed Work, claims and other disputed matters.

All claims arising out of or related to the Contract Documents or this Project, and the

consideration and payment of such claims, are subject to the Government Claims Act (Government Code Section 810 et seq.) with regard to filing claims.

All such claims are also subject to Public Contract Code Section 9204 and Public Contract Code Section 20104 et seq. (Article 1.5), where applicable. This Contract hereby incorporates those provisions as through fully set forth herein.

Thus, the Contractor or any Subcontractor must file a claim in accordance with the Government Claims Act as a prerequisite to filing a construction claim in compliance with Section 9204 and Article 1.5 (if applicable), and must then adhere to Section 9204 and Article 1.5 (as applicable), pursuant to the definition of "claim" as individually defined therein.

9-10 THIRD PARTY CLAIMS

The District shall have full authority to compromise or otherwise settle any claim relating to the Project at any time. The District shall timely notify the Contractor of the receipt of any third-party claim relating to the Project. The District shall be entitled to recover its reasonable costs incurred in providing this notice.

9-11 COMPLIANCE WITH LAWS

The Contractor shall comply with all applicable federal, State and local laws, ordinances, codes and regulations in force at the time the Contractor performs pursuant to the Contract Documents.

9-12 CONTRACTOR'S REPRESENTATIONS

By signing the Contract, the Contractor represents, covenants, agrees, and declares under penalty of perjury under the laws of the State of California that: (a) the Contractor is licensed, qualified, and capable of furnishing the labor, materials, and expertise necessary to perform the services in accordance with the terms and conditions set forth in the Contract Documents; (b) there are no obligations, commitments, or impediments of any kind that will limit or prevent its full performance under the Contract Documents; (c) there is no litigation pending against the

Contractor that could adversely affect its performance of the Contract, and the Contractor is not the subject of any criminal investigation or proceeding; and (d) to the Contractor's actual knowledge, neither the Contractor nor its personnel have been convicted of a felony.

9-13 CONFLICTS OF INTEREST

The Contractor agrees not to accept any employment or representation during the term of the Contract or within twelve (12) months after acceptance as defined in Section 3-13.2

of the General Provisions that is or may likely make the Contractor “financially interested,” as provided in Government Code Sections 1090 and 87100, in any decisions made by the District on any matter in connection with which the Contractor has been retained pursuant to the Contract Documents.

9-14 APPLICABLE LAW

The validity, interpretation, and performance of these Contract Documents shall be controlled by and construed under the laws of the State of California, excluding California’s choice of law rules. Venue for any such action relating to the Contract shall be in the Superior Court with geographic jurisdiction over the District.

9-15 TIME

Time is of the essence in these Contract Documents.

9-16 INDEPENDENT CONTRACTOR

The Contractor and Subcontractors shall at all times remain, as to the District, wholly independent contractors. Neither the District nor any of its officials, officers, employees or agents shall have control over the conduct of the Contractor, Subcontractors, or any of their officers, employees, or agents, except as herein set forth, and the Contractor and Subcontractors are free to dispose of all portions of their time and activities that they are not obligated to devote to the District in such a manner and to such Persons that the Contractor or Subcontractors wish except as expressly provided in these Contract Documents.

The Contractor and Subcontractors shall have no power to incur any debt, obligation, or liability on behalf of the District, bind the District in any manner, or otherwise act on behalf of the District as agents. The Contractor and Subcontractors shall not, at any time or in any manner, represent that they or any of their agents, servants or employees, are in any manner agents, servants or employees of the District.

The Contractor and Subcontractors agree to pay all required taxes on amounts paid to them under the Contract, and to indemnify and hold the District harmless from any and all taxes, assessments, penalties, and interest asserted against the District by reason of the independent contractor relationship created by the Contract Documents. The Contractor shall include this provision in all contracts with all Subcontractors.

9-17 CONSTRUCTION

In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of these Contract Documents shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the

uncertainty to exist or against the party who drafted the Contract Documents or who drafted that portion of the Contract Documents.

9-18 NON-WAIVER OF TERMS, RIGHTS AND REMEDIES

Waiver by either party of anyone (1) or more of the conditions of performance under these Contract Documents shall not be a waiver of any other condition of performance under these Contract Documents. In no event shall the making by the District of any payment to the Contractor constitute or be construed as a waiver by the District of any breach of covenant, or any default that may then exist on the part of the Contractor, and the making of any such payment by the District shall in no way impair or prejudice any right or remedy available to the District with regard to such breach or default.

9-19 TERM

The Contract is effective as of the Effective Date listed and shall remain in full force and effect until the Contractor has fully rendered the services required by the Contract Documents or the Contract has been otherwise terminated by the District. However, some provisions may survive the term listed within this Section, as stated in those provisions.

9-20 NOTICE

Except as otherwise required by law, any notice or other communication authorized or required by these Contract Documents shall be in writing and shall be deemed received on (a) the day of delivery if delivered by hand or overnight courier service during the District's regular business hours or (b) on the third (3rd) business day following deposit in the United States mail, postage prepaid, to the addresses listed on the Contractor's Bid and District Hall, or at such other address as one party may notify the other.

9-21 SEVERABILITY

If any term or portion of these Contract Documents is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of these Contract Documents shall continue in full force and effect.

SPECIAL PROVISIONS

The Sections that follow supplement, but do not replace, the corresponding provisions in Part 3 (Construction Methods) and Part 4 (Existing Improvements) of the Standard Specifications, except as otherwise indicated herein. In the event of any conflict between the Standard Specifications and these Special Provisions, these Special Provisions shall control.

SECTION 306 - OPEN TRENCH CONDUIT CONSTRUCTION

306-3.1 GENERAL

Pursuant to Public Contract Code Section 7104, if the project involves trenching more than four (4) feet deep, Contractor shall promptly and before the following conditions are disturbed notify the District in writing of any:

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

b. Subsurface or latent physical conditions at the site differing from those indicated; and/or

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

d. As required by Labor Code Section 6705 and in addition thereto, whenever work under the Contract that involves an estimated expenditure in excess of twenty-five thousand dollars (\$25,000) for the excavation of any trench or trenches five (5) feet or more in depth, Contractor shall submit for acceptance by District in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by Contractor, and all costs therefor shall be included in the price of the Contract. Nothing in this provision shall be deemed to allow the use of a shoring, sloping, or other protective system less effective than that required by the Construction Safety Orders. Nothing in this provision shall be construed to impose tort liability on the District or on any District officer, agent, consultant, representative, or employee. All plans, processing and shoring costs are Contractor's responsibility and must be included in Contractor's bid.

SECTION 400 - PROTECTION AND RESTORATION

400-1 GENERAL

All costs to the Contractor for protecting, removing, restoring, relocating, repairing, replacing, or reestablishing existing improvements shall be included in the Bid.

SECTION 402 - UTILITIES

402-1 LOCATION

The location and existence of any underground Utility or substructure has not been obtained. The methods used and costs involved to locate existing elements, points of connection and all construction methods are the Contractor's sole responsibility. Accuracy of information furnished, as to existing conditions, is not guaranteed by the District. The Contractor, at its sole expense, must make all investigations necessary to determine locations of existing elements, which may include contacting Underground Service Alert and other private underground locating firm(s), utilizing specialized locating equipment, hand trenching, or both. For every Dig Alert Identification Number issued by Underground Service Alert during the course of the Project, the Contractor must submit to the District the following form. The Contractor shall be responsible for preserving the integrity of the existing underground utilities at the site.

UNDERGROUND SERVICE ALERT IDENTIFICATION NUMBER FORM

No excavation will be permitted until this form is completed and returned to the District. Government Code Section 4216 *et seq.* requires a Dig Alert Identification Number to be issued before a permit to excavate will be valid.

To obtain a Dig Alert Identification Number, call Underground Service Alert at **811** a minimum of three (3) Working Days before scheduled excavation. For best response, provide as much notice as possible up to ten (10) Working Days.

REQUIRED: This form is required for every Dig Alert Identification Number issued by Underground Service during the course of the Work.

Additional forms may be obtained from the District upon request.

Dig Alert Identification Number:

Dated: _____
("CONTRACTOR")

By: _____
Printed Name: _____

Title:

By: _____

Printed Name: _____

Title: _____

402-1.3 Entry by Utility Owners

The right is reserved to the owners of public Utilities or franchises to enter the Project site for the purpose of making repairs or changes in their property that may be necessary as a result of the Work as well as any other reason authorized by the District. When the Contract Documents provide for the Utility owners to alter, relocate or reconstruct a Utility, or when the Contract Documents are silent in this regard and it is determined by the District Engineer that the Utility owners must alter, relocate or reconstruct a Utility, the Contractor shall schedule and allow adequate time for those alterations, relocations or reconstructions by the respective Utility owners. District employees and agents shall likewise have the right to enter upon the Project site at any time and for any reason or no reason at all.

402-2 PROTECTION

If Contractor damages or breaks the Utilities, it will be the Contractor's responsibility to repair the Utility at no cost to the Utility or the District.

402-3 REMOVAL

Facilities encountered during the prosecution of the Work that are determined to be abandoned shall be removed by the Contractor as required for the Work, unless directed otherwise by the District Engineer. The remaining portion of the existing Utility which is left in place shall be accurately recorded, in elevation and plan, on the control set of Contract Drawings.

402-4 RELOCATION

The Contractor shall cooperate fully with all Utility forces of the District or forces of other public or private agencies engaged in the relocation, altering, or otherwise rearranging of any facilities that interfere with the progress of the Work. The Contractor shall schedule the Work so as to minimize interference with the relocation, altering, or other rearranging of facilities.

402-6 COOPERATION

The Contractor's attention is directed to the fact that Work may be conducted at or adjacent to the site by other contractors during the performance of the Work under this Contract. The Contractor shall conduct its operations so as to cause a minimum of interference with the work of such other contractors, and shall cooperate fully with such contractors to provide continued safe access to their respective portions of the site, as required to perform work under their respective contracts. Compensation for compliance shall be included in the various items of the Work, and no additional compensation shall be allowed therefor.

402-7 NOTIFICATION

The Contractor shall notify the District Engineer and the owners of all Utilities and substructures not less than forty-eight (48) hours before starting construction. The following list of names and telephone numbers is intended for the convenience of the Contractor and is not guaranteed to be complete or accurate:

Agency:	
Contact Person:	
Phone Number:	Email:

Agency:	
Contact Person:	
Phone Number:	Email:

Agency:	
Contact Person:	
Phone Number:	Email:

End of Document