PALM SPRINGS CEMETERY DISTRICT

REQUEST FOR PROPOSALS

EXTERIOR WALL EXTENSION AND INTERIM MANUAL GATE PROJECT

Sealed proposals for this project will be received by Kathleen Jurasky, District Manager for the Palm Springs Cemetery District ("District") at the business offices of the District located at Desert Memorial Park, 31-705 Da Vall Drive, Cathedral City, California 92234 until **4:00PM on Tuesday, November 3, 2026**.

In general, this project includes: Replacing an existing chain-link perimeter fence along Da Vall Drive & McCallum Way at Desert Memorial Park ("DMP") in Cathedral City, California, with a permanent wall and installing an interim manual swing gate. This project includes associated grading and site preparation necessary to construct the wall and interim manual swing gate pending installation of a permanent automatic gate (note: while the interim manual swing gate is a part of this project, the permanent automatic gate is not a part of this project). Also, the selected contractor is required to comply with the plans and specifications prepared by MSA Consulting, Inc. for the project and all permits issued by the City of Cathedral City for the project, and is required to ensure that all documents and plans required of the contractor or any of its subcontractor(s) are sufficiently completed and timely submitted to the appropriate entity pursuant to the permits issued by the City of Cathedral City for the project, which include, but are not limited to, a requirement for the contractor to submit construction details to the City of Cathedral City for the gate, a requirement for the contractor to submit shop drawings to landscape architect for approval prior to fabrication, and a requirement for the contractor or subcontractor of the gate to supply provisions for the lock and to submit shop drawings to Riverside County Fire Marshall for approval prior to fabrication and installation. The work is to be complete within a period of ninety (90) calendar days after issuance of the Notice to Proceed, unless otherwise agreed upon. **A Notice to Proceed will be issued once all insurance, bonds, and critical submittals have been approved.**

Questions concerning the project should be directed to Kathleen Jurasky, District Manager for the District, at (760) 328-3316 or info@pscemetery.com. You may view the plans for this project and this request for proposals package on the District's website at https://www.pscemetery.com/request-for-proposals.

Pursuant to California Business and Professions Code section 7059, the Contractor, at the time of proposal submittal, must have the State of California General Contractor's licenses, C-29 Masonry, C-13 Fencing, C-12 Earthwork and Paving, or a combination of appropriate licenses required to perform the entire work.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations ("DIR"). No contractor or subcontractor may be listed on a proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. No contractor or subcontractor shall be qualified to bid on, be listed in a proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section

1725.5. By submitting a proposal to the District, Contractor is certifying that it has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration, including each subcontractor's DIR registration number, to the District.

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

In accordance with California Labor Code Section 1771, all workers engaged in performance of the specified contract work shall be paid not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the project is to be performed, including for holiday and overtime work as determined by the Director of Industrial Relations. Copies of the prevailing rate of per diem wages are available at the District's office at Desert Memorial Park, 31-705 Da Vall Drive, Cathedral City, California 92234, and shall be made available to any interested party on request.

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

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

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

The District reserves the right to reject any and all proposals and/or to waive any irregularity to the extent permitted by law. If the District elects to award a contract for performance of the project, the contract will be awarded to the proposer with the strongest proposal across all categories described in Section 12 of the Instructions for Proposals. All pricing proposals shall remain valid for sixty (60) calendar days after the bid opening.

PALM SPRINGS CEMETERY DISTRICT

INSTRUCTIONS FOR PROPOSALS

EXTERIOR WALL EXTENSION AND INTERIM MANUAL GATE PROJECT

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1. Proposal Requirement and Proposer's Representations

1.1 Format of Proposals. Proposals shall be submitted in writing and contain the following required contents. The District will not consider any proposal not meeting these requirements. Required contents include:

a. Proposer's Statement of Qualifications

b. Proposal Form, including:

i. Department of Industrial Relations Registration

ii. Debarment Certification

iii. Off Road Regulations Assurances

iv. Price Proposal

v. Addenda Acknowledgement

vi. Non-Collusion Affidavit

vii. Designation of Subcontractors

viii. Contractor License Information

ix. Proposer Statement of Qualifications

x. Proposer's Signature Page

1.2 Proposer Representations. Each proposer represents that:

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

b. The proposer has visited and familiarized him or herself with the site conditions. It will be the sole responsibility of each proposer to conduct any additional examination, investigation, exploration, test, study or other inquiry and to obtain any additional

information pertaining to the physical conditions (including surface and underground utilities) that may affect the cost, progress, or performance of the Project. Proposers seeking any such additional examination or other inquiries or information concerning the Project will do so at the proposer's sole expense.

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

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

1.3 Eligibility and Responsibility.

a. The District has absolute discretion to determine the most qualified proposer. The Contract will not be awarded to any proposer who cannot give satisfactory assurance of their ability to perform the Contract if it is awarded to them. Each proposer may be required to furnish satisfactory evidence that it has sufficient means and facilities and has had ample experience in the type of work contemplated herein to deliver the materials and complete the installation in accordance with the specifications and within the time limit guaranteed.

b. All proposers must be contractors holding a valid license to perform the required work as provided by the Business and Professions Code (see license requirements in the Request for Proposals). The Proposer's license(s) must remain active and in good standing throughout the term of the Contract.

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

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

e. Proposers failing to meet the requirements in this Section 1 will not be considered.

1.4 Cost of Proposal. The Proposer shall be solely responsible for all costs and expenses incurred in connection with its preparation, submission, and presentation of its proposal in response to this Request for Proposals, including, without limitation, all costs associated with preparing the proposal, conducting due diligence, attending meetings or interviews, preparing presentations, obtaining professional or technical services, and negotiating any resulting contract. The District shall have no liability and no obligation to reimburse or otherwise compensate any Proposer for any such costs or expenses, regardless of whether the Proposer is selected, the Request for Proposals is canceled or withdrawn, the District rejects any or all proposals, or the District elects not to proceed with the proposed project or enter into a contract. By submitting a proposal, each Proposer acknowledges and agrees to bear all such costs and expenses at its sole risk and expense. Without limiting the foregoing, the District reserves the right, in its sole and absolute discretion and subject to applicable law, to modify or cancel this Request for Proposals, to reject any or all proposals, to waive any irregularities, or to elect not to proceed with the project, without liability to any Proposer for costs or expenses incurred in connection with this Request for Proposals.

2. Plans and Documents

2.1 Plans for the project can be obtained by submitting an email request to Kathleen Jurasky, District Manager for the District, at info@pscemetery.com.

Paper copies of the RFP documents and reasonable accommodations for auxiliary aids will be made available upon request by contacting Kathleen Jurasky, District Manager for the District, at (760) 328-3316 or info@pscemetery.com.

2.2 Prior to submitting a proposal, the proposer is responsible for examining the job site and proposal documents and notifying the District of apparent errors, omissions, and patent ambiguities in the plans, specifications, and forms. Proposal submission is your acknowledgment that you have examined the job site and RFP documents and are satisfied with:

a. General and local conditions to be encountered

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

c. Quantities of materials to be furnished

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

e. Requirements of the contract

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

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

3. Addenda

3.1 Every interpretation of the specifications, changes, additions or corrections will be in the form of an addendum to the contract documents, and when issued will be available on the District's website at https://www.pscemetery.com at least one (1) business day before proposals are opened. Addenda withdrawing the Request for Proposals or postponing the deadline for proposals may be issued any time prior to the deadline.

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

3.3 Each proposer shall acknowledge receipt of all Addenda in their proposal.

4. Requests for Clarification and Project Communication

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

Kathleen Jurasky, District Manager for the District, at (760) 328-3316 or info@pscemetery.com.

5. Bid Protests

All bid protests shall be in writing, addressed to Kathleen Jurasky, District Manager for the District, at info@pscemetery.com and received no later than 4:00 p.m. on Tuesday, November 10, 2026 ("Bid Protest Deadline"), following the District Manager's written recommendation of the selected proposer to be issued on or before 5:00 p.m. on Friday, November 6, 2026. Bid Protests submitted after the Bid Protest Deadline will not be considered.

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

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

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

5.4 Responses to Bid Protest. The protested proposer may submit a written response to the Bid Protest by filing a written response to Kathleen Jurasky, District Manager for the District, at info@pscemetery.com. This response must be submitted to the District no later than 4:00 p.m. on Wednesday, November 11, 2026. The response must include all supporting documentation, and any late material will not be considered. The response must include the name, address, telephone number, and email address of the person representing the responding party, if different than the responding party.

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

5.6 District Decision on Bid Protest. The District Board of Trustees, at its public meeting scheduled for Thursday, November 12, 2026, or if such meeting is cancelled or adjourned, then at a District Board of Trustees public meeting scheduled as soon thereafter, shall consider all timely Bid Protests and timely written responses to Bid Protests prior to formal award of the contract for the project. The District Board of Trustees may consider the Bid Protests and written responses to Bid Protests, if any, as part of its consideration of the award of the contract for the project to which the Bid Protests relate or may consider the Bid Protests and written responses, if any, as a separate item, provided that the District Board of Trustees shall decide the Bid Protests prior to awarding the contract for the project unless the District Board of Trustees exercises its discretion to reject all bids.

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

5.8 Rejection of All Bids. Nothing in this Section shall be construed as a waiver of the right of the District Board of Trustees to reject all bids and proposals.

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

6. Time Limit and Liquidated Damages

All work shall be diligently prosecuted to completion before the expiration of ninety (90) calendar days after issuance of the Notice to Proceed. If the Contractor fails to complete the work within this time limit, the Contractor shall pay liquidated damages to the District, computed at the rate of Eight Hundred Dollars ($800.00) for each calendar day beyond the specified time limit until the project is completed.

7. Subcontracting

7.1 Proposals must include a completed list of proposed subcontractors. The subcontractor list must include the name, place of business, California contractor license number, DIR

registration number, the portion (type or trade), and dollar amount of work to be subcontracted (including special fabrication and installation of a portion of the work). DIR registration numbers must be provided for all subcontractors.

7.2 For any portion of the Project work for which no subcontractor is listed, proposers certify by submitting their proposals that they are qualified to perform that portion of the work with their own forces. A proposer may not substitute another subcontractor for a subcontractor listed in its proposal except as permitted by the District.

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

8. Prevailing Wage and Labor Law Compliance

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

8.2 In accordance with Labor Code Section 1771, the successful proposer will be required to pay not less than the prevailing rate of per diem wages as determined by the California Department of Industrial Relations (DIR) on the date the work is performed. Copies of the prevailing rate of per diem wages may be obtained from the District at the District's office at Desert Memorial Park, 31-705 Da Vall Drive, Cathedral City, California 92234, or on DIR's website at http://www.dir.ca.gov/DLSR/PWD/index.htm.

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

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

8.5 A proposer's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in response to a solicitation shall not be grounds for filing a bid protest or rejecting the proposal provided that any of the following apply: (1) the subcontractor

is registered prior to proposal opening; (2) within twenty-four (24) hours after the proposal opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered subcontractor pursuant to Public Contract Code section 4107.

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

9. Off-Road Regulation Assurances

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

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

10. Bonds and Insurance

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

11. Substitution of Securities

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

12. Evaluation Process and Award of Contract

12.1 The District will review and evaluate the proposals to ensure that each proposal meets all the requirements identified in this RFP. The District will evaluate the proposals in accordance with the categories described below. The proposer with the strongest proposal across all categories will be awarded the Contract.

12.2 The following categories will be used by the District to evaluate submissions:

a. Experience and demonstrated competence of proposer to perform the work;

b. References; and

c. Pricing

12.3 The District Board reserves the right to reject any or all proposals and the right to waive any irregularities.

12.4 The award of contract, if awarded, shall be based on budget requirements and shall be made to the most qualified proposer.

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

PROPOSAL FORM

EXTERIOR WALL EXTENSION AND INTERIM MANUAL GATE PROJECT

Proposer's Name: _____

TO PALM SPRINGS CEMETERY DISTRICT (the "DISTRICT"):

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

Proposer declares that this proposal is based upon careful examination of the work site, Project Plans, and other Contract Documents, including the Request for Proposals, this Proposal, the Contract, General Conditions, and Plans & Specifications. If this proposal is accepted for award, Proposer agrees to enter into a contract with the District at the lump sum price set forth in this proposal.

Proposer agrees and acknowledges that it is aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the proposer will comply with such provisions of that code before commencing the performance of this Contract if awarded it.

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

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

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

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

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

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

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

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

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

- ❑ DEPARTMENT OF INDUSTRIAL RELATIONS REGISTRATION
- ❑ DEBARMENT CERTIFICATION
- ❑ OFF ROAD REGULATIONS ASSURANCES
- ❑ PRICE PROPOSAL
- ❑ ADDENDA ACKNOWLEDGEMENT
- ❑ NON-COLLUSION AFFIDAVIT
- ❑ DESIGNATION OF SUBCONTRACTORS
- ❑ CONTRACTOR LICENSE INFORMATION
- ❑ PROPOSER STATEMENT OF QUALIFICATIONS
- ❑ PROPOSER'S SIGNATURE PAGE

DEPARTMENT OF INDUSTRIAL RELATIONS REGISTRATION

EXTERIOR WALL EXTENSION AND INTERIM MANUAL GATE PROJECT

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

Project: EXTERIOR WALL EXTENSION AND INTERIM MANUAL GATE PROJECT

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

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

_____ _____

(Signature) Date

_____

(Printed Name)

DEBARMENT CERTIFICATION

EXTERIOR WALL EXTENSION AND INTERIM MANUAL GATE PROJECT

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

CONTRACTOR OFF-ROAD REGULATION ASSURANCES

The District requires that all work done on its property or otherwise on behalf of the District is performed in accordance with the State's environmental health and safety laws, codes and regulations. To this end, please check the appropriate boxes and provide information as required below related to compliance with California Air Resources Board (CARB) Off-Road Diesel-Fueled Fleets Regulations. The District will not approve this Contract until this form has been completed. This form must be updated annually or anytime changes occur. Contractor agrees to provide the Agency with any documents referenced below within one (1) business day of the request. Information on these Regulations is available here: https://ww2.arb.ca.gov/our-work/programs/use-road-diesel-fueled-fleets-regulation

Contractor Name: _____

In the performance of this contract, does Contractor propose to use vehicles subject to 13 CCR 2449, the In-Use Off-Road Diesel-Fueled Fleets Regulation?

YES ☐ **NO** ☐

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

If the answer above is **YES:**

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

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

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

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

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

PRICING PROPOSAL

EXTERIOR WALL EXTENSION AND INTERIM MANUAL GATE PROJECT

The proposer will do the work for the lump sum of: _____.

Proposer acknowledges receipt of the following addenda:

_____.

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

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

EXTERIOR WALL EXTENSION AND INTERIM MANUAL GATE PROJECT

To be Executed by Proposer and Submitted with Proposal

State of California
County of _____

The undersigned declares:

I am the _____[title] of _____ [proposing entity] , the party making the foregoing proposal.

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

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

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

_____
Signature

_____
Name

_____
Title and Company

DESIGNATION OF SUBCONTRACTORS

EXTERIOR WALL EXTENSION AND INTERIM MANUAL GATE PROJECT

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

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

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

CONTRACTOR LICENSE INFORMATION

EXTERIOR WALL EXTENSION AND INTERIM MANUAL GATE PROJECT

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

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

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

Proposer's Taxpayer Identification No.

_____

PROPOSER'S STATEMENT OF QUALIFICATIONS

EXTERIOR WALL EXTENSION AND INTERIM MANUAL GATE PROJECT

1. SCOPE OF THIS STATEMENT

To allow the District to evaluate the Proposer's responsibility, the Proposer shall provide the following information as a part of its proposal. If additional pages are required to respond to any of the questions set forth in this Statement, the Proposer shall describe and list the additional pages in Section 7, below.

At the request of a Proposer, the District may consider, in its sole and absolute discretion, certain personal and proprietary information that is contained in this Statement of such Proposer as confidential information and not subject to public disclosure; provided, however, that such information may be subject to public disclosure under the California Public Records Act or similar laws, in the District's reasonable discretion, and that the Proposer shall indemnify, defend, and hold the District harmless from any claim or litigation related to the District's classification of such information as exempt from disclosure under the California Public Records Act or similar laws. It is agreed and acknowledged by the Proposer that all information submitted by the Proposer may be helpful in the District Board of Trustees' determination at its public meeting of the selection of a Proposer and award of a contract, and that any information classified by the Proposer as confidential and not subject to public disclosure will not be presented to the District Board of Trustees at its public meeting at which the selection of a contractor and award of a contract for this matter will be considered.

2. EXPERIENCE

a. How many years has the Proposer been performing work as a contractor under the present business name for construction of walls, fences and gates that are similar to, or greater in scope than, the project?

_____ years.

b. Prospective proposers shall demonstrate a minimum of three (3) years of experience in constructing projects of a similar size and nature.

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

3. COMPLETED WORK / REFERENCES

Provide the requested information set forth below for at least two (2) most recent projects of similar size and scope completed during the past three (3) years.

a. Project Name: _____

Project Description: _____

_____

Contract Amount: _____

Date Completed: _____

Contact Person: _____

Contact Person's Phone: _____

b. Project Name: _____

Project Description: _____

_____

Contract Amount: _____

Date Completed: _____

Contact Person: _____

Contact Person's Phone: _____

c. Project Name: _____

Project Description: _____

_____

Contract Amount: _____

Date Completed: _____

Contact Person: _____

Contact Person's Phone: _____

4. CLAIMS HISTORY

a. Has any claim (whether mediated, arbitrated, or litigated) been made against your company in the past five (5) years? _____

b. Has your company made any claim (whether mediated, arbitrated, or litigated) against any Public Agency or claim in the past five (5) years? _____

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

Project Name: _____

Claim Amount: _____

Other Party Contact: _____

Name and Phone: _____
Describe the claim(s) on a separate sheet (see Section 7, below).

5. CONTRACT TERMINATION

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

Project Name: _____

Agency/Client Contact
Name and Phone: _____

Date of Termination/Rejection: _____

Explanation: _____

_____

_____

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

6. COMPLETION BY SURETY

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

Project Name: _____

Surety Contact
Name and Phone: _____

Date of Surety Took Over: _____

Explanation: _____

_____

_____

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

7. ADDITIONAL PAGES

The Proposer declares that the pages listed in this Subsection were added and included with this Statement of Qualifications.

_____ (List Pages)

8. PENALTY OF PERJURY

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

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

PROPOSER: _____
Signature(s)

DATE: _____

_____
(Name and Title of Signatories)

_____
(Legal Name of Proposer)

_____
(Address)

_____
(Phone Number)

PROPOSER'S SIGNATURE PAGE

EXTERIOR WALL EXTENSION AND INTERIM MANUAL GATE PROJECT

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

Respectfully Submitted, Date: _____

Firm Name: _____

Signature: _____

Address: _____

_____

Business Phone: _____

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

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

Name	**Address**

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

Executed _____ at _____ California.
Date Location

* By: _____ * By: _____

Title: _____ Title: _____

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

PALM SPRINGS CEMETERY DISTRICT

CONSTRUCTION CONTRACT

EXTERIOR WALL EXTENSION AND INTERIM MANUAL GATE PROJECT

THIS CONSTRUCTION CONTRACT ("Contract") is made and entered into on the last date signed below ("Effective Date") by and between the Palm Springs Cemetery District, a California special district and public cemetery district located in the County of Riverside, State of California, hereinafter referred to as "District," and contractor name, a California business type, hereinafter referred to as "Contractor," for the work described herein.

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

1. **Contract Award.** On date, the District awarded this Contract to Contractor.

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

- ❑ Request for Proposals & Instructions to Proposers
- ❑ Contract
- ❑ General Conditions
- ❑ Proposer's Proposal Documents
- ❑ Contract Specifications
- ❑ Drawings
- ❑ Notice to Proceed
- ❑ Bonds
- ❑ Evidence of Insurance
- ❑ Any Addenda
- ❑ Any Change Orders
- ❑ Additional documents: _____

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

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

the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

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

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

6. **Time for Completion.** Contractor will fully complete the Work for the Project within ninety (90) calendar days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.

7. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, the District will assess liquidated damages in the amount of Eight Hundred Dollars ($800.00) per day for each calendar day of unexcused delay in completion, and such liquidated damages may be deducted from the District's payments due or to become due to Contractor under this Contract.

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

To the District:

Kathleen Jurasky
District Manager
Palm Springs Cemetery District
31-705 Da Vall Drive
Cathedral City, CA 92234
Email: kjurasky@pscemetery.com

With a Copy to:

Kane Ballmer & Berkman
515 S. Figueroa St., Suite 780
Los Angeles, CA 90071
Attn: Kendall D. Levan, Esq.,
District General Counsel
Email: kendall@kbblaw.com

To Contractor:

Contractor Name
Contractor Address
Contractor Email

9. **General Provisions.**

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

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

9.3 Governing Law and Venue. This Contract will be governed by California law and venue will be in the Superior Court of Riverside County, and no other place. Contractor waives any ability to transfer venue pursuant to Code of Civil Procedure Section 394.

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

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

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

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

9.8 Counterparts. This Contract may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Electronic or facsimile signatures shall have the same force and effect as original signatures.

[THIS PORTION OF THE PAGE IS INTENTIONALLY LEFT BLANK;

SIGNATURES ARE ON THE FOLLOWING PAGE]

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

Contractor	District
_____ Insert Name By: _____ Name: _____ Title: _____ By: _____ Name: _____ Title: _____ Date: _____	Palm Springs Cemetery District, a California special district and public cemetery district By: _____ Name: _____ Title: _____ Date: _____
	ATTEST: By: _____ Name: _____ Title: _____ APPROVED AS TO CONTENT: By: _____ Name: Kathleen Jurasky Title: District Manager APPROVED AS TO FORM: KANE, BALLMER & BERKMAN By: _____ Name: Kendall D. Levan, Esq. Title: General Counsel

PALM SPRINGS CEMETERY DISTRICT
CONSTRUCTION CONTRACT
GENERAL CONDITIONS

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

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

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

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

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

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

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

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

1.7 District: The Palm Springs Cemetery District, a California special district and public cemetery district located in the County of Riverside, State of California.

1.8 Project: The Project named in the Contract Documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

2.3 Technical Specifications and Project Plans.

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

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

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

d. The General Conditions apply with equal force to all of the Work, including extra work authorized by the Project Manager in accordance with the Contract Documents. Contractor must submit any required shop diagrams and/or drawings by the times and in the quantities indicated in the Technical Specifications. Any such shop diagrams and/or drawings must show completely the Work to be done, expanding on the Project Plans concerning details not previously shown, field conditions, and the condition of the Work. Architect or Engineer review of such shop diagrams and/or drawings will concern conformance with the requirements of the Contract Documents only. The Architect or Engineer assumes no responsibility for the correctness or accuracy of the dimensions or any other contents of any shop diagrams and/or drawings submitted by Contractor. Contractor must check all dimensions at the Work site. Shop diagrams and/or drawings must be clearly marked with the name of the Project and the name of Contractor, subcontractor, or supplier making the submittal, and must be stamped and signed by Contractor and submitted under a signed transmittal letter from Contractor certifying that all dimensions have been checked at the Work site. These requirements are mandatory. The Architect or Engineer will not review shop diagrams and/or drawings that do not satisfy these requirements. Contractor will be responsible for any and all discrepancies between dimensions of the actual Project site and/or Work and those shown on shop diagram and/or drawings submitted by Contractor, and for any other errors contained in or resulting from such shop diagrams and/or drawings including, but not limited to, errors in material and/or equipment quantities and any resulting errors, delays, or additional cost in the performance of the Work. Contractor will have all of the obligations and the District will have all of the rights and remedies that are specified in Section 11 concerning any discrepancies or errors in shop diagrams and/or drawings

submitted by Contractor, and concerning any resulting errors, delays, or additional costs in the performance of the Work.

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

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

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

3.2 Omitted.

3.3 Inspection and Testing of Work and Material.

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

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

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

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

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

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

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

3.5 Materials and Substitutions.

a. *New Materials.* Materials used for the Work must be new and of the quality specified. When not particularly specified, materials must be the best of their class or kind. Contractor must, if required, submit satisfactory evidence as to the kind and quality of materials.

b. *Substitutions.* If Contractor submitted complete information to the District for products proposed as equals in accordance with the Contract Documents, and the District approved such products proposed as equals in writing, Contractor may either furnish such products approved as equals, or furnish the products listed by manufacturer name, brand, or model number in the Technical Specifications or Project Plans. The District retains the right, in its sole discretion, to accept or reject any other proposed substitution. To be considered, proposals concerning products proposed as equals must include sufficient information to permit the District to determine whether the products proposed as equals

will satisfy the same performance requirements as products listed by manufacturer's name, brand, or model number. Such performance requirements may include, but are not limited to, size, strength, function, appearance, ease of maintenance and repair, and useful life requirements. If the District does not accept a proposed substitution, Contractor must furnish the product specified in the Technical Specifications or Project Plans for the Contract Price, regardless of whether the product is specified by manufacturer's name, brand or model number, or otherwise.

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

3.6 Audit and Examination of Records.

a. The District may examine and audit at no additional cost to the District all books, estimates, records, contracts, documents, proposal documents, proposal cost data, subcontract job cost reports and other Project related data of Contractor, subcontractors engaged in performance of the Work, and suppliers providing supplies, equipment and other materials required for the Work, including computations and projections related to bidding, negotiating, pricing or performing the Work or contract modifications and other materials concerning the Work, including, but not limited to, Contractor daily logs, in order to evaluate the accuracy, completeness, and currency of cost, pricing, scheduling and any other project related data.

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

c. Pursuant to California Government Code section 8546.7, if the amount of public funds to be expended is in excess of $10,000, this Contract shall be subject to the

examination and audit of the State Auditor, at the request of the District, or as part of any audit of the District, for a period of three (3) years after final payment under the Contract.

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

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

3.8 Project Schedule.

a. *Schedule.* Within ten (10) calendar days of the Notice to Proceed, Contractor shall submit a bar chart schedule showing each task of Work, the sequence of each task, the number of days required to complete each task, and the critical path controlling the completion of the entire Work. The schedule shall allow for the completion of the entire Work within the Time for Completion.

b. *District Review of Schedule.* The District may review Contractor's submitted schedule and may note any exceptions. Contractor shall correct any exceptions noted by the District within five (5) working days of being notified of the exceptions.

c. *Update of Schedule.* After submission of a schedule to which the District has taken no exceptions, Contractor shall submit an updated schedule on a biweekly basis until completion of the Work. The updated schedule shall show the progress of Work as of the date specified in the updated schedule.

d. *Float.* The schedule shall show early and late completion dates for each task. The number of days between these dates shall be designated as "Float." The Float shall be designated to the Project and shall be available to both the District and Contractor as needed.

e. *Failure to Submit Schedule.* If Contractor fails to submit the schedule within the time period specified in Section 3.8(a), or the updated schedule as specified in Section 3.8(c), or submit a schedule to which the District has taken uncorrected exceptions, the District shall be entitled to withhold payment for the next application for payment submitted after the schedule or updated schedule becomes late.

f. *Responsibility for Schedule.* Contractor shall have sole and exclusive responsibility for creating the schedule and properly updating it. The District has no authority to approve the schedule. The District may note exceptions to any schedule submitted by Contractor. However, it shall be Contractor's sole responsibility to determine the proper method to address exceptions and the District's review of the schedule shall not serve to place any such obligation on the District.

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

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

4. **Changes in Work.**

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

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

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

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

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

4.6 Liability Under Unapproved Change Orders. Contractor shall be solely responsible for any and all losses, costs, or liabilities of any kind incurred by Contractor, any subcontractor engaged in the performance of the Work, any party supplying material or equipment for the Work or any

third party that are incurred pursuant to Contractor-proposed change orders prior to issuance of an approved change order executed in accordance with this Section 4. Contractor will have all of the obligations and the District will have all of the rights and remedies that are specified in Section 11 concerning any work or resulting losses, costs, or liabilities pursuant to a Contractor proposed change order before issuance of an approved change order executed in accordance with this Section 4.

4.7 Changes Subject to Contract Documents. Any changes in the Work and/or the Contract Documents pursuant to change orders and any other amendments issued in accordance with the Contract Documents, including this Section 4, will in all respects be subject to all provisions of the Contract Documents, including, but not limited to, the Technical Specifications and the Project Plans, except as modified by such change orders or amendments.

4.8 Change Order Disputes.

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

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

5. **Trenching and Utilities.**

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

a. If the Work involves excavation more than four (4) feet deep, Contractor must promptly notify the District in writing before disturbing:

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

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

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

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

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

5.2 Excavation of Five Feet or More (Labor Code section 6705). Contractor must prepare and submit for the District's acceptance, prior to excavation of five (5) feet or more in depth, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during excavation. The shoring system plan must be prepared and stamped by a registered civil or structural engineer.

5.3 Underground Infrastructure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. **Project Facilities.**

6.1 Omitted.

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

7. **Prosecution and Progress.**

7.1 No Damage for Delay Beyond District and Contractor Control.

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

b. The District will not be liable to Contractor, any subcontractor or other entity engaged in the performance of the Work, any supplier, or any other person or organization, or to any surety or employee or agent of any of them, for damages arising out of or resulting from (i) delays beyond the control of the District and Contractor including but not limited to fires, floods, epidemics, abnormal weather conditions, earthquakes, and acts of God or acts or neglect by utility owners or other contractors performing other work, or (ii) delays caused by the District, its officials, officers, employees, agents, or volunteers, or delays caused by the Project Manager or the Architect or Engineer, which delays are reasonable under the circumstances involved and/or are within the contemplation of the District and Contractor. An extension of the Time for Performance in an amount equal to the time loss due to such delay(s) will be Contractor's sole and exclusive remedy for such delay(s).

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

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

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

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

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

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

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

7.7 Contractor Coordination of the Work.

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

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

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

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

7.8 Liquidated Damages. Time is of the essence in the Contract. The District and Contractor agree that it will be difficult and/or impossible to determine the actual damage that the District would sustain in the event of Contractor's failure to fully perform the Work or to fully perform all of Contractor's obligations that have accrued pursuant to the Contract by the Time for Completion. Accordingly, the District and Contractor agree in accordance with Government Code section 53069.85 that Contractor will forfeit and pay to the District liquidated damages in the amount indicated in the Contract Documents for each and every calendar day completion of the Work and/or performance of all of Contractor's obligations that have accrued pursuant to the Contract is delayed beyond the Time for Completion. The District and Contractor further agree in accordance with Government Code section 53069.85 that the liquidated damages sum specified in this Contract is not manifestly unreasonable under the circumstances existing at the time the Contract was made, and that the District may deduct liquidated damages sums in accordance with this provision from any payments due or that may become due Contractor under the Contract.

8. **Contractor Responsibilities.**

8.1 Eligibility. By executing the Contract, Contractor certifies that Contractor is not ineligible to perform work on public works projects pursuant to California Labor Code sections 1777.1 or 1777.7. In accordance with Public Contract Code section 6109(a), contractors who are ineligible to perform work on public works projects pursuant to Labor Code sections 1777.1 or 1777.7 may

neither bid on, be awarded or perform the Work. Contractor shall hold harmless and indemnify the District from and against any and all damages, costs, and liability arising from or as a consequence of any violation of Public Contract Code section 6109.

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

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

8.4 Contractor's Superintendent. Contractor will keep on the Work, throughout its progress, a competent superintendent and any necessary assistants, all satisfactory to the District. The superintendent may not be changed without the consent of the District. The superintendent will represent Contractor and all directions given by the District to the superintendent will bind Contractor in accordance with the Contract. Superintendent time, if any, must be included in Contractor's approved overhead rate and may not be charged as a direct cost.

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

8.6 Drug-Free Workplace. Contractor shall maintain a drug-free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code Section 812, including marijuana, heroin, cocaine, and amphetamines, at any facility, premises or work-site used in any manner in

connection with performing services pursuant to this Contract. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at such a facility, premises, or work-site, Contractor, within five (5) calendar days thereafter, shall notify the District. Failure to comply with this section shall constitute a material breach of this Contract.

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

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

8.9 Subcontracting.

a. By executing the Contract, Contractor certifies that no subcontractor included on the list of proposed subcontractors submitted with Contractor's proposal is ineligible to perform work on public works projects pursuant to Labor Code sections 1777.1 or 1777.7. In accordance with Public Contract Code Section 6109(a), subcontractors who are ineligible to perform work on public works projects pursuant to California Labor Code sections 1777.1 or 1777.7 may neither bid on, be awarded or perform as a subcontractor on the Work. In accordance with Public Contract Code section 6109(b), any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. Contractor will ensure that no debarred subcontractor receives any public money for performing the Work, and any public money that may have been paid to a debarred subcontractor for the Work is returned to the District. Contractor will be responsible for payment of wages to workers of a debarred subcontractor who has been allowed to perform the Work.

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

of the amount of the subcontract, and disciplinary action by Contractors State License Board.

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

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

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

8.10 Insurance.

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

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

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

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

iv. *Builder's Risk insurance* utilizing an "all risk" (special perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. Contractor may submit evidence of Builder's Risk insurance in

the form of Course of Construction coverage. Such coverage shall name the District as a loss payee as their interest may appear.

If this box is checked, a *Property Installation Floater* is required in lieu of Builder's Risk: X

If the Work does not involve new or major reconstruction, at the option of the District, a Property 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 District's site.

If this box is checked, the nature of this Work does not required Builder's Risk insurance and the provisions of this Section 8.10(a)(iv) are waived: □

v. If this box is checked, this provision applies, and *Contractors' Pollution Legal Liability insurance* is required: X

The District may require Contractor to maintain Contractors' Pollution Legal Liability insurance with limits of no less than $2,000,000 per occurrence or claim, and $2,000,000 policy aggregate. All activities contemplated in this Contract shall be specifically scheduled on the policy as "covered operations." If applicable, the policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.

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

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

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

payment of losses and related investigations, claim administration and defense expenses.

ii. *District as Additional Insured.* The District, its officers, officials, employees, agents and volunteers are to be covered as insureds with the same coverage and limits available to the named insured regarding: liability arising out of activities performed by or on behalf of Contractor; premises owned, occupied or used by Contractor, or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of the protection afforded to the District, its officers, officials, employees, agents or volunteers. Any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured; the additional insured coverage and limits shall be (1) the minimum coverage and limits specified in this Contract; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater. This provision does not apply to the worker's compensation policy.

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

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

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

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

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

vi. *Umbrella/Excess Insurance*. The limits of insurance required in this Contract may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of District (if agreed to in a written contract or

agreement) before the District's own Insurance or self-insurance shall be called upon to protect it as a named insured.

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

d. Contractor hereby grants to District a waiver of any right to subrogation which any insurer of Contractor may acquire against District by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether District has received a waiver of subrogation endorsement from the insurer.

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

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

8.11 Indemnification.

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

b. To the fullest extent permitted by law, Contractor will indemnify, defend (with counsel approved by the District), and hold harmless the District, its officials, officers, employees, agents, volunteers, and consultants ("indemnified parties") from and against any or all loss, liability, expense, claims, penalties, costs (including costs, attorneys' fees and expert fees of defense), suits, and damages of every kind, nature, and description directly or indirectly arising from or in any way connected to the performance of the Work ("Claims"), regardless of Contractor's fault or negligence, including any of the same resulting from the alleged or actual negligent act or omission of an indemnified party;

except that said indemnity shall not be applicable to Claims to the extent arising from the sole negligence, active negligence, or sole willful misconduct of an indemnified party. In instances where the active negligence of an indemnified party accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion of the percentage of liability not attributable to the active negligence of the indemnified party.

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

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

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

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

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

h. All indemnification and hold harmless provisions of this Contract shall survive termination or expiration of this Contract.

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

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD, WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR (4) YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN TEN (10) YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.

8.13 California Labor Code Requirements.

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

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

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

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

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

had knowledge of that failure or unless Contractor fails to comply with all of the following requirements:

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

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

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

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

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

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

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

g. In accordance with Labor Code section 1777.5, Contractor, on behalf of Contractor and any subcontractors engaged in performance of the Work, will be responsible for ensuring compliance with Labor Code section 1777.5 governing

employment and payment of apprentices on public works contracts. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

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

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

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

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

National Board of Fire Underwriters' Regulations

California Building Standards Code as adopted by the District

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

Industrial Accident Commission's Safety Orders, State of California

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

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

8.15 Guarantee.

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

b. Upon receiving Written Notice of a need for repairs which are directly attributable to defective materials or workmanship, Contractor must make good any defects arising or discovered in any part of the Work by diligently commencing the

necessary repairs within ten (10) calendar days from the date of notice from the District. If Contractor fails to make good any defects in the Work in accordance with this provision, in addition to any other available remedy under the Contract or at law or equity, the District may make good or have made good such defects in the Work and deduct the cost from amounts that may be due or become due Contractor, and/or call on Contractor's bonds for the cost of making good such defects and for the District's reasonable legal costs, if any, of recovering against the bond. Contractor shall remain responsible for repairing any Work found to be defective regardless of when such defect is discovered by the District.

8.16 Safety.

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

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

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

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

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

8.17 Assignment of Unfair Business Practice Claims. In accordance with Public Contract Code section 7103.5, Contractor and any subcontractors offer and agree to assign to the District all

rights, title, and interest in and to all causes of action Contractor or any subcontractors may have under section 4 of the Clayton Act (15 U.S. Code section 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract. This assignment shall be made and become effective at the time the District tenders final payment to Contractor, without further acknowledgement by the parties.

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

8.19 Nondiscrimination.

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

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

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

8.21 Conflicts of Interest.

a. Contractor shall comply with the conflict of interest provisions of Government Code section 1090 and the Political Reform Act (Government Code Section 81000, et seq.). Contractor understands that in carrying out this Contract, its professional responsibility is solely to the District. Contractor represents and warrants that it presently has no interest, and will not acquire any direct or indirect interest, that would conflict with its performance of this Contract. Contractor shall not employ or subcontract with a person having such an interest in the performance of this agreement.

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

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

9. **Measurement and Payment.**

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

9.2 Progress Payments.

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

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

c. In accordance with Public Contract Code section 20104.50, the District will review applications for payment as soon as practicable after receipt. Any application or part of an application that is determined to be improper will be returned to Contractor as soon

as practicable, but no later than seven (7) calendar days after receipt by the District, along with a written description of the reasons why the application is improper. Contractor's failure to submit a schedule in the time specified in Section 3.8, or its submission of a schedule to which the District has taken any uncorrected exception, shall serve as a basis for returning an application for payment in its entirety.

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

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

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

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

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

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

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

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

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

b. Superintendent labor and clerical labor.

c. Bond premiums.

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

e. Utility costs.

f. Work Site office expenses.

g. Home office expenses.

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

a. Defective work not remedied or uncompleted work.

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

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

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

e. Damage to another contractor.

f. Damage to the District.

g. Damage to a third party.

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

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

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

9.6 Securities in Lieu of Retention.

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

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

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

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

10. **Project Acceptance and Cost.**

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

10.2 Work Completion and Final Inspection.

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

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

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

10.3 Work Acceptance.

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

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

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

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

11. **Remedies and Disputes.**

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

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

11.2 Termination.

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

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

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

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

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

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

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

b. If the District intends to terminate Contractor's control of the Work for any of the reasons specified in Sections 11.2(a)(i) through 11.2(a)(vi), above, the District will immediately serve Written Notice to Contractor and its sureties in accordance with the Contract Documents. Notice of the District's intent to terminate Contractor's control of the Work will be given by registered or certified mail, and via email as a courtesy only, and specify the grounds for termination, the required cure, and the time by which the cure must be effected. Upon receipt of notice of the District's intent to terminate Contractor's control of the Work for any of the reasons specified in Sections 11.2(a)(i) through 11.2(a)(vi), above, Contractor will have ten (10) calendar days from receipt of the notice or a longer time specified in the notice to cure its default. If Contractor does not effect the required cure by the time specified in the notice, the District will issue a Written Notice of termination to Contractor and its sureties by registered or certified mail, and

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

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

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

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

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

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

11.3 Disputes.

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

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

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

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

(2) If the District needs approval from District Board of Trustees in order to provide the claimant with the written statement described above, and District Board of Trustees does not meet within the 45-day period or within the mutually agreed extended time period, then the District has up to three (3) calendar days following the next duly publicly noticed meeting after the 45-day period (or extension) to provide the written statement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

iv. If Contractor disputes the District's written response, or the District fails to respond within the time prescribed, Contractor may so notify the District, in writing, either within fifteen (15) calendar days of receipt of the District's response or within fifteen (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 a demand, the District shall schedule a meet and confer conference within thirty (30) calendar days for settlement of the dispute.

v. Following the meet and confer conference, if a claim under this section or any portion remains in dispute, Contractor may file a claim for money or

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

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

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

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

(1) The parties may agree in writing that within sixty (60) calendar days, but no earlier than thirty (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. The mediation process shall provide for the selection within fifteen (15) calendar days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) calendar days of the submittal, and shall be concluded within fifteen (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, any party may petition the court to appoint the mediator.

ii. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(1) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly

rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

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

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

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

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

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

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

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

2. The Contract.

3. Special Conditions or Provisions.

4. General Conditions.

5. The Request for Proposals, Instructions to Proposers, and Proposal Documents.

6. Technical Specifications.

7. Project Plans and Drawings.

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

13. **Miscellaneous.**

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

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

CONTRACTOR'S PAYMENT BOND -- PUBLIC CONTRACT

KNOW ALL BY THESE PRESENTS:

That _____

As Principal (herein called "Principal") and

_____

As Surety (herein called "Surety")

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

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That

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

_____

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

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

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

Signed and Sealed this _____ day of _____ 20 .

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

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

PERFORMANCE BOND – PUBLIC CONTRACT

KNOW ALL BY THESE PRESENTS:

That _____

As Principal (herein called "Principal") and

_____

As Surety (herein called "Surety")

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

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That

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

_____

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

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

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

Signed and Sealed this _____ day of _____ 20 .

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

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