

**MONTEREY PENINSULA WATER
SUPPLY PROJECT**

REQUEST FOR PROPOSALS

FOR THE

SLANT WELL INTAKE SYSTEM – CIVIL WORK

Issue Date: May 31, 2019

Due Date: July 22, 2019



**CALIFORNIA
AMERICAN WATER**

Pacific Grove, California

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ATTACHMENTS

A. PROPOSAL FORMS

Proposal Form 1	Transmittal Letter
Proposal Form 2	Non-Collusion Affidavit
Proposal Form 3	Disclaimer Statement
Proposal Form 4	Key Personnel
Proposal Form 5	Not Used
Proposal Form 6	Not Used
Proposal Form 7	Not Used
Proposal Form 8	Not Used
Proposal Form 9	Not Used
Proposal Form 10	Preliminary Project Schedule, Scheduled Construction Date, and Scheduled Acceptance Date
Proposal Form 11	Acceptance of the Contract
Proposal Form 12	Not Used
Proposal Form 13	Not Used

B. DRAFT CONSTRUCTION CONTRACT

C. BID PACKAGE

D. DIVERSE BUSINESS ENTERPRISE REQUIREMENT STATEMENT

SECTION 1

INTRODUCTION

1.1. EXECUTIVE SUMMARY

California-American Water Company (“CAWC”) through this Request for Proposals (“RFP”) is soliciting sealed Proposals from qualified respondents (“Proposers”) for a contract to perform civil construction work for the MPWSP slant well intake system (“Project”).

This Project is a component of the MPWSP. The purpose of the MPWSP is to replace a significant portion of the existing water supply from the Carmel River, as directed by the State Water Resources Control Board (“SWRCB”). CAWC is proposing a three-pronged approach to replace the water supply reductions ordered by the SWRCB. The three prongs consist of: (1) desalination, (2) groundwater replenishment (“GWR”), and (3) aquifer storage and recovery (“ASR”). This RFP is being issued to procure the intake system for the MPWSP source water slant wells.

The Project will include site grading and installation of approximately 700 feet of 42-inch pipe using horizontal directional drilling along with valves and instrumentation within the CEMEX sand mining site located in the City of Marina and is further described in the technical specifications.

CAWC, the Monterey Peninsula Regional Water Authority, the Monterey Peninsula Water Management District, and the County of Monterey have formed an oversight committee (the “Governance Committee”) to ensure efficient and effective public input into the development and operation of the MPSWP. The Governance Committee was formed pursuant to an agreement of the Governance Committee members dated March 8, 2013 (the “Governance Committee Agreement”).

Additional information concerning the MPWSP history, the Project Site conditions, background technical and environmental documents, the Governance Committee Agreement, and public outreach are available on the MPWSP website at www.watersupplyproject.org (the “MPWSP Website”).

CAWC expects to enter into a contract for the Project (the “Contract”) with the Proposer that submits the most advantageous Proposal as determined by CAWC with input from the Governance Committee.

This RFP provides background information for the Project, a description of the overall procurement process, the Proposal submission requirements, and the evaluation criteria that will be used to select a firm to perform the Contract. A draft Contract is included with this RFP. Unless otherwise defined in this RFP, all capitalized words, abbreviations and terms used herein shall have the meanings that will be set forth in the draft Contract.

1.2. PROPOSAL

IN ORDER TO BE CONSIDERED RESPONSIVE TO THIS RFP, PROPOSERS SHALL PROVIDE ALL REQUESTED INFORMATION IN ACCORDANCE WITH THE REQUIREMENTS OF THIS RFP.

CAWC is soliciting a detailed Proposal with specific forms and textual requirements from the Proposers. Proposals shall comply with the submittal requirements for Proposals outlined in Section 4 of this RFP. Proposers shall provide adequate information with respect to their proposed construction management and construction methods in order to demonstrate that: (1) the Project can be completed within the Project schedule; (2) the Project will be constructed in accordance with the Contract; and (3) the completed Project will meet the standards for acceptance in accordance with the draft Contract.

1.3. PROPOSAL SUBMITTAL

Proposals must be submitted and received by CAWC, pursuant to Section 4 of this RFP, **NO LATER THAN 3:00 P.M., PACIFIC DAYLIGHT TIME (“PDT”), ON JULY 22, 2019**. All Proposals shall be submitted in sealed packages and in accordance with the requirements of Section 4 of this RFP.

By submitting a Proposal, Proposers acknowledge and agree to the following conditions:

- All Proposals submitted in response to this RFP will become the property of CAWC and will be subject to disclosure as and to the extent provided in Section 3 of this RFP.
- CAWC’s selection of a Proposal shall not waive or limit any assumptions of risk, provision of indemnity, or other obligations of the Contractor under the Contract, as may be executed between a Proposer and CAWC.
- Proposers shall comply with the communications protocol set forth in Section 3 of this RFP with respect to all communications concerning this RFP.
- Proposals shall comply with all requirements of Section 4 of this RFP. Failure to comply with Section 4 of this RFP may result in a Proposer being deemed unresponsive by CAWC.
- The qualification of the Proposers to receive this RFP and provide a Proposal does not waive or abridge CAWC’s right to find that any Proposer or Proposal is non-responsive to the requirements of this RFP or to find that a Proposer is less qualified than another Proposer and have their evaluation scoring reflect such finding.
- After selection of a Proposal, the selected Proposer shall be required to execute the Contract following the conclusion of successful negotiations with the selected Proposer.

SECTION 2

GENERAL INFORMATION

2.1. PURPOSE OF SOLICITATION

CAWC is soliciting Proposals from the Proposers identified in Section 1.1 of this RFP to perform the construction work for the Project as required by the draft Contract. The construction work described in this paragraph is referred to herein as the “Work.”

CAWC intends to select one qualified Proposer that provides CAWC the benefits discussed below and that best meets CAWC’s objectives set forth in Section 2.2 of this RFP. CAWC will select the most advantageous Proposal by applying the evaluation criteria contained in Section 5 of this RFP to the Proposals.

CAWC expects any firm it contracts with will: (a) be efficient; (b) demonstrate that its construction management and construction methods are cost-effective; (c) have an optimal Project schedule; (d) provide a clear assignment of responsibilities through a single contracting entity (for each component of work); and (e) possess an exceptional safety record and be green flagged in AVETTA or can become green flagged in AVETTA prior to the execution of the Contract.

2.2. MPWSP BACKGROUND AND OBJECTIVES

CAWC has served the Monterey Peninsula since it acquired properties from California Water & Telephone Company in 1966. CAWC’s Monterey service area is located in the semi-arid central California coastal area that is currently entirely dependent on local rainfall for its water supply; imported water is not an available option. By reason of its geography and rainfall patterns, the area is prone to severe droughts. Wells located along the Carmel River that draw water from the Carmel River Aquifer are the primary source of water for CAWC. An additional source of water for CAWC is a network of eight wells located in the Seaside Basin, which CAWC shares with a number of users and purveyors.

The CAWC Monterey service area, also known as the Monterey County District, includes six incorporated cities, the Monterey Airport District, the unincorporated areas of Carmel Highlands, Carmel Valley, and Pebble Beach, and other unincorporated areas in Monterey County. The City of Marina, unincorporated Castroville, and other areas of unincorporated Monterey County lie north of the CAWC service area. The MPWSP is needed to replace existing supplies that are constrained by recent legal decisions affecting the Carmel River and Seaside Groundwater Basin water resources: SWRCB Order No. WR 95-10 (“Order 95-10”) and the Monterey County Superior Court adjudication of water rights in the Seaside Groundwater Basin. Both rulings reduce CAWC’s use of its two primary sources of supply for the Monterey County District and provide the most immediate impetus for the MPWSP. In addition, in October 2009, the SWRCB issued a Cease and Desist Order (“CDO”) claiming CAWC had not complied with Order 95-10, requiring CAWC to terminate unauthorized diversions from the Carmel River, and that these diversions constitute a trespass of water. The CDO, as amended in July of 2016, imposes certain milestones and a deadline of December 31, 2021, for CAWC to reduce its diversion of water from the Carmel River by approximately 70%.

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The MPWSP is the result of a multi-year planning effort that has considered several different proposed projects and various related documents. Since 1989, several options have been proposed that proponents have hoped would meet the water supply needs of the Monterey Peninsula and address the impacts on the Carmel River underlying Order 95-10, as well as the Seaside Basin adjudication. The objectives that were considered during development of the MPWSP are as follows:

- Satisfy CAWC’s obligations to meet the requirements of Order 95-10;
- Diversify and create a reliable drought-proof water supply;
- Protect the Seaside Groundwater Basin for long-term reliability;
- Protect the local economy from the effects of an uncertain water supply;
- Minimize water rate increases by creating a diversified water supply portfolio;
- Minimize energy requirements and greenhouse gas emissions per unit of water delivered to the extent possible;
- Provide facilities that can accommodate sea level changes;
- Explore opportunities for regional partnerships; and
- Provide flexibility to incorporate alternative water supply sources, such as GWR.

CAWC submitted an application to the California Public Utilities Commission (“CPUC”) for the MPWSP in April 2012. The MPWSP consists of several distinct components: a source water intake system consisting of slant wells; a desalination plant; a brine discharge system; water conveyance pipelines and storage facilities; and an ASR system. In addition, Monterey One Water (“M1W”) (formerly known as the Monterey Regional Water Pollution Control Agency or “PCA”) is constructing a 3,500 acre foot per year GWR project.

The CPUC and the Monterey Bay National Marine Sanctuary, as co-Lead Agencies under the National Environmental Policy Act and the California Environmental Quality Act, issued the Final Environmental Impact Report/Environmental Impact Statement (“Final EIR/EIRS”) in March 2018. In September of 2018 the CPUC certified the MPWSP EIR and approved construction of the 6.4 MGD desalination project alternative. CAWC is currently in the process of obtaining necessary permits to begin construction by September 2019 on certain components of the MPWSP. While the permitting approvals are progressing and the CDO date approaching, CAWC would like to have the Contractor for the Project in place as soon as possible.

2.3. PROJECT DESCRIPTION

2.3.1 Generally

The Contractor will be asked to provide all necessary construction, commissioning, start-up and testing services to bring the Project described in this section of this RFP on-line

2.3.2 Slant Well Intake System – Civil Work

The Project components are to be constructed at Project Site, as generally described below and in the draft Contract.

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The structures and facilities that are components of this Project are expected to include approximately 700 feet of 42-inch pipe and appurtenances including valves and instrumentation as well as pump to waste basins.

2.4 AVAILABLE REPORTS AND MATERIALS

Certain Project, Project Site-related, and relevant background information are available for review by the Proposers at the MPWSP Website. The following documents are (or will be) available for review on the MPWSP Website:

- Governance Committee Agreement
- Final EIR/EIS, March 2018
- Project procurement documents, drawings, specifications, and other material

2.5. ACCURACY OF RFP AND RELATED DOCUMENTS; RELIANCE ON ORAL COMMENTS

Except as specifically set forth in the draft Contract, CAWC neither makes any representation or warranty with respect to nor assumes any responsibility for the appropriateness, completeness or the accuracy of this RFP or any of the related documents, addenda or information provided in connection with this RFP, including the available reports and materials provided on the MPWSP Website. Under no circumstances shall a Proposer to this RFP rely on verbal statements made on behalf of CAWC or any of their respective agents, employees, contractors, advisors or consultants. To the best of its ability, CAWC has tried to provide timely and up-to-date information; however, CAWC cannot guarantee the accuracy or completeness of all data provided. Thus, Proposers are cautioned to use their best judgment in determining how to use the data and information provided, and whether or not further independent research and due diligence is required for the preparation of their Proposals and the subsequent delivery of the Work under the Contract. Except as specifically provided in the Contract, no information derived from any part of the foregoing documents, this RFP or from CAWC or any of their respective agents, employees, contractors, advisors or consultants shall relieve the Contractor from any risk or from fulfilling all terms of the Contract.

2.6. PROJECT SITE

2.6.1 Project Site Description

All work will be performed within the CEMEX Sand Mining Site, located in the City of Marina. The limits of work are shown on the project drawings and are within the easement described in the grant to CAWC for the source water slant wells. The Contractor must acquire the necessary permits to conduct the Work prior to mobilization. All worksites must be returned to pre-existing conditions or better upon demobilization.

2.6.2 Project Site Preparation

CAWC does intend to perform any Project Site preparation work prior to entering into the Contract with the Contractor.

2.6.3 Project Site Access during the Proposal Period

Each Proposer should, at its own cost and expense, visit the Project Site and become familiar with and be satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work. Proposers may only access any portion of the Project Site that may be situated on private property after obtaining written authorization from CAWC or the private property owner and may be required to enter into a site access agreement with CAWC or the private property owner as a condition of such authorization.

Upon request, CAWC may provide an optional tour of the Project Site to Proposers. If provided, CAWC will send written notification of the meeting location and other logistical information following a request for tour. During the tour, Proposers may ask questions limited to those regarding the Project Site, and CAWC may provide responses. All such questions will be recorded by CAWC personnel, and any responses will be issued in writing in an addendum to all Proposers. Only official addenda issued by CAWC are binding.

2.7. SCOPE OF WORK

The required scope of Work is set forth in detail in the draft Contract and is summarized in Section 2.3 and below.

2.7.1 Basic Performance Requirements

The Contract will require the Contractor to provide a quality assurance and quality control plan prior to beginning the construction of the Project and adhere to that plan during construction. In performing the Work, the Contractor shall comply with the Contract, which includes all requirements of applicable law.

2.7.2 Environmental Compliance

The Contractor will be required to conduct its construction activities consistent with the requirements of the attached technical specifications.

2.7.3 Construction

The Contractor will have full responsibility for construction of the Project, including safety of the Project Site and the Work and all means and methods of construction, and for obtaining and maintaining necessary Mine Safety and Health Administration/MSHA certifications for all workers during project construction.

The Contractor will be required to be AVETTA green flag certified prior to execution of the Contract with CAWC. AVETTA is a third party safety program auditing firm that CAWC uses to evaluate contractor safety programs. There is a fee associated with AVETTA membership that is

the responsibility of the Contractor. To sign up or learn more, Proposers may visit the following web-site: <https://www.avetta.com/>

The Contractor will be required to perform all Work in compliance with the Contract, including all environmental and other stipulations, conditions and mitigation requirements set forth in the various requirements and permits, approvals and grants of rights to CAWC property access and use. The Contractor will be required to provide for the observation of its Work by CAWC and regulatory agencies. All Work will be required to conform to the requirements set forth in the draft Contract.

2.7.4 Acceptance Testing

The Contractor will be required to successfully complete acceptance testing of the Project as set forth in the draft Contract.

2.7.5 Quality Management

To help ensure a comprehensive and effective construction quality management plan is implemented by the Contractor to achieve CAWC objectives and that the contractual requirements pertaining to quality are met, certain minimum requirements for the construction quality control are set forth in the draft Contract. The Contractor must provide a construction quality management plan meeting the minimum requirements of the Contract prior to beginning construction.

2.7.6 Operation and Maintenance Training

The Contractor will be required to train CAWC employees prior to substantial completion, as described in the draft Contract and Technical Specifications.

2.8. DRAFT CONTRACT

2.8.1 Purpose and Scope

The scope of work described in this section is reflected in the draft Contract. The draft Contract shall serve as the intended form of the contract between CAWC and the Contractor. Specific information from the selected Proposal(s) will be incorporated into the final Contract including, but not limited to, pricing and the Contract Times.

The Contract will contain the entire agreement between the parties with respect to the Work.

2.8.2 Proposed Changes to the Draft Contract

Proposers may request changes to the terms and conditions of the draft Contract (excluding technical specifications and drawings) in writing and submitted with their Proposal.

CAWC requests Proposers to base their Proposals on the terms and conditions set forth in the draft Contract as amended by any addendum. Acceptance of the terms and conditions of the draft Contract will be a factor in the evaluation of Proposals, as detailed under Section 5 of this RFP.

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CAWC recognizes, however, that Proposals may be conditioned on the mutual resolution of particular issues.

To the extent that a Proposer intends to condition its Proposal on particular changes to the draft Contract, such changes shall be identified through submission of a markup version of the draft Contract in a Microsoft Word document using track changes. Proposers are cautioned that significant deviations from the terms and conditions set forth in the draft Contract may result in fewer or no points being awarded to the Proposer under the business terms and conditions evaluation criterion. In addition, to the extent that proposed changes to the terms and conditions substantially change the nature of the transaction or the scope of Work, CAWC may reject the Proposal in its sole discretion as non-responsive to the requirements of this RFP.

In evaluating proposed terms and conditions, CAWC will assume that the Proposer's markup includes all suggested changes and that the Proposer accepts all terms and conditions that are not specifically addressed in the tracked changes draft. Except with respect to changes in law occurring between the Proposal date and the effective date of the Contract, CAWC does not intend to discuss or negotiate any issue, term or condition that is not specifically identified in the Proposer's markup. If the Proposer selected for negotiations raises any such issue, term or condition, CAWC reserves the right to suspend or terminate negotiations with the selected Proposer and to commence negotiations with the next highest ranked Proposer. The process for the negotiation of the Contract is further described in Section 3.11 of this RFP.

2.9. UTILIZATION OF DIVERSE BUSINESS ENTERPRISES (DBE)

CAWC acknowledges the contributions of all DBEs, including Women Business Enterprise (WBE), Minority Business Enterprise (MBE), disabled veteran Business Enterprise (DVBE), and Lesbian, Gay, Bi-Sexual and Transgender Business Enterprises (LGBTBE) to California's economy, in part, through CPUC General Order 156. In accordance with CPUC General Order 156, CAWC is committed to promote and facilitate full participation in these programs.

CAWC has established a combined DBE participation goal for the Project of thirty percent (30%) of the Contract Price.

Proposers must prepare and submit a DBE subcontracting commitment through submittal of a Diverse Business Enterprise Requirement Statement as part of its response to this RFP (Attachment D). The DBE Requirement Statement is a written commitment to contract with DBEs that have been certified through the CPUC's Supplier Clearinghouse, as part of the Project.

CAWC will require that the Contractor monitor and report the continued implementation of the DBE program goals, as stated in the DBE Requirement Statement, throughout performance of the Contract.

2.10. UTILIZATION OF LOCAL CONTRACTORS AND SUPPLIERS

CAWC acknowledges the benefit that the local community receives through utilization of local contractors, laborers, and suppliers.

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Proposers must prepare and submit a local resources utilization and reporting plan (“Local Resources Utilization Plan”) as part of its response to this RFP. The Local Resources Utilization Plan is a written commitment to contract with local contractors, subcontractors, sub-consultants, vendors, suppliers, and labor forces. The Contractor will be required to make a good faith effort to employ qualified individuals who are, and have been for at least one year out of the three years prior to the opening of Proposals, residents of Monterey County, San Benito County, or Santa Cruz County in sufficient numbers so that no less than fifty percent (50%) of the Contractor’s total construction work force, including any Subcontractor work force (with exception of specialty subcontractor items), measured in labor work hours, is comprised of residents of such counties.

CAWC will require that the Contractor monitor and report the continued implementation of the Local Resources Utilization Plan throughout performance of the contract.

2.11. LABOR COMPLIANCE AND PREVAILING WAGE

Proposers must comply with all applicable requirements of the California Labor Code, the Department of Fair Employment and Housing regulations set forth in CCR, title 2, sections 8101 *et seq.* Proposer Nondiscrimination and Compliance (2 CCR §§ *et seq.*), and with all applicable federal labor requirements. Any Contract executed pursuant to this RFP will incorporate *DBE Good Faith Efforts Requirements* and *Davis Bacon Contract Provisions*, both of which are Exhibits to the draft Contract.

CAWC has the responsibility for financing the Project. CAWC anticipates that a portion of the funding will come from the State’s revolving loan program. Prevailing wages must be paid on projects receiving such funding. Proposers, therefore, will be required to pay prevailing wages.

Pursuant to Section 1773 of the California Labor Code, the general prevailing wage rates in the county in which the construction is to be performed is determined by the Director of the California Department of Industrial Relations (“DIR”). The general prevailing wage rates for this Project are available from the DIR’s website at <http://www.dir.ca.gov>.

The Project may be subject to a statutory requirement to adopt and enforce a labor compliance program for the monitoring and enforcement of prevailing wage requirements.

2.12. EQUAL EMPLOYMENT OPPORTUNITY

Proposers shall not, in connection with the RFP, the Proposal or the Contract, discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status or disability. Proposers shall take affirmative action to ensure that neither employees nor applicants for employment are discriminated against on the basis of race, color, religion, sex, national origin, age, marital status, ethnic group identification, sexual orientation, residence or disability. The areas requiring such affirmative action shall include, but not be limited to, the following: layoffs or terminations; pay rates or any other form of compensation; employment; job assignments; promotions; demotions; transfers; recruitment or recruitment advertising; and selection for training, including apprenticeships, pre-apprenticeships and on-the-job training.

2.13. LICENSING REQUIREMENTS

Proposers, including all major participants of a Proposer's team, shall possess all licenses applicable to the Project at the time of Proposal submittal. No Proposer may propose on work of a kind for which Proposer is not properly licensed, and any such proposal received will be rejected. The Proposal shall contain evidence that the Proposer, including all major participants, is properly licensed in accordance with the laws of the State of California. Subcontractors that are not major participants must be licensed no later than the time of execution of a subcontract with the Contractor. All joint ventures must have a joint venture license in compliance with Sections 7029 and 7029.1 of the California Business and Professions Code prior to execution of the Contract.

2.14. EXAMINATION OF CONTRACT DOCUMENTS AND PROJECT SITE

2.14.1 Proposer's Responsibilities

It is the responsibility of each Proposer before submitting a Proposal to:

1. Examine, with appropriate care and diligence, the RFP (including any addenda), and inform itself with respect to any and all conditions that may in any way affect the amount or nature of its Proposal or the performance of the Work, if Proposer enters into the Contract with CAWC. The Transmittal Letter (Proposal Form 1) includes an acknowledgment that Proposer has received and reviewed all materials posted thereon. Any failure of Proposer to so examine and inform itself shall be at Proposer's sole risk, and CAWC will provide no relief for any error or omission thereto;
2. Become familiar with the Project Site and the general, local or other conditions that may affect cost, progress, performance or furnishing of the Work;
3. Become familiar with and satisfy all applicable law that may affect cost, progress, performance or furnishing of the Work; and
4. Promptly notify CAWC of all conflicts, errors, ambiguities, or discrepancies that Proposer has discovered in the RFP.

2.14.2 Site Visits

Proposers should visit the Project Site as described in Section 2.6.3.

2.15. SECURITY FOR PERFORMANCE

The Contractor will be required to provide the following security for performance in connection with the Project: payment and performance bonds each in an amount equal to the Contract Price.

SECTION 3

DESCRIPTION OF PROCUREMENT PROCESS

3.1. PROCUREMENT PROCESS SCHEDULE

A summary schedule of the major activities associated with this procurement process is presented below. This procurement schedule is based on CAWC’s intent to execute a Contract to be effective by August 30, 2019.

RFP Process	Date
RFP and draft Contract issued to Pre-qualified Respondents	May 31, 2019
RFP Mandatory Pre-Proposal meeting	June 18, 2019
Written questions and comments on RFP and draft Contract due	July 1, 2019
CAWC issues addendum to RFP distributing answers to written questions	July 8, 2019
Project Proposals due	July 22, 2019
Selection of preferred Proposer(s)	July 31, 2019
Final draft Contract and all Proposals to Governance Committee for recommendation	August 14, 2019
Governance Committee meeting	August 21, 2019
Contract execution	August 30, 2019

Proposers are encouraged, but not required, to submit written questions or comments on the RFP or draft Contract in advance of the pre-Proposal meeting with CAWC in order to facilitate discussion. Where written comments or submittals are required, all such documents shall be submitted no later than 3:00 p.m. PDT on the day specified. CAWC reserves the right to modify any or all of the above dates at its sole discretion at any time during this procurement process.

3.1.1 Pre-Proposal Meeting

As set forth in the schedule included in Section 3.1 above, CAWC will hold a pre-Proposal meeting with all qualified Proposers. This meeting is intended to, among other things, allow Proposers to raise questions or comments on the RFP or draft Contract. Following the meeting, CAWC will issue an addendum to reflect any changes to the RFP or draft Contract. Proposers are encouraged to submit information regarding any proposed changes at least three business days in advance of the meeting in order to maximize the value of the discussions at the meeting.

3.2. SELECTION COMMITTEE

The Selection Committee, which is comprised of individuals selected by CAWC, will review and evaluate the Proposals submitted and select the most advantageous Proposer(s) based upon the criteria detailed in Section 5 of this RFP.

3.3. CAWC RIGHTS AND OPTIONS

This RFP constitutes an invitation to submit Proposals to CAWC. CAWC reserves, holds without limitation and may exercise, in its sole discretion, the rights as set forth below. Such rights are in addition to and shall not serve to limit any of the specific rights and conditions set forth in this RFP. By responding to this RFP, Proposers acknowledge and consent to the following CAWC rights:

1. CAWC reserves the right to waive any defect, technicality or any other minor informality or irregularity in any Proposal.
2. CAWC reserves the right to eliminate any Proposer that submits an incomplete or inadequate response, or is not responsive to the requirements of this RFP, or is otherwise deemed to be unqualified during any stage of the procurement process.
3. CAWC reserves the right to prepare and issue such amendments and addenda to this RFP prior to the deadline for receipt of all Proposals, including any amendments or addenda that may expand or cancel any portion or all of the work described in this RFP.
4. CAWC reserves the right to receive questions concerning this RFP from Proposers and to provide such questions, and CAWC's responses, if any, to all Proposers.
5. CAWC reserves the right to request clarifications of information submitted in the Proposals.
6. CAWC reserves the right to modify or terminate the procurement process by written notice to the Proposers for any reason whatsoever.
7. CAWC reserves the right to change or alter the schedule for any events associated with this procurement process upon notice to the Proposers, including, without limitation, the date for receipt of Proposals or any other deadlines and dates set forth in this RFP.
8. CAWC reserves the right to issue subsequent RFPs.
9. CAWC reserves the right to conduct investigations with respect to the experience of any team member included in a Proposal and to request additional evidence to support any such information.
10. CAWC reserves the right to visit and examine any of the facilities referenced in the Proposals and to observe and investigate the operations of such facilities.
11. CAWC reserves the right to interview one or more of the Proposers, in CAWC's sole discretion, in order to obtain clarification of information provided by the Proposer.

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12. CAWC reserves the right to amend the Work described in the draft Contract, at any time, to omit Work therein or to include Work not currently contemplated therein.
13. CAWC reserves the right to determine the selected Proposer(s) with whom to negotiate the Contract.
14. CAWC reserves the right to discontinue negotiations with the selected Proposer(s) and commence negotiations with the next ranked Proposer(s).
15. CAWC reserves the right to enter into, or decline to enter into, the Contract with the selected Proposer(s) following negotiations.
16. CAWC reserves the right, for any reason, to decide not to award a Contract as a result of this procurement process.
17. CAWC reserves the right to decide on the most appropriate method for Project implementation, which may include discontinuation of this procurement process and development of the Project via another process elected by CAWC.

3.4. EXPENSE OF PROPOSAL PREPARATION

CAWC accepts no liability for the costs and expenses incurred by the Proposers in responding to this RFP, responding to clarification requests and attending discussion meetings, preparing any re-submittals, attending potential interviews and negotiations, and any other activities included as part of this procurement process. Each Proposer that enters into the procurement process shall prepare the required materials and submittals at its own expense and with the express understanding that it cannot make any claims whatsoever for reimbursement from CAWC or from any of its employees, advisors or representatives for the costs and expenses associated with the process, including, but not limited to, costs of preparation of the Proposal, loss of anticipated profits, loss of opportunity or for any other loss, cost or expense.

3.5. ADDENDA TO RFP

During the period provided for the preparation of Proposals, CAWC may issue addenda clarifying or modifying this RFP. Such addenda will be numbered consecutively and will be distributed to each Proposer's duly designated Proposal Manager. All RFP addenda will be issued by, or on behalf of, CAWC and will constitute a part of this RFP. A list of addenda will be kept on the MPWSP Website. CAWC recommends that prior to submitting its Proposal, a Proposer should contact the Procurement Contact (defined below) to verify the number and subject of the addenda that have been issued. The Proposer shall be responsible for obtaining all addenda prior to submitting a Proposal.

3.6. COMMUNICATIONS PROTOCOL

To ensure fairness during the procurement process, until the Contract is executed or all Proposals are rejected, Proposers and their employees, representatives and agents shall not contact any CAWC employee (other than the Procurement Contact); any County of Monterey official, representative or staff member; any Monterey Peninsula Regional Water Authority official,

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representative, technical advisory committee member or staff member; or any Monterey Peninsula Water Management District official, representative or staff member on any matter relating to the Project, the MPWSP or this procurement process. Proposers, however, may contact, discuss with, or inquire of any permitting agency, including those identified above, about the Project or the MPWSP but only for the limited purpose and within the limited scope of obtaining information relating to the permitting requirements for the Project. Failure to adhere to these requirements may result in disqualification from the procurement process.

All formal questions regarding interpretations or clarification of the meaning of any part of this RFP or other documents provided by CAWC shall be made in writing or by email to Lori Girard with a copy to Tim O'Halloran (the "Procurement Contact") at the following addresses:

CALIFORNIA AMERICAN WATER
511 FOREST LODGE ROAD, SUITE 100
PACIFIC GROVE, CA 93950
Attn: Lori Girard, Corporate Counsel
lori.girard@amwater.com
Tim.Ohalloran@amwater.com

The Proposers shall submit questions and requests for clarifications no later than 5:00 p.m. PDT on the date indicated in Section 3.1 of this RFP. All questions and clarification requests shall be in writing, and Proposers are encouraged to submit such questions and clarification requests in advance of the above deadline. Only answers issued by formal written addenda or as posted on the MPWSP Website shall be binding upon CAWC. Oral and other interpretations or clarifications shall not be binding and Proposers shall not rely on any such responses.

3.7. USE OF TECHNICAL INFORMATION

By submitting a Proposal, Proposers agree that regardless of whether CAWC awards the Contract, CAWC shall have the right to use (or permit the use of) all information submitted pursuant to this RFP, including the data, information, concepts and ideas contained therein, without any requirement of providing compensation to the Proposer, for all purposes associated with the continued development, implementation, or operation of the Project. Notwithstanding the foregoing, other than the use of data, information, concepts and ideas contained in the selected Proposer's Proposal for the Project, CAWC agrees that any such use of Proposals by CAWC without the applicable Proposer's consent shall be at the sole risk of CAWC.

3.8. INFORMATION DISCLOSURE TO THIRD PARTIES

Per section V(D) of the Governance Committee Agreement, at the appropriate time CAWC will provide the Governance Committee a copy of all responsive Proposals received, except for any proprietary information provided by Proposers submitting responsive Proposals. This may be accomplished by posting the Proposals on the MPWSP Website. If a Proposer identifies proprietary information in its Proposal, CAWC will use reasonable efforts to hold in confidence such proprietary information. Notwithstanding the foregoing, CAWC will not be responsible or liable in any way for any losses that the Proposer may suffer from the disclosure of information or materials to third parties. Any proposed pricing shall not be considered proprietary information.

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CAWC will notify the Proposer of any requests under applicable law to disclose any information identified by a Proposer as proprietary. However, it is the responsibility of the Proposer, as the real party in interest, to defend its basis for exemption from disclosure of such information in accordance with applicable law.

3.9. PRIOR EXPERIENCE

In order for offers to be considered responsive Proposers must meet these minimum prior experience requirements:

- Proposer shall have completed at least 3 projects during the past 2 years of similar size and scope in nature as the projects specified herein.
 - Provide references including contact information for at least two projects referenced.
- Be properly licensed and provide evidence your firm can perform this work within the State of California.

Proposer's failure to meet these minimum prior experience requirements may cause their proposal to be considered non-responsive and their proposal may be rejected.

3.10. EVALUATION AND RANKING OF PROPOSALS

The Selection Committee will evaluate the Proposals in the manner set forth in Section 5 of this RFP. The results of the evaluation will be a selection of the most advantageous Proposer.

The Selection Committee will: (i) review the Proposals; and (ii) rank the Proposals using the criteria detailed in Section 5 of this RFP.

The evaluation of the technical and financial qualifications shall be based on the Proposals received in compliance with this RFP and an analysis of other publicly available information with respect to the Proposers. CAWC may conduct such investigations, interviews, and site visits as it deems necessary to assist in the evaluation of any Proposal, and to establish to CAWC's satisfaction with the responsibility, qualifications, and financial ability of any Proposer.

3.11. NEGOTIATION OF CONTRACT

The Proposer(s) selected for negotiations shall be determined based upon the evaluation and ranking of the Proposals by the Selection Committee consistent with the requirements set forth in this RFP.

Proposers are reminded that, pursuant to Section 2.8 of this RFP, acceptance of any suggestions included in the Proposer's mark-up of the draft Contract submitted by the Proposer is at CAWC's sole discretion and that CAWC does not intend to discuss or negotiate any issue, term or condition that is not specifically identified therein. At any time during the negotiation process, CAWC may decide that it is in CAWC's best interests to terminate negotiations with the selected Proposer(s). In such event, CAWC may elect to commence negotiations with the next highest ranked Proposer(s), to terminate this procurement, or to re-solicit proposals under this, or a different, RFP.

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As shown on the schedule set forth in Section 3.1, CAWC does not intend to have an extended period of negotiation.

Following the negotiation of the Contract(s) and review of the Contract(s) by the Governance Committee pursuant to the Governance Committee Agreement, CAWC intends to execute the Contract(s).

**SECTION 4
PROPOSAL REQUIREMENTS**

4.1. OVERVIEW OF SUBMISSION REQUIREMENTS AND CRITERIA FOR PROPOSALS

Proposers shall submit a fully developed Proposal in accordance with the instructions provided in this Section.

Proposals shall meet or exceed the construction requirements provided in the Contract.

Proposers shall provide the information requested in this RFP in accordance with the format and content requirements outlined in this Section. Failure of the Proposer to provide all of the requested information and to provide it in the requested format may result in CAWC, in its sole discretion, determining that the Proposal is non-responsive to the requirements of this RFP.

4.2. PROPOSAL FORMAT

Proposals shall be spiral bound (or similar, such as 3-ring binders) and shall consist of four sections in accordance with the format outlined below. Narrative pages shall be 8-1/2 inches by 11 inches, printed single or double sided and typed with a minimum 11-point font (unless otherwise stated). Diagrams and figures may be printed on 11-inch by 17-inch paper. All descriptive text on diagrams and figures must be easily readable; 10-point font is acceptable as long as it is easily readable. Proposers shall incorporate graphics (*e.g.*, process flow diagrams and drawings) as necessary to clearly present their Proposals. A clear and concise presentation of information is encouraged within the size limitations established for the Proposal. Proposals shall be in the English language.

Failure of the Proposer to organize the information as required by this Section of this RFP may result in rejection of the Proposal by CAWC, in its sole discretion, deeming the Proposal unresponsive to the requirements of the RFP. Proposers may reduce the repetition of identical information within the several sections of Proposals by making the appropriate cross-references to other sections of their Proposals and Proposal Forms.

The complete Proposal format requirements are outlined as follows:

Section 1.0 Executive Summary

- A. Proposal Form 1: Transmittal Letter
- B. Executive Summary
- C. Proposal Form 2: Non-Collusion Affidavit
- D. Proposal Form 3: Disclaimer Statement

Section 2.0 Project Team Information

- A. General Project Team Information
- B. Proposal Form 4: Key Personnel
- C. DBE Requirement Statement
- D. Local Resources Utilization Plan

Section 3.0 Technical Proposal

- A. Proposal Form 10: Preliminary Project Schedule, Scheduled Construction Date, and Scheduled Acceptance Date
- B. Plan for Acceptance Testing

Section 4.0 Business and Price Proposal

- A. Summary of Business and Price Proposal
- B. Bid Package
- C. Proposal Form 11: Acceptance of Contract

4.3 PROPOSAL SUBMISSION

4.3.1 Proposal Deadline

Proposals, including all attachments, shall be delivered in a sealed package addressed to:

CALIFORNIA AMERICAN WATER
511 FOREST LODGE ROAD, SUITE 100
PACIFIC GROVE, CALIFORNIA 93950
Attn: Lori Girard, Corporate Counsel

The Proposal shall include the following information on the outside of the envelope(s) or box(es): (1) Name of Proposer and (2) “Proposal for Slant Well Civil Work for the Monterey Peninsula Water Supply Project”. Proposals will not be opened publicly.

The Proposals, including applicable Proposal Forms, shall be signed and acknowledged by the Proposer in accordance with the instructions herein. Proposals shall be delivered to and be received by CAWC at the above address **on or before 3:00 pm PDT on July 22, 2019**. Any Proposal received after that time may be returned unopened to the Proposer.

4.3.2 Number of Copies

At least one original signed hard copy. Proposals shall be complete with all requested information, data and attachments. If more than one copy is provided, the original copy of the Proposal must be clearly marked as the original and must contain the original signature forms and other original documents. The remaining copies of the Proposal may be reproductions and Proposer shall number each hard copy in sequential order on the upper right corner of each cover. Proposer shall also include a thumb drive which contains an electronic copy of the signed proposal documents in PDF format.

4.4 PROPOSAL CONTENTS

The Proposer shall provide the appropriate information in accordance with the content and format requirements set forth in each of the following submission subsections.

Proposers are advised that, if selected, as part of the Contract negotiation phase, portions of the information contained in its Proposal will be included or integrated into the Contract, as negotiated by the parties based on the RFP and Proposal.

4.4.1 Section 1.0: Executive Summary

A. Proposal Form 1: Transmittal Letter

Each Proposal must include one fully executed and notarized Transmittal Letter from the Proposer acknowledging, among other things, that the Proposer has completely reviewed and understands and agrees to be bound by the requirements of this RFP and has received all addenda. Such letter commits the Proposer, if selected, to carry out the provisions of the Proposal. The Transmittal Letter shall be submitted on the Proposer's letterhead in the form of Proposal Form 1 and signed by a representative of the Proposer who is empowered to sign such material and to commit the Proposer to the obligations contained in the Proposal (the "Designated Signatory"). The Certificate of Authorization (Attachment 1 to the Transmittal Letter) attesting to such authorization must also be submitted with the Transmittal Letter. If the Proposer is a partnership, the Proposal shall be signed by one or more of the general partners. If the Proposer is a corporation, an authorized officer shall sign his or her name and indicate his or her title beneath the full corporate name. If the Proposer is a joint venture, each firm in the joint venture shall sign the Transmittal Letter. If the Proposer is a limited partnership or a limited liability company, the Proposal shall be executed by the managing partner(s) or managing member thereof. Anyone signing the Proposal or any Proposal Form as agent must file with it legal evidence of his or her authority to execute such Proposal or Proposal Form. The Designated Signatory shall sign all forms that require the signature of the Proposer. The Transmittal Letter must also contain a listing of all firms that are part of the Proposer's Project team (Attachment 2 to the Transmittal Letter) and a listing of all applicable licenses (Attachment 3 to the Transmittal Letter). A summary of the role for each member of the Proposer's Project team shall be included.

B. Executive Summary

The Proposer shall submit an executive summary detailing the key aspects of the Proposal. The executive summary should include a clear statement of the Proposer's understanding of the RFP, identify the Proposer's key team members and their respective roles with respect to the proposed Project, briefly describe the proposed processes, and summarize the other significant aspects of the Proposal noting how the Proposer meets the requirements of the RFP and the Contract. The executive summary shall include the following charts and diagrams:

- Project Team (8½" x 11", 1 page)
- Preliminary Proposed Staging Plan (11" x 17", 1 page)

C. Proposal Form 2: Non-Collusion Affidavit

Proposers shall complete and sign Proposal Form 2, which acknowledges that the Proposal has been made and submitted in good faith and without collusion or fraud.

D. Proposal Form 3: Disclaimer Statement

Proposers shall be responsible for independently verifying the accuracy of all the information contained in the RFP. Proposers shall complete and sign Proposal Form 3 which releases CAWC and CAWC Representatives (as defined therein) from any and all claims arising from any information contained in or otherwise provided in connection with this RFP, except as otherwise specifically provided in the Contract.

4.4.2 Section 2.0: Project Team Information

A. General Project Team Information

The Proposal shall include a description of the Proposer, *i.e.*, the form of business structure (corporation, partnership, joint venture, etc.) that is proposed to serve as the contracting party. A Project organization chart is required which shall include a full-page diagram of the legal relationships between all parties of the Proposer’s Project team and a clear description of the ownership structure of all Project team members. If the Proposer is a partnership or a joint venture, all members of the Proposer shall be listed.

The Proposal shall identify the portions of the Project that will be undertaken directly by the Proposer and what portions of the Project will be subcontracted and to which firms (collectively, “Significant Subcontractors”). The Project organization chart shall also show all Key Personnel (identified on Proposal Form 4, below) and lines of authority.

The Proposer shall also identify any other entity, including, without limitation, any corporation, partnership, firm, joint venture, or individual to which the Proposer intends to assign material responsibilities under the Contract. At a minimum, the Proposal shall identify the parties that will undertake the various roles required to perform the Work.

The proposed contractual relationships between the Proposer and all major partners and Significant Subcontractors relative to the various phases of the Project (*e.g.* construction, commissioning) shall be outlined in the Proposal. CAWC reserves the right to request copies of such contracts as part of the Proposal review process.

In addition, Proposers shall indicate the current workload of the key Project team members and shall provide a description of how the Project team will manage the workload in a manner that will assure the timely, cost-effective delivery of the Work.

B. Proposal Form 4: Key Personnel

The Proposer shall complete Proposal Form 4 for all Key Personnel, which shall include the following individual team members (as applicable):

1. Executive and Program Leadership;
2. Overall Project Manager;
3. Construction Superintendent;
4. Safety Manager;
5. QA/QC Manager;

6. Commissioning Manager.

Additional forms may be provided for other Key Personnel critical to completion of the Project. Where one individual or team member performs several functions, information shall be provided on immediate subordinates. The Proposers shall demonstrate that the Key Personnel include the appropriate mix of skills and disciplines, that there shall be assurance of continuity throughout performance of the Work, and that there is definitive authority vested in the appropriate individuals to fully execute the Project. The Proposer shall submit a statement attesting to the Proposer's commitment to keep the individuals so identified for the duration of the intended role in the Project for each individual. This commitment is to last as long as each individual remains in the employ of the Proposer, subject only to unavoidable personal circumstances affecting the Key Personnel. The Proposal shall identify where Key Personnel will be located during the execution of the Project.

C. DBE Requirement Statement

As described in Section 2.9 of this RFP, Proposers must prepare and submit a DBE Requirement Statement as part of its Proposal on the attached Diverse Business Enterprise Statement (Attachment D). The DBE Requirement Statement is a written commitment to contract with DBEs that have been certified through the CPUC's Supplier Clearinghouse, as part of the Project. CAWC has established a combined minimum DBE participation goal for the Project of thirty percent (30%) of the Contract Price. CAWC will require that the Contractor monitor and report the continued implementation of the DBE program goals, as stated in the DBE Requirement Statement, throughout performance of the Contract.

D. Local Resources Utilization Plan

As described in Section 2.10 of this RFP, Proposers must prepare and submit a Local Resources Utilization Plan as part of its Proposal. The Local Resources Utilization Plan shall include that the Contractor will make a good faith effort to employ qualified individuals who are, and have been for at least one year out of the three years prior to the opening of Proposals, residents of Monterey County, San Benito County, or Santa Cruz County in sufficient numbers so that no less than fifty percent (50%) of the Contractor's total construction work force, including any Subcontractor work force (with exception of specialty subcontractor items), measured in labor work hours, is comprised of residents of such counties. CAWC will require that the Contractor monitor and report the continued implementation of the Local Resources Utilization Plan throughout performance of the Contract.

E. Section 3.0: Technical Proposal

This section of the Proposal shall present the technical aspects of the Proposer's plan to provide the Work. Each Proposer shall provide a description of the proposed Project and the information necessary to convey a clear understanding of the proposed systems and equipment, as well as a description of the approach to the performance of the Work in accordance with the requirements set forth in this Section. The Proposer's technical submission shall be in sufficient detail so that CAWC can ascertain the Proposer's ability to comply with the performance and quality level

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requirements set forth in the draft Contract. The organization of the technical information submitted shall be in a format that can be easily incorporated into the final Contract.

F. Preliminary Project Schedule, Scheduled Construction Date, and Scheduled Acceptance Date

The Proposer shall provide a list of proposed major milestones, durations and completion dates for major activities important to procurement, permitting, construction, and commissioning activities in Proposal Form 10. The list shall start with the effective date of the Contract and end upon final completion and shall clearly indicate the extent to which the Proposer has included float in the schedule. These major milestones, activity durations, and completion dates will comprise the preliminary Project schedule. The Proposer shall provide copies of this preliminary Project schedule in both written and electronic formats with the Proposal. The level of detail shall be summary level for major procurement, construction, commissioning and acceptance testing activities in accordance with the requirements specified in Proposal Form 10.

G. Plan for Acceptance Testing

The Proposal shall describe the Proposer’s approach for making the transition from the Work to the warranty period under the Contract. The Proposer shall provide an overview of its approach for the transition in its Proposal as such transition plans may not be finalized. Requirements for commissioning and for training of CAWC’s staff are in the draft Contract.

4.4.3 Section 4.0: Business and Price Proposal

This section of the Proposal shall present the business and pricing aspects of the Proposal. While CAWC anticipates entering into the Contract with the selected Proposer(s) in accordance with the schedule set forth in Section 3 of this RFP, it is possible that the execution of the Contract will be delayed due to unforeseen circumstances. The following subsections outline the information that shall be included in the Proposer’s business and price submission.

A. Summary of Business and Price Proposal

Proposers shall provide a summary of the key aspects of its business and price proposal with reference to the applicable Proposal Forms and bid packages, including the bid packages discussed below and the Proposal Forms required above with respect to the financial capacity of the Proposer.

B. Attachment C: Bid Package

Attachment C consists of the bid package. The bid package prices shall include all costs for performing the corresponding Work. The bid package prices shall also include the costs associated with the required insurance, performance bond and payment bond, as well as any other costs associated with the Work necessary to achieve final completion. Proposers shall propose their bid package prices with the understanding that there is no intention on the part of CAWC to request further “best and final offers.”

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The total Contract Price and each line item price shall be inclusive of all applicable taxes (including California sales taxes on purchases of materials at the applicable tax rate). The Contractor will be responsible for paying all such taxes in accordance with applicable law.

C. Proposal Form 11: Acceptance of Contract

The Proposer shall complete Proposal Form 11 by agreeing to all of the terms and conditions of the draft Contract except for those suggested changes submitted as an attachment to Proposal Form 11. As indicated in Section 2.8.2 of this RFP, while CAWC requests Proposers to base their Proposals on the terms and conditions set forth in the draft Contract included with this RFP, CAWC recognizes that Proposals may be conditioned on the mutual resolution of specific issues identified in Proposal Form 11. Any requested changes that are conditions of the Proposal must be clearly identified as such. Please refer to Sections 2.8 and 3.11 of this RFP for a discussion concerning CAWC's expectations concerning the Contract and the negotiation process.

4.5 PROPOSAL FORMS GENERALLY

To be deemed responsive to this RFP, Proposers shall provide all the requested information and complete all details provided in the Proposal Forms attached to this RFP. All Proposal Forms shall be completed in ink or typewritten and submitted in accordance with the instructions set forth in this Section 4 of this RFP.

The Proposal Forms require Proposer-specific information to be inserted in order to be properly completed. Once the Proposer is selected, certain Proposal-specific information submitted in their Proposal and the Proposal Forms may be included as part of the Contract, as appropriate.

Electronic versions of the Proposal Forms in Microsoft Word® format have been provided to Proposers on the MPWSP Website.

**SECTION 5
EVALUATION OF PROPOSALS**

5.1. EVALUATION OF PROPOSALS

Proposals will be evaluated by the Selection Committee based on the Proposer’s ability to meet the performance requirements of this RFP and the Contract in a cost-effective manner. All Proposals must be complete and in conformance with the submission requirements established in this RFP.

Proposals will first be individually evaluated for completeness and for conformance with the requirements set forth in this RFP. Any Proposal that the Selection Committee determines is incomplete or otherwise not in conformance with the submission requirements of this RFP may be deemed non-responsive and thereby rejected in its entirety by the Selection Committee. Alternatively, in its discretion, CAWC may request that a Proposer submit any information necessary to make its Proposal complete and/or in conformance with requirements. Proposals deemed responsive and in conformance with the submission requirements of this RFP will be evaluated by the Selection Committee through the application of the evaluation criteria to the Proposal, as described in Section 5.2 of this RFP.

5.2 EVALUATION CRITERIA

The specific criteria to be used by the Selection Committee in the evaluation of the Proposals include both technical criteria and business/financial criteria. Technical criteria are allotted a total of 40 points (out of 100) and include: (1) Project Delivery, (2) Safety, (3) Construction Management, (4) Quality Control, and (5) Schedule each as further detailed below. Commercial terms are allotted a total of 60 points (out of 100) and include (1) Cost Effectiveness (*i.e.*, price) and (2) Business Terms and Conditions, as further detailed below.

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5.2.1 Weighting of Evaluation Criteria

The specific weighting for each evaluation criterion is as follows:

Technical Criteria

40 points

- Project Delivery
- Safety
- Construction Management
- Quality Control
- Schedule

Business and Financial Criteria

60 points

- Cost Effectiveness of Proposal (including the DBE Requirement Statement and the Local Resources Utilization Plan)
- Business Terms and Conditions

Total

100 points

5.2.2 Technical Criteria

Proposers shall be evaluated based upon the Proposer’s ability to successfully implement the proposed Work and to meet CAWC’s desired schedule for the implementation of the Project. The Selection Committee will conduct an assessment of the Proposer’s schedule and approach for construction management.

Proposer’s approach to project planning, purchasing, coordination of subcontractors, and sequencing and managing the construction activities to meet the schedule will be evaluated, as well as the expertise and management capability to integrate the required expertise of the Project team members for the overall benefit of the Project. Particular attention will also be given to the Proposer’s understanding and inclusion in the schedule of the requirements necessary to test equipment, commission the Project, and conduct the acceptance testing. CAWC will evaluate the Proposer’s approach to avoiding adverse environmental impacts, protecting natural resources, and mitigating environmental impacts. Evaluating the Proposal with respect to Project delivery also includes an assessment of current and projected workloads of the Proposer, and the Proposer’s ability to meet the construction schedule for the proposed Project. The Proposer’s approach to construction management and scheduling the construction, commissioning, start-up and acceptance test activities will also be evaluated.

Safety experience rating for the last three years shall also be considered in this evaluation.

5.2.3 Business and Financial Criteria

Terms and Conditions

CAWC will evaluate the extent to which the Proposer accepts the terms and conditions set forth in the draft Contract included with this RFP or otherwise proposes terms and conditions that are more favorable to CAWC than the terms and conditions set forth in the draft Contract. Suggested changes, including, particularly, changes that are indicated to be conditions of the Proposal, will be carefully considered and evaluated to determine whether the suggested changes, taken as a whole, would result in a less favorable Contract to CAWC. Proposers are reminded that proposed changes to the terms and conditions that are conditions of the Proposal and that substantially change the nature of the transaction or the scope of work may result in the rejection of a Proposal as non-responsive to the requirements of this RFP, notwithstanding the relative weight assigned to the proposed business terms and conditions in this RFP. Proposers will also be evaluated on their DBE Requirement Statement and their Local Resources Utilization Plan.

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**ATTACHMENT A
PROPOSAL FORMS**

**Monterey Peninsula Water Supply Project
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PROPOSAL FORM 1

TRANSMITTAL LETTER

(to be typed on Proposer’s Letterhead)

[Date]

Re: Monterey Peninsula Water Supply Project – Slant Well Civil Work

Dear Sir/Madam:

_____ (the “Proposer”) hereby submits its Proposal in response to the Request for Proposals for the Monterey Peninsula Water Supply Project Slant Well Civil Work (the “RFP”) issued by California-American Water Company (“CAWC”) on XXXX XX, 2019, as amended.

As a duly authorized representative of the Proposer, I hereby certify, represent, and warrant, on behalf of the Proposer team, as follows in connection with the Proposal:

1. The Proposer acknowledges receipt of the RFP and the following addenda:

<u>No.</u>	<u>Date</u>
_____	_____
_____	_____
_____	_____

- 5.2.3.1.1 The submittal of the Proposal has been duly authorized by, and in all respects is binding upon, the Proposer. Attachment 1 to this Transmittal Letter is a Certificate of Authorization which evidences my authority to submit the Proposal and bind the Proposer.
- 5.2.3.1.2 All information and statements contained in the Proposal are current, correct and complete, and are made with full knowledge that CAWC will rely on such information and statements in selecting the most advantageous Proposal to CAWC and executing the Contract.
- 5.2.3.1.3 Attachment 2 to this Transmittal Letter sets forth the Proposer’s Project team and identifies each team member’s proposed role with respect to the Project. Attachment 3 to this Transmittal Letter provides licensing information for each Project team member.
- 5.2.3.1.4 Not used.

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- 5.2.3.1.5 Not used.
- 5.2.3.1.6 Not used.
- 5.2.3.1.7 Neither the Proposer nor any Project team member is currently suspended or debarred from doing business in the State of California;
- 5.2.3.1.8 There is no action, suit or proceeding, at law or in equity, before any court or similar governmental body, against the Proposer, wherein an unfavorable decision, ruling or finding would have a materially adverse effect on the ability of the Proposer to perform their respective obligations under the Contract or the other transactions contemplated hereby, or which, in any way, would have a materially adverse effect on the validity or enforceability of the obligations proposed to be undertaken by the Proposer, or any Contract or instrument entered into by the Proposer in connection with the transactions contemplated hereby.
- 5.2.3.1.9 No corporation, partnership, individual or association, officer, director, employee, manager, parent, subsidiary, affiliate or principal shareholder of the Proposer has been adjudicated to be in violation of any state or federal anti-trust or similar statute within the preceding five years, or previously adjudged in contempt of any court order enforcing such laws.
- 5.2.3.1.10 The Proposer and all Project team members have reviewed all of the engagements and pending engagements of the Proposer and all Project team members and no potential exists for any conflict of interest or unfair advantage.
- 5.2.3.1.11 No person or selling agency has been employed or retained to solicit the award of the Contract under an arrangement for a commission, percentage, brokerage or contingency fee or on any other success fee basis, except bona fide employees of the Proposer.
- 5.2.3.1.12 The principal contact person who will serve as the interface between CAWC and the Proposer for all communications is:

NAME: _____
TITLE: _____
ADDRESS: _____

PHONE: _____
FAX: _____
EMAIL: _____

- 5.2.3.1.13 The key technical and legal representatives available to provide timely response to written inquiries submitted and to attend meetings requested by CAWC are:

**Monterey Peninsula Water Supply Project
Request for Proposals for the Slant Well Intake System – Civil Work**

Technical Representative:

NAME: _____
TITLE: _____
ADDRESS: _____

PHONE: _____
FAX: _____
EMAIL: _____

Legal Representative:

NAME: _____
TITLE: _____
ADDRESS: _____

PHONE: _____
FAX: _____
EMAIL: _____

- 5.2.3.1.14 The Proposer has carefully examined all documents constituting the RFP and the addenda thereto.
- 5.2.3.1.15 The Contract in the form issued with this RFP is agreed to, except where changes have been requested in Proposal Form 11 and such changes have been indicated as conditions of the Proposal.
- 5.2.3.1.16 If selected, the Proposer agrees to negotiate in good faith to enter into a Contract that reflects the substantive terms and conditions of the RFP and the Proposal.

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**Monterey Peninsula Water Supply Project
Request for Proposals for the Slant Well Intake System – Civil Work**

5.2.3.1.17 The Proposer has submitted all Proposal Forms and applicable bid packages and such Proposal Forms and applicable bid packages are a part of this Proposal.

Having carefully examined the RFP and all other documents bound therewith, together with all addenda thereto, all information made available by CAWC, and being familiar with the Project (as described in the RFP and the Contract) and the various conditions affecting the work, the Proposer hereby offers to furnish all labor, materials, supplies, equipment, facilities and services which are necessary, proper or incidental to carry out such work as required by and in strict accordance with the RFP and the Proposal, all for the prices set forth in the submitted bid packages.

Name of Proposer

Name of Designated Signatory

Signature

Title

Note: If this Proposal is being submitted by a corporation, the Proposal shall be executed in the corporate name by the president or other corporate officer with authority to bind the corporation, and the corporate seal shall be affixed and attested to by the clerk. A certificate of the secretary of the corporation evidencing the officer's authority to execute the Proposal shall be attached.

If this Proposal is being submitted by a joint venture or general partnership, it shall be executed by all partners, and any partner that is a corporation shall follow the requirements for execution by a corporation, as set forth above.

If this Proposal is being submitted by a limited partnership or a limited liability company, it shall be executed by the managing partner(s) or managing member thereof, and such shall also submit proof of authority to so execute the Proposal, in a form satisfactory to CAW. Any partner or member that is a corporation shall follow the requirements for execution by a corporation, as set forth above.

**Monterey Peninsula Water Supply Project
Request for Proposals for the Slant Well Intake System – Civil Work**

(Use State-Appropriate form for Notary Public)

State of _____

County of _____

On this _____ day of _____, 2018, before me appeared [DESIGNATED SIGNATORY], who is [INSERT TITLE] of [INSERT PROPOSER], a [INSERT STATE AND TYPE], personally known to me to be the person described in and who executed this Transmittal Letter and acknowledged that she/he signed the same freely and voluntarily for the uses and purposes therein described.

In witness thereof, I have hereunto set my hand and affixed my official seal the day and year last written above.

Notary Public in and for the State of _____
(Seal)

(Name Printed)

Residing at _____

Commission Number _____

**Monterey Peninsula Water Supply Project
Request for Proposals for the Slant Well Intake System – Civil Work**

Attachment 1

CERTIFICATE OF AUTHORIZATION*

I, _____, a resident of [INSERT CITY] in the State of [INSERT STATE], DO HEREBY CERTIFY that I am the Clerk/Secretary of [INSERT PROPOSER NAME], a [corporation] duly organized and existing under and by virtue of the laws of [INSERT STATE]; that I have custody of the records of such [corporation]; and that as of the date of this certification, [INSERT DESIGNATED SIGNATORY NAME] holds the title of [INSERT TITLE] of the [corporation], and is authorized to execute and deliver in the name and on behalf of the [corporation] the Proposal submitted by the [corporation] in response to the Request for Proposals for Monterey Peninsula Water Supply Project Slant Well Civil Work, issued by California-American Water Company on XXXX XX, 2019, as amended; and all documents, letters, certificates and other instruments which have been executed by such officer on behalf of the [corporation] in connection therewith.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the [corporate] seal of the [corporation] this _____ day of _____ 2019.

(Affix Seal Here)

Clerk/Secretary

** Note: Separate certifications shall be submitted if more than one corporate officer has executed documents as part of the Proposal. Proposers shall make appropriate conforming modifications to this Certificate in the event that the signatory's address is outside of the United States.*

**Monterey Peninsula Water Supply Project
Request for Proposals for the Slant Well Intake System – Civil Work**

Attachment 2

PROJECT TEAM MEMBER LIST

Proposals shall identify the names and roles of the Proposer and any Significant Subcontractors and all other Project team members identified to date:

NAME:

ROLE:

Name of Proposer

Name of Designated Signatory

Signature

Title

**Monterey Peninsula Water Supply Project
Request for Proposals for the Slant Well Intake System – Civil Work**

(Use State-Appropriate Form for Notary Public)

State of _____

County of _____

On this _____ day of _____, 2019, before me appeared [DESIGNATED SIGNATORY], who is [INSERT TITLE] of [INSERT PROPOSER], a [INSERT STATE AND TYPE], personally known to me to be the person described in and who executed this Transmittal Letter and acknowledged that she/he signed the same freely and voluntarily for the uses and purposes therein described.

In witness thereof, I have hereunto set my hand and affixed my official seal the day and year last written above.

Notary Public in and for the State of _____

(Seal)

(Name Printed)

Residing at _____

Commission Number _____

**Monterey Peninsula Water Supply Project
Request for Proposals for the Slant Well Intake System – Civil Work**

PROPOSAL FORM 3

DISCLAIMER STATEMENT

The information contained in or otherwise provided in connection with the Request for Proposals for the Monterey Peninsula Water Supply Project Slant Well Civil Work (the “RFP”) issued by California-American Water Company (“CAWC”) on XXXX XX, 2019, as amended, has been prepared by CAWC and, while such information is believed to be accurate and reliable, except as otherwise expressly set forth in the RFP, CAWC makes no representation as to such accuracy or reliability. In no way shall any such information constitute a representation or warranty by CAWC or any of its officials, employees, agents, consultants, attorneys, representatives, contractors, or subcontractors (the “CAWC Representatives”). The Proposer hereby releases and forever discharges CAWC and the CAWC Representatives from any and all claims which such Proposer has, had or may hereafter have arising out of any information contained in or otherwise provided in connection with the RFP. Any party who intends to submit a response to this RFP is specifically invited to independently verify the accuracy of the information contained herein.

Name of Proposer

Name of Designated Signatory

Signature

Title

**Monterey Peninsula Water Supply Project
Request for Proposals for the Slant Well Intake System – Civil Work**

PROPOSAL FORM 4

KEY PERSONNEL¹

(Copy and complete this form for Key Personnel. Attach additional pages along with organizational charts as needed)

General Information²

Name: _____

Firm: _____

Title: _____

Year employed by firm: _____ years

Total Professional Experience: _____ years

Professional Registration and Licenses (type/number/state/year)³ _____

Project-Specific Information

Title/Assignment _____

Description of Role/Responsibilities:

Commitment⁴	Permitting _____ %	Construction _____ %
	_____	Startup and Testing: _____ %

Footnotes:

- ¹ Proposers shall duplicate this form for all Key Personnel. Refer to subsection 4.4.2 of the RFP for a list of the minimum personnel for which this form shall be completed.
- ² Please indicate any staff that has changed from that provided in the Statement of Qualifications in accordance with subsection 4.4.2 of the RFP. Attach pages as necessary.
- ³ Where applicable, key construction personnel must provide either: (1) proof of current California licensure; or (2) if not currently licensed in California, a detailed plan to obtain a required California license no later than the effective date of the Contract.
- ⁴ Commitment indicates the amount of time (in percent) that the individual would be available to work on the Project during the construction, start-up and testing phases of the Project. Indicate by "N/A" where the individual is not proposed to be involved in a particular phase of the Project.

PROPOSAL FORM 10

**PRELIMINARY PROJECT SCHEDULE, SCHEDULED CONSTRUCTION DATE AND
SCHEDULED ACCEPTANCE DATE**

The Proposer shall submit a preliminary Project schedule with the Proposal that includes important construction activities and milestones from issuance of the Notice to Proceed through final completion. This preliminary Project schedule shall be submitted in both written and electronic formats. The level of detail shall be in summary level for major procurement and construction activities. Major milestones throughout the construction period shall be included.

The preliminary Project schedule shall consist of, but not be limited to, the following:

- (i) Important procurement activities and milestones
- (ii) Important construction activities and milestones
- (iii) Important commissioning and testing milestones
- (iv) It shall indicate the sequence of Work and the time of starting and completing each part.

In addition, the Proposer shall summarize and provide a list of proposed major milestones and completion dates including, but not limited to:

- 5.2.3.2 Issuance of Notice to Proceed
- 5.2.3.3 Expected delivery of all materials and equipment
- 5.2.3.4 Date of construction commencement
- 5.2.3.5 Completion of major structures
- 5.2.3.6 Commissioning and functional testing commencement
- 5.2.3.7 Substantial Completion Date
- 5.2.3.8 Acceptance test
- 5.2.3.9 Date of acceptance
- 5.2.3.10 Date of Completion and readiness for final payment

The Proposer shall use the following format to provide this information:

TABLE 5-1 MAJOR ACTIVITIES AND MILESTONES¹

ACTIVITY NUMBER	ACTIVITY/MILESTONE	DATE²

Name of Proposer

Name of Designated Signatory

Signature

Title

Footnotes:

¹ List each major activity and milestone separately.

² Indicate the end of activity or date milestone achieved.

**Monterey Peninsula Water Supply Project
Request for Proposals for the Slant Well Intake System – Civil Work**

PROPOSAL FORM 11

ACCEPTANCE OF THE CONTRACT

Proposer agrees to all of the provisions of the draft Contract except as expressly provided in the track changes or redline version of the draft Contract that is attached to this Proposal Form.

Name of Proposer

Name of Designated Signatory

Signature

Title

ATTACHMENT B
DRAFT CONSTRUCTION CONTRACT

AGREEMENT

This Agreement is by and between California-American Water Company, a California corporation (Owner), and [INSERT], a [INSERT] (“Contractor”).
Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Slant Well Intake System – Civil Work

ARTICLE 2 – THE PROJECT

- 2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Monterey Peninsula Water Supply Project

ARTICLE 3 – ENGINEER

- 3.01 The Engineer for the Project is California-American Water Company, acting through Tim O’Halloran who shall be the Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.
- 3.02 The following Owner-affiliated entities or independent engineers, consultants, or managers have been retained by Owner to undertake some or all of Engineer’s or Owner’s authority, duties, or responsibilities under the Contract Documents:

Michael Baker International, Inc.

ARTICLE 4 – CONTRACT TIMES

- 4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and Final Completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

- 4.02 *Days to Achieve Substantial Completion and Final Completion*

A. The Work will be substantially completed on or before August 15, 2021, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before September 30, 2021.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner: (1) **\$10,000** for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion, or any extension thereof in accordance with Paragraph 12.02 of the General Conditions, until the Work is substantially complete ; and (2) **\$10,000** for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment, or any extension thereof in accordance with Paragraph 12.02 of the General Conditions, until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

- A. The Contract Price for all Work is **\$(INSERT)**, as further specified in Exhibit C, subject to any subsequent amendments.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions. All invoices will be processed through the Taulia System. For information on how invoices are to be submitted to Taulia, go to: <http://supplierinfo.taulia.com/americanwater>

Payments shall be remitted to:
[INSERT CONTRACTOR NAME AND ADDRESS]

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer and as otherwise specified in Paragraph 14.02 of the General Conditions. All such payments will be measured by the schedule of values established as provided in Paragraph 2.05.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
- B. Prior to Substantial Completion, progress payments will be made in an amount equal to **90%** percent of Work completed (with the balance being retainage), but, in each case, less the aggregate of payments previously made and less such amounts as Engineer

may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

- C. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to **95%** percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less **100%** percent of Owner's determination of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.
- D. All applications for progress payments shall be accompanied by a conditional lien release and, for payments after the first, an affidavit of payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price, and any retained funds, as provided in said Paragraph 14.07.
- B. An application for final payment shall be accompanied by a conditional lien release and an affidavit of payment.

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS

7.01 To induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been provided pursuant to Paragraph 4.02 of the General Conditions.
- E. Contractor has considered the information known to Contractor, information and observations obtained from visits to the Site, information commonly known to contractors doing business in the locality of the Site, the Contract Documents, and the reports and drawings identified in the Contract Documents and referred to in Paragraph 7.01.D above with respect to the effect of such information and observations on: (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques,

sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Contractor's safety precautions and programs.

- F. Based on the information and observations referred to in Paragraph 7.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor is prepared to comply with the applicable requirements of Owner's safety program, if any.
- I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- K. If checked, Contractor will provide Owner with a performance bond or a payment bond, or any combination thereof, as indicated in this Paragraph and conforming to the specifications in Article 5 of the General Conditions.

ARTICLE 8 – CONTRACT DOCUMENTS

8.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages AG-1 to AG-11, inclusive).
 - 2. Notice of Award. (Note: This document is not attached to this Agreement).
 - 3. General Conditions (pages GC-i to GC-70, inclusive).
 - 4. Supplemental General Conditions (pages SC-1 to SC-24, inclusive)
 - 5. Technical Specifications titled *Monterey Peninsula Water Supply Project Slant Well Intake System Civil Construction* dated April 2019 and consisting of 365 pages.
 - 6. Drawings titled *Monterey Peninsula Water Supply Project Slant Well Intake System Civil Construction* dated November 2018 and consisting of 58 pages.

7. *American Water Cut-Off and Ring Saw Safety Operations Practice*, Number PRA-OPS01/01 dated 4/28/2014 and consisting of 15 pages.
 8. *DBE Good Faith Efforts Requirements* identified as Attachment 1 and consisting of 12 pages.
 9. *Davis Bacon Contract Provisions* identified as Attachment 2 and consisting of 9 pages.
 10. Exhibits to this Agreement (enumerated as follows):
 - a. Performance bond form, identified as Exhibit A consisting of pages A-1 through A-2;
 - b. Payment bond form, identified as Exhibit B, consisting of pages B-1 through B-2.
 - c. Contractor's Bid identified as Exhibit C and consisting of pages C-1 through C-[INSERT].
 - d. Other exhibits as specified in the General Conditions, which may include but are not limited to, Exhibits G through R, inclusive.
 11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed (page NP-1).
 - b. Work Change Directives substantially conforming to the form attached hereto as Exhibit E.
 - c. Change Orders substantially conforming to the form attached hereto as Exhibit F.
- B. The documents listed in Paragraph 8.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 8.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 9 – MISCELLANEOUS

9.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions.

9.02 *Assignment of Contract*

- A. No assignment by Contractor of any rights under or interests in the Contract will be binding on Owner without the written consent of Owner; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge Contractor from any duty or responsibility under the Contract Documents.

9.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 9.05:
 1. "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution.
 2. "Fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition.
 3. "Collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels.
 4. "Coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

- B. Contractor certifies that Contractor will conform its business dealings with the Company in accordance with the underlying principles of the Company's Code of Ethics, a copy of which is available on the Company's website at <http://amwater.com>.

9.06 *Other Provisions*

A. Government Regulations

The following clauses, where applicable, are incorporated in this Agreement by reference as if fully set out: The Equal Opportunity Clause prescribed in 41 CFR 60-1.40, the Affirmative Action Clause prescribed in 41 CFR 60-250.4, regarding veterans and veterans of the Vietnam Era, and the Affirmative Action Clause for Handicapped Workers prescribed in 41 CFR 60-741.4.

B. Background Check

Contractor shall conduct a background check on each of its employees prior to the employee performing any function or activity under this Agreement involving any direct customer contact, or on-site at any of the Owner's water treatment plants. As used in the Agreement, "direct customer contact" shall include but not be limited to, any activity by the Contractor's employee at or near a customer's premises. The background check conducted by Contractor shall consist of a check of at least the following: Previous employers and dates of employment; Education; Driving record; Criminal history (state and federal); References; Credit history. Prior to commencing any work under this Agreement, Contractor shall provide proof to the Owner that the requirements of this Paragraph have been met. Contractor shall make available to the Owner, upon request, the documentation and results of the background check with respect to any employee of Contractor performing any function under this Agreement involving any direct customer contact.

C. Project Manuals

Owner shall furnish to Contractor up to one (1) printed copy of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

D. Notices

Unless other specified in a specific provision of this Agreement, any notice required by the Contract Documents to be given to the Owner shall be addressed as follows:

Timothy O'Halloran
511 Forest Lodge Road, Suite 100
Pacific Grove, CA 93950

Any notice required by the Contract Documents to be given to the Contractor shall be addressed as follows:

[INSERT CONTRACTOR NAME AND ADDRESS]

9.07 *Diverse Business Enterprise Requirement*

- A. Owner utilizes the established guidelines from the California Public Utilities Commission (“CPUC”) to qualify diverse suppliers and requires certification as a Diverse Business Enterprise (“DBE”) by the Supplier Clearinghouse and/or the California Department of General Services. Generally, a DBE is a business in which 51% or more of the ownership interest is held, and 51% or more of the daily management and control of the business is performed, by one or more certified diverse suppliers. DBEs are divided into four classifications, as follows: Minority Business Enterprises (“MBE”), Women-Owned Business Enterprises (“WBE”), Disabled Veteran Business Enterprises (“DVBE”), and Lesbian, Gay, Bi-Sexual and Transgender Business Enterprises (“LGBTBE”).
- B. Contractor represents and warrants that the percentage of the Contract Price that will be paid to DBEs, including to the Contractor and any of Contractor’s subcontractors, will be at least [TBD]% (the “DBE Requirement”). If Contractor fails to meet the DBE Requirement, such failure will be deemed a Default and may result in termination of this Agreement by Owner pursuant to Section 15.02 of the General Conditions.
- C. The CPUC requires Owner to report the amount of Owner’s DBE spend in compliance with General Order 156. In order for Owner to meet this requirement, Contractor is required to submit a quarterly report to Owner, in a form provided by or acceptable to Owner, identifying (1) the total dollar amount of Contract Price paid by Owner to Contractor as of date of report (“Amount Paid to Date”), (2) the percentage of Amount Paid to Date that has been paid to DBEs, whether to Contractor or any of Contractor’s subcontractors (“DBE Percentage”), and (3) the breakdown of the DBE Percentage into a percentage for each of the four classifications of DBEs (i.e., MBE, WBE, DVBE, and LGBTBE). Contractor will participate and assist, as requested by Owner, in any audit activities relating to this program. In addition, Contractor will produce copies of invoices and cancelled checks to DBE subcontractors if requested by Owner.

9.08 *Local Resources Goal*

Owner acknowledges the benefit that the local community receives through utilization of local contractors, laborers, and suppliers. Contractor has submitted a local resources utilization plan which is included in Exhibit C (Local Resources Utilization Plan). Contractor will make a good faith effort to employ qualified individuals who are, and have been for at least one year out of the three years prior to the opening of Proposals, residents of Monterey County, San Benito County, or Santa Cruz County in sufficient numbers so that no less than fifty percent of Contractor’s total work force, including any Subcontractor work force (with exception of specialty subcontractor items), measured in labor work hours, is comprised of residents of such counties. Contractor must comply with such plan and shall monitor and report at least quarterly the continued implementation of the Local Resources Utilization Plan throughout the performance of this Contract.

9.09 *Public Funding/Labor Law Compliance*

- A. **Prevailing Wages and Labor Compliance Program.** Contractor shall pay prevailing wage rates. The general prevailing wage rates for the Work are available on the California Department of Industrial Relations’ website at <http://www.dir.ca.gov>. Further, the Work may

be subject to a statutory requirement to adopt and enforce a labor compliance program for the monitoring and enforcement of prevailing wage requirements. Contractor shall, at no additional cost to Owner, comply with any applicable labor law and labor compliance program requirements. Contractor is responsible for all failures by Subcontractors to comply with labor compliance program requirements. Pursuant to section 1773 of the California Labor Code, the general prevailing wage rates in the county in which the Work is to be done have been determined by the Director of the California Department of Industrial Relations.

B. CWSRF Funding Responsibilities.

1. Application and Submittals. Owner shall submit all filings, applications and reports necessary to obtain reimbursement from the Clean Water State Revolving Fund ("CWSRF") for the Project.

2. Contractor Responsibilities. Contractor shall be responsible for cooperating with and providing reasonable assistance to Owner in all activities related to the loan agreement regarding the CWSRF loan from the State Water Resources Control Board ("SWRCB") to the Owner to partially fund the Project ("CWSRF Loan Agreement") including:

(a) coordinating with Owner or Owner's consultant on the schedule and content of the submittals required for the CWSRF program;

(b) assisting Owner or Owner's consultant in developing and furnishing all necessary and reasonably required supporting material;

(c) supplying all data and information which may be reasonably required;

(d) familiarizing itself with the terms and conditions of the CWSRF program relating to construction activities and practices;

(e) complying with the terms and conditions of the CWSRF Loan Agreement or other financing document required by the CWSRF program or by applicable law with respect to construction activities and practices, including requirements described in Exhibits A and B;

(f) attending meetings, as necessary, with SWRCB and other governmental bodies; and

(g) taking all other actions reasonably requested by Owner in order to assist and support Owner related to the CWSRF financing for the Project.

Contractor shall take all reasonable actions necessary to comply with the conditions to disbursement of proceeds of the CWSRF Loan Agreement and to maximize Owner's eligibility to receive timely reimbursement under the CWSRF Loan Agreement. Contractor shall perform its CWSRF-related responsibilities in a manner which complies with all CWSRF program requirements.

3. Data and Information. All data, information and action required to be supplied or taken in connection with any CWSRF financing shall be supplied and taken on a timely

basis considering the CWSRF requirements at Contractor's sole cost and expense. The data and information supplied by Contractor to Owner or Owner's consultant and the SWRCB in connection therewith shall be correct and complete in all material respects and shall be submitted in draft form to Owner or Owner's consultant sufficiently in advance to allow full and meaningful review and comment by Owner. Contractor shall not be entitled to any schedule or price relief or escalation which result from a delay due to the submission of materially incorrect or incomplete information. Owner reserves the right to reject, modify, alter, amend, delete or supplement any information supplied by Contractor pursuant to this Section.

4. CWSRF Requirements. Owner is informed that in order to obtain CWSRF financing for the Project: (a) American Iron and Steel (AIS) requirements will apply; (b) the State Water Resources Control Board ("SWRCB") CWSRF policy will apply; and (c) the SWRCB applies USEPA guidance on AIS requirements. Contractor agrees to cooperate with Owner to meet all CWSRF financing requirements applicable to the Project and Contractor has included all costs necessary to comply with AIS requirements in the Contract Price.

DRAFT

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf

This Agreement will be effective on the date it has been executed by OWNER (which is the Effective Date of the Agreement).

OWNER:

California-American Water Company

By: _____

Title: _____

Date: _____

CONTRACTOR

[INSERT CONTRACTOR NAME]

By: _____

Title: _____

Date: _____

Attest: _____

Title: _____

Date: _____

Contractor's License No.:

**STANDARD GENERAL CONDITIONS
OF THE CONSTRUCTION CONTRACT
FOR CONSTRUCTION PROJECTS LOCATED IN
CALIFORNIA**

2007 American Water System Edition

Issued by

American Water System
Voorhees, New Jersey

The Standard General Conditions of the Construction Contract, 2007 American Water System Edition ("General Conditions"), are based on the Standard General Conditions of the Construction Contract prepared by the Engineers Joint Contract Document Committee (EJCDC Doc. No. C-700, 2007 Edition). The General Conditions incorporate terms and conditions that are consistent with American Water System practices and policies. Only the General Conditions contained herein are a part of the Contract Documents for the project.

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT FOR CONSTRUCTION PROJECTS IN CALIFORNIA

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda* – Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
2. *Agreement* – The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
3. *Application for Payment* – The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
4. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
5. *Bid* – The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
6. *Bidder* – The individual or entity who submits a Bid directly to Owner.
7. *Bidding Documents* – The Bidding Requirements and the proposed Contract Documents (including all Addenda).
8. *Bidding Requirements* – The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order* – A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
10. *Claim* – A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
11. *Contract* – The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
12. *Contract Documents* – Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price* – The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times* – The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor* – The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work* – See Paragraph 11.01.A for definition.
17. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement* – The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer* – The individual or entity named as such in the Agreement.
20. *Field Order* – A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements* – Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.
22. *Hazardous Environmental Condition* – The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
23. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens* – Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone* – A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
27. *Notice of Award* – The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed* – A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner* – The American Water System entity with which Contractor has entered into the Agreement and for which the Work is to be performed.
30. *PCBs* – Polychlorinated biphenyls.
31. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule* – A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual* – The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative* – The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals* – A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values* – A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
40. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site* – Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications* – That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part

thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

45. *Successful Bidder* – The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions* – That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.
48. *Underground Facilities* – All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work* – Work to be paid for on the basis of unit prices.
50. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive* – A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

- A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

B. *Intent of Certain Terms or Adjectives*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.07 or any other provision of the Contract Documents.

C. *Day*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents, or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).
 - d. Fails to perform to industry standards within the geographic area of the Project at any time during the Correction Period specified in Paragraph 13.07.

E. *Furnish, Install, Perform, Provide*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. *Bonds*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish pursuant to Paragraph 7.01.K of the Agreement.
- B. *Evidence of Insurance*: Before any Work at the Site is started, Contractor shall deliver to Owner, certificates of insurance (and other evidence of insurance which Owner or any additional insured may reasonably request) which Contractor is required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor the number of printed or hard copies of the Contract Documents specified in Paragraph 9.06.C of the Agreement. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the date indicated in the Notice to Proceed. In no event will Owner have any obligations or duties to Contractor under the Agreement until the Contract Times commence to run.

2.04 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Preliminary Schedules*

- A. *Submission of Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified by Owner or Engineer in writing or at the Preconstruction Conference), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
2. a preliminary Schedule of Submittals; and
3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

- B. *Acceptance of Preliminary Schedules:* No progress payment shall be made to Contractor until schedules are submitted to Engineer in accordance with Paragraph 2.05.A and accepted by Engineer:

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work and the allocation of the Contract Price as shown in the Progress Schedule.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor shall each designate, in writing, specific individuals to act as their respective representatives with respect to the services and responsibilities of each party under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

- A. Standards, Specifications, Codes, Laws, and Regulations
 - 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those

set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

- B. Unless specified otherwise in the Contract Documents, all Work shall meet the laws, regulations, codes, and industry standards (in that order) applicable to the location of the Work.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers or has actual knowledge of and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.15.A) until a modification to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

- b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Modifying Contract Documents*

- A. The Contract Documents may be modified to provide for additions, deletions, or revisions (or any combination thereof) in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 - 1. Work Change Directive
 - 2. Change Order
 - 3. Field Order;
 - 4. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.16.D.3); or
 - 5. Engineer's written interpretation or clarification.
- C. Changes in Contract Time or Contract Price must be made by Change Order.

3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
 - 2. reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.
- B. The prohibition of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

- A. Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:*

1. A Geotechnical Report, if any, is included as a Contract Document and is attached hereto as Exhibit G.
2. Reports of explorations and tests of subsurface conditions at the Site known to Owner and drawings of physical conditions relating to existing surface and subsurface structures (except Underground Facilities) at the Site known to Owner, if any, are attached hereto as Exhibit H.
3. Copies of reports and drawings itemized in Exhibit I that are not included with Bidding Documents may be examined at the address listed in paragraph 9.06.D of the Agreement. Such examination is allowed during regular business hours. These reports and drawings are not part of the Contract Documents. Contractor is not entitled to rely upon any information or data in any report or drawing itemized in Exhibit I except as set forth in Paragraph 4.02.
4. No other reports of explorations or tests of subsurface conditions at or contiguous to the Site were used in the preparation of the Drawings and Specifications, unless otherwise specified in writing.

B. *Limited Reliance by Contractor Authorized:* The Geotechnical Report, which is a Contract Document, presents as a contractual baseline those subsurface conditions that Contractor may assure it will encounter; however, Owner does not warrant that actual conditions will not vary from the assumed conditions. Contractor may rely upon the express statements and depictions regarding assumed subsurface conditions at the Site presented as a contractual baseline in the Geotechnical Baseline Report, which is a Contract Document. Except for such reliance, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities, with respect to:

1. the completeness of the Geotechnical Report, or content, quality, or completeness of any other such reports, tests, or drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in any such reports or tests, or shown or indicated in any such drawings; or
3. any Contractor interpretation of or conclusion drawn from any such report, test, or drawing or any such other data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

A. Notice

1. The Contractor shall give written notice to Owner and Engineer of (a) subsurface or latent physical conditions at the Site which differ materially from those indicated in the Geotechnical Baseline Report or other Contract Documents or (b) unknown physical conditions at the Site of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract Documents.
2. The Contractor's notice shall provide the Owner and Engineer the opportunity to investigate the conditions at the Site, and to obtain additional exploration or tests with respect to the pertinent condition. Owner shall provide to Contractor the results of any such additional tests or exploration.

B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet at least one of the two categories described in Paragraph 4.03.A.1; and
 - b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.05 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or

Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

- c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, Contractor may make a Claim therefor as provided in Paragraph 10.05. However, Owner and Engineer, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Contract Documents:

1. Contractor may assume the general accuracy and completeness of any such information and data shown or indicated in the Contract Documents; and
2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data,
 - b. locating for field construction purposes all Underground Facilities shown or indicated in the Contract Documents,
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in

connection therewith (except in an emergency as required by Paragraph 6.15.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and advise Owner as to the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Owner concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points and property monuments necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

- A. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- B. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an

emergency as required by Paragraph 6.15.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by paragraph 4.06.C.

- C. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- D. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- E. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.E shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- F. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other

dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.F shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- G. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

4.07 *Notice of Hazardous Materials*

- A. In accordance with the intent of the Federal Occupational Safety and Health Administration (OSHA) Standard Section 29 CFR 1910.1200, Hazard Communication with effective date of May 25, 1986, as it may be amended from time to time, the Owner hereby notifies the Contractor that Work is to be performed on company property where the Contractor's employees may be exposed to hazardous materials existing on the premises.

Chemicals known to be used or stored by the Owner and required to be disclosed by said OSHA Standard Section 29 CFR 1910.1200 are listed in Exhibit J.

- B. Owner, Contractor, and any Subcontractors will each provide or make available to the others: (a) any written hazard communication program required to be maintained with respect to the site and any material safety data sheet and other hazard communication information required to be provided in accordance with the applicable Laws and applicable Regulations; or (b) in the event that applicable Laws and Regulations do not require the provision or exchange of such hazard communications, Contractor and any Subcontractors shall, nevertheless, provide or make available to Owner and any other employers at the site a written hazard communication program, material safety data sheets and other hazard communication information of the type and consistent with the intent of said OSHA Standard Section 29 CFR 1910.1200 and acceptable to Owner and Engineer. Contractor shall be responsible for coordinating any such required exchange of documents or information between or among Owner and any other employers at the Site, or any of them. Contractor shall include the provisions of this paragraph in any subcontract for any part of the Work at the site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. If required by the Contract Documents, Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or

Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.
- D. All bonds furnished in compliance with the above shall be executed by sureties having a rating of "A" by the most recent Best's Key Rating Guide and as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in these General Conditions.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured identified in Exhibit K, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

- B. Failure of Owner to demand such certificates or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- C. Owner does not represent that coverage and limits will necessarily be adequate to protect Contractor against all risks, including Contractor's obligation to indemnify Owner.
- D. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
 - 5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in Exhibit K, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages provided in Exhibit L or required by Laws or Regulations, whichever is greater;
3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.19;
4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in Exhibit K to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
6. include completed operations coverage:
 - a. Such insurance shall remain in effect for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured identified in Exhibit K, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

- C. The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations.

1. At no expense to Owner, Contractor shall (1) obtain and keep in force during the term of this Agreement, and any renewals or extensions hereof; and (2) require its subcontractors to obtain and keep in force during the terms of their respective engagements or contracts, the minimum insurance limits and coverage set forth in Exhibit L. The insurance coverage limits stated therein are minimum coverage requirements, not limitations of liability, and shall not be construed in any way as Owner's acceptance of the responsibility of Contractor.
2. The minimum liability limits required may be satisfied through the combination of the primary general liability, employers' liability, and automotive liability limits with an umbrella liability policy (with coverage no more restrictive than the underlying insurance) providing excess limits at least equal to or greater than the combined primary limits.
3. All commercial general liability including completed operations-products liability coverage and automotive liability insurance shall designate Owner, its parent, affiliates and subsidiaries, their respective directors, officers and employees as additional insureds. All such insurance should be primary and non-contributory, and is required to respond and pay prior to any other insurance or self-insurance available to Owner. In addition to the liability limits available, such insurance will pay on behalf of or will indemnify Owner for defense costs. Any other coverage available to Owner applies on a contingent and excess basis. Such insurance shall include appropriate clauses pursuant to which the insurance companies shall waive its rights of subrogation against Owner.
4. Contractor and any of its subcontractors shall furnish, prior to the start of work, certificates or adequate proof of the foregoing insurance including, if specifically requested by Owner, copies of the endorsements and insurance policies naming Owner as an additional insured, as provided herein. Current certificates of insurance shall be provided prior to the commencement of work and shall be maintained until termination of this Agreement. Contractor shall notify Owner in writing, at least thirty (30) calendar days prior to cancellation, or of a material change in any policy.
5. The certificate holder is included as an additional insured with respect to liability arising out of the named insured's operations performed on behalf of such certificate holder. A waiver of any subrogation endorsement must accompany a certificate of insurance and must include workers' compensation policies.
6. Carriers providing coverage will be rated by A.M. Best with at least an A-rating and a financial size category of at least Class VII. Such cancellation or material alteration shall not relieve Contractor of its continuing obligation to maintain

insurance coverage in accordance with this contract. Carriers shall be licensed in the state(s) where work is performed.

7. If Contractor shall fail to procure and maintain such insurance, Owner, upon written notice, may, but shall not be required to, procure and maintain same, but at the expense of Contractor. In the alternative, Owner may declare a default hereunder and, unless such default is timely cured, terminate the Agreement. Unless and until the default is cured, neither Contractor nor its servants, employees or agents will be allowed to enter upon the Owner's premises.

5.05 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance – Builder's Risk Insurance*

The Contractor shall bear all risks of all loss or damage to the materials and Work until the Work is finally accepted by the Owner, except that the Contractor may claim reimbursement under the Owner's builder's risk insurance policy as herein provided and limited. Owner may carry "All Risk" Builders Risk Insurance subject to deductibles, terms and conditions as stated in the policy and below. It is the obligation and responsibility of the Contractor to make appropriate claim to the insurance company for all losses claimed under the policy. Should any loss not be covered under this policy, in whole in or parts, the Contractor shall bear the loss. Any questions regarding coverages, limitation, exclusion, etc. contained in the policy shall be addressed by bidders prior to submittal of bids, to **Director, Risk Management, American Water, 1025 Laurel Oak Road, Voorhees, NJ 08043.**

Such insurance shall cover the full value of the cost of replacement to the Owner, less applicable deductibles, of all completed portions of the work to be performed throughout the entire time of construction. The deductibles on each separate and unrelated loss are: (1) \$25,000 on loss; (2) \$250,000 on loss caused by flood; (3) 5% of total insurable value for loss caused by earthquake. Owner will furnish to the Contractor evidence of the insurance coverage provided.

Such insurance shall not cover (1) damage to or loss of material or equipment furnished by either party which are damaged or lost due to carelessness or negligence on the part of the Contractor, or (2) damage to or loss of machinery, tools, equipment, or other property furnished by the Contractor whether or not used by the Contractor in carrying out the terms of the Contract unless such machinery, tools, equipment or other property are specifically intended for permanent incorporation into the Contract work and are included in an approved application for payment.

5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in Exhibit K to be listed as loss payees (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, and Engineer, and all other individuals or entities identified in Exhibit K to be listed as loss payees (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If either Owner or Contractor has any objection to the coverage afforded by, or other provisions of, the bonds or insurance purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates or other requested evidence of coverage. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent, acceptable to Owner, who shall not be replaced without written authorization from Owner except under extraordinary circumstances.

- C. If required by Owner, the Contractor shall assign the project manager listed in Exhibit M who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, no like, equivalent, or "or-equal" item, and no substitution, is permitted.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Contract Documents require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner for Owner's acceptance by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Contract Documents, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked by Owner on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor

2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
 - E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
 - F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade. This paragraph does not authorize Contractor to assign work to Subcontractors or Suppliers in violation of licensing requirements or other laws and regulations.
 - G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate written agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Contract Documents to be listed as insureds or additional insureds (and the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.
 - H. Owner or Engineer may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by a particular Subcontractor or Supplier.
 - I. Subcontractors approved by the Owner and Engineer are listed in Exhibit N. Approved Subcontractors shall not be replaced without prior notice to Owner. Owner shall have all rights provided in this Paragraph 6.06 with respect to any proposed replacement Subcontractor.

6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner or Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor and Subcontractors, and the officers, directors, partners, employees, agents, and consultants of each and any of them from and against all claims, costs, losses, and damages, including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

- A. A listing of the permit(s) known at the time of preparation of the Bid Documents to be required for the Project and the identification of the party responsible for obtaining such permit(s) is set forth in the attached Exhibit O. Owner will obtain and pay for all necessary permits which by Laws or Regulations must be obtained by the Owner. The Contractor will obtain and pay for all other permits, licenses and certificates of inspection. The Contractor will pay for all inspection costs and fees. The Owner and Engineer will assist the Contractor as required by the Permitting Agency in obtaining all permits required to be obtained by the Contractor. The Contractor will assist the Owner as required by the Permitting Agency in obtaining the permits required to be obtained by the Owner.

- B. The Contractor and/or his Subcontractor(s) shall obtain, complete, seal and sign all applications required to obtain construction permits required by state and local government agencies. A copy of the electrician's and plumber's current state and/or local license shall be delivered to the Owner.
- C. When required by the local governing body, the electrician and plumber will execute a mechanical bond in the form approved by the local government.
- D. If Owner is required by Laws and Regulations to apply for a building permit, all bonds, application forms and copies of licenses shall be delivered to the Owner by Contractor so these documents may be submitted with the Owner's application for a building permit. The Contractor shall assist the Owner in preparing the building permit. The Owner will pay for the building permit.

6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

- A. Unless otherwise provided in the Contract Documents, Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

- B. Contractor's responsibility under Paragraph 6.10 to pay all such taxes shall: (i) include the obligations to pay any interest or penalties that may be assessed as a result of Contractor's late payment or failure to pay such taxes, and (ii) survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.
- C. Contractor shall indemnify and hold harmless and defend Owner from and against all claims, losses, expenses, damages and liability relating to: (i) Contractor's nonpayment of any sales, consumer, use and other similar taxes or interest or penalties required to be paid by Contractor, or (ii) Contractor's failure to utilize or implement any available sales and use tax exemption or Contractor's failure to obtain any necessary exemption certificate or other required exemption evidence.
- D. Contractor shall furnish evidence satisfactory to Owner that Contractor has paid all sales, consumer, use and other similar taxes required to be paid by Contractor. Contractor shall also furnish to Owner with Contractor's applications for final payment a schedule of all items incorporated in the Work that Contractor has determined are entitled to sales and use taxes exemption and for which no sales and use taxes were paid by Contractor. Owner reserves the right to audit the Contractor's compliance with applicable sales and use taxes requirements prior to release of retainage and final payment. If Owner disagrees with any of Contractor's determinations or exemptions or otherwise has reason to believe that Contractor has not paid all applicable sales and use taxes, Owner shall be entitled to withhold the amount of sales and use taxes Owner believes Owner may be potentially liable for as a result of Contractor's nonpayment until: (i) Contractor presents evidence satisfactory to Owner that Contractor has paid the taxes in question or that the items in question are exempt and (ii) all statutes of limitation for the applicable taxing authority to bring an action against Owner for payment of the taxes in question have expired, whichever first occurs.
- E. In addition to Owner's other rights and remedies under this Paragraph 6.10, Owner shall be entitled to set off against monies otherwise due Contractor hereunder the amount of any sales and use tax, or any other tax, which Owner is required to pay be reason of Contractor's failure to comply with this Paragraph 6.10.

6.11 *Use of Site and Other Areas*

A. Limitation on Use of Site and Other Areas

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work, Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. At the completion of Work, all waste materials, rubbish, and other debris generated by the Work shall be removed from the Site. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work, Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work, Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents, Samples, and Shop Drawings to Engineer for Owner.

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
1. all persons on the Site or who may be affected by the Work;
 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- D. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.16 *Shop Drawings and Samples*

- A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the acceptable Schedule of Submittals (as required by Paragraph 2.05). Each submittal will be identified as Engineer may require.

1. *Shop Drawings*

- a. Submit number of copies specified by Engineer.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.16.D.

2. *Samples*: Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.

- a. Submit number of Samples specified in the Specifications.
- b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.16.D.

- B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the

pertinent submittal will be at the Contractor's risk; no Change Order will be issued to provide additional time or compensation for corrections needed to conform previously performed work to the Shop Drawing or Sample approved by the Engineer.

C. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials offered with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals approved pursuant to Paragraph 2.05. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.16.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.16.C.1.

E. Resubmittal Procedures

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
- F. Contractor shall furnish required submittals with sufficient information and accuracy in order to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing subsequent submittals of Shop Drawings, samples or other items requiring approval and Contractor shall reimburse Owner for Engineer's charges for such time.

6.17 Continuing the Work

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.18 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its Related Entities shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
 6. any inspection, test, or approval by others; or
 7. any correction of defective Work by Owner.

6.19 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of, in connection with, or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable. Contractor's obligations under this Section 6.19 shall not be limited to or by the amount of insurance coverage required by the Contract Documents.
- B. In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of

the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.19.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- C. The indemnification obligations of Contractor under Paragraph 6.19.A shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, consultants and subcontractors arising out of:
1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.20 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.20, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals

(except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.16.D.1.

- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or via other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
 - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
 - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be agreed to at the Preconstruction Conference :
 - 1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 - 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 - 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Contract Documents, Owner shall have sole authority and responsibility for such coordination.

ARTICLE 8 – OWNER’S RESPONSIBILITIES

8.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

- A. Owner’s duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner’s identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Engineer in preparing the Contract Documents.

8.06 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.07 *Compliance with Safety Program*

- A. While at the Site, Owner and its employees and representatives shall become familiar with Contractor's safety programs as initiated and maintained under Paragraph 6.13 and shall comply with the requirements of such programs while at the Site.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period.
- B. Owner reserves the right to at any time, and in Owner's sole discretion to: 1) designate an employee or Owner or an Owner-affiliated entity as Engineer, 2) directly undertake or perform some or all Engineer's authority, duties, or responsibilities, and 3) retain Owner-affiliated entities or independent engineers, consultants, or managers to undertake some or all of Engineer's or Owner's authority, duties or responsibilities under the Contract Documents.
- C. The assignment of any authority, duties or responsibilities to Engineer or others under the Contract Documents, or any undertaking, exercise or performance thereof by Engineer, Owner, or others is intended to be for the sole and exclusive benefit of Owner and not for the benefit of Contractor, Subcontractor, Supplier, or any other person or organization.

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep

Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.07. Particularly, but without limiting the foregoing, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.04 *Rejecting Defective Work*

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require inspection or testing of the Work as provided in Paragraph 13.03, whether or not the Work is fabricated, installed, or completed.

9.05 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. For the purposes of determining the timeliness of a Claim under Paragraph 10.05.A, the date of Engineer's decision under this Paragraph 9.06.B shall be the date of the event giving rise to the Claim.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.06, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.07 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.07 shall also apply to the Resident Project Representative, if any, and assistants, if any.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 Authorized Changes in the Work

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 Unauthorized Changes in the Work

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as modified in accordance with Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.15 or in the case of uncovering Work as provided in Paragraph 13.04.B.

10.03 Execution of Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
 - 1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.17.A.

10.04 *Notification to Surety*

- A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 *Claims*

- A. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event. A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal.
- B. *Other Party's Action:* The other party will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
 1. deny the Claim in whole or in part, or
 2. approve the Claim.
- C. In the event that the other party does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

- D. The other party's written action under Paragraph 10.05.B or denial pursuant to Paragraph 10.05.C will be final and binding upon the claimant, Owner and Contractor, unless claimant invokes the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- E. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.
 - 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
 - 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
 - 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from

subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

4. Costs of special consultants (including but not limited to Engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expresses, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded.* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office, for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or not specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A and 11.01.B.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

- D. *Documentation*: Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

- A. The Contract Price includes all allowances identified in the Contract Documents. Contractor shall cause the Work covered by such allowances, if any, to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer. Contract is not entitled to any part of an unexpended balance of an allowance.

B. *Cash Allowances*

1. Contractor agrees that:

- a. cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
- b. cash allowances do not include Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, or other expenses related to the Work covered by the cash allowances, all of which have been included separately in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. *Contingency Allowance*

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs. Expenditures from the contingency allowance, if any, are authorized and valued changes in the Work in accordance with Articles 10 and 12. Owner shall determine which changes in the Work, if any, are paid from the contingency allowance.

- D. Prior to final payment, if applicable, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.05.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 Change of Contract Price

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
 - 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus

a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Notice of Defects

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and programs so that they may comply therewith as applicable.

13.03 Tests and Inspections

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner may employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and
 - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals and furnish Engineer the required certificates of inspection or approval. Owner shall pay any inspection fee imposed by the public body.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of

materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.
- G. No observations, inspections, tests, or approvals by Engineer, Owner, or others shall relieve Contractor of its obligation to perform the Work in accordance with the Contract Documents.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work

will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Contract Documents) any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. repair such defective land or areas; or
 - 2. correct such defective Work; or
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or

repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner or Owner may offset an appropriate amount from final payment if not yet paid. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

- A. The Schedule of Values established as provided in Paragraph 2.05 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 Progress Payments

A. Applications for Payments

1. At intervals of once a month, Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed to the first day of such month and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested for materials and equipment not incorporated in the Work but delivered and suitably stored

at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Each Application for Payment shall be accompanied by completed and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work, to the date of the Application for Payment. Applications for progress payments shall be accompanied by a Conditional Release of Lien substantially conforming to the form specified in California Civil Code section 8132. Contractor may use the form attached hereto as Exhibit P.
3. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment. Such affidavit shall substantially conform to the form attached as Exhibit Q. It shall be Contractor's responsibility to maintain the property free of all liens from subcontractors retained or employed by Contractor upon submitting an Application for Payment covering such subcontractor's work and an affidavit attesting that such payment has been applied to such Subcontractor's account.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations on the Site of the executed Work as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;

- b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.05, and to any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
 3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. there are no other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
 4. Neither Engineer's nor Owner's review of Contractor's Work for the purposes of recommending payments or determining to make payments, nor Engineer's recommendation of any payment, including final payment, nor Owner's decision to make any payment, including final payment, will impose responsibility on Engineer or Owner:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
 5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment

or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Change Orders;
- c. Owner has corrected defective Work or completed Work in accordance with Paragraph 13.09; or
- d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due

1. Forty-five days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount

so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner free and clear of all liens no later than the time of payment.

14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within 14 days after submission of the tentative certificate to Owner notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will within said 14 days execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties

and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions.
 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner and Engineer will follow the procedures of paragraph 14.04 A.-D. for that part of the Work.
 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. The Application for Final Payment shall be accompanied by a Release of Lien completed by Contractor, Subcontractors and Suppliers substantially conforming to the form specified in California Civil Code section 8136. Contractor, Subcontractors, or Suppliers may use the form attached hereto as Exhibit R.
4. Contractor shall defend, indemnify, and hold Owner harmless against any Lien filed in connection with the Work by any Subcontractor, Supplier, or other lien claimant. At Owner's request, Contractor shall furnish a bond or other collateral satisfactory to Owner to protect and indemnify Owner against any Lien.

B. *Engineer's Review of Application and Acceptance*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 Final Completion Delayed

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

- A. The making and acceptance of final payment will constitute:
 1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner and a release of all liens other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 Owner May Terminate for Cause

- A. The occurrence of any one or more of the following events will justify termination for cause:
 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.05 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Engineer; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
 1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion),
 2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and
 3. complete the Work as Owner may deem expedient.

- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration

or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. At any time after submitting notice of a claim under Paragraph 10.05.A and prior to the expiration of the 30-day time period set forth in Paragraph 10.05.D, Owner or Contractor may give to the other party written notice of intent to submit the Claim to a process of bilateral negotiations as set forth below.

B. Within 30 days of delivery of such notice, Owner and Contractor shall meet and confer regarding the Claim. A good-faith effort to negotiate resolution shall be made by both parties.

C. If the negotiations contemplated by Paragraph 16.01.B are unsuccessful, management representatives of Owner and Contractor at least one tier above the individuals who met

under 16.01.B shall meet, confer, and negotiate within 30 days of the closure of the unsuccessful negotiations.

D. If the Claim is not resolved by negotiation, the Claim shall be deemed denied and shall become final and binding 30 days after termination of the negotiations unless, within that time period, Claimant:

1. invokes the dispute resolution process provided for in Paragraph 16.01.E, or
2. agrees with the other party to submit the Claim to another dispute resolution process.

E. **Mandatory Non-binding Mediation.** If a dispute arises out of, or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the Parties agree to first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation under the Construction Industry Mediation Rules of the American Arbitration Association before having recourse in a court of law. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required travel and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties, unless they agree otherwise. Any resultant agreements from mediation shall be documented in writing. All mediation proceedings, results, and documentation shall be inadmissible for any purpose in any legal proceeding (pursuant to California Evidence Codes sections 1115 thru 1128), unless such admission is otherwise agreed upon in writing by both parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

F. Any dispute arising under the Contract not resolved through mediation shall be resolved through submittal of the dispute to a court of competent jurisdiction.

G. **Covenant of Good Faith and Fair Dealing:**

1. This contract imposes an obligation of good faith and fair dealing in its performance and enforcement. The Contractor, Engineer and Owner, with a positive commitment to honesty and integrity, agree to the following mutual duties:
 - a. Each will function within the laws and statutes applicable to their duties and responsibilities.
 - b. Each will assist in the other's performance.
 - c. Each will avoid hindering the other's performance.
 - d. Each will proceed to fulfill its obligations diligently.
 - e. Each will cooperate in the common endeavor of the contract.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
 - 1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or
 - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice, or by facsimile transmission.

17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 *Controlling Law*

- A. This Contract is to be governed by the laws of the state of California.

17.06 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

DRAFT

EXHIBIT LIST
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Exhibit A
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that _____,
having an office at _____, as Principal, hereinafter
called CONTRACTOR, and _____,
having an office at _____, as Surety, hereinafter
called Surety, are held and firmly bound unto the _____ **(Water Company name)**
_____, having an office at **(Water**
Company address), as Oblige, hereinafter called OWNER, for the use and benefit of claimants as
hereinbelow defined, in the amount of _____ (\$ _____), for
the payment whereof CONTRACTOR and Surety bind themselves, their heirs, executors,
administrations, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, CONTRACTOR has by written agreement dated _____, 20____, entered into a
Contract with the OWNER for the construction of the project entitled **(Project Title)**, in accordance with
Drawings and Specifications prepared by **(Engineer or Engineer's consultant as appropriate)**, which
Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, the condition of this obligation is such that, if CONTRACTOR shall
promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it
shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of Contract Times made by the
OWNER.

Whenever CONTRACTOR shall be and declared by OWNER to be in default under the
Contract, the Surety shall promptly remedy the default. If the OWNER terminates the Contract for such
default, the following precautions shall govern the liability of the CONTRACTOR and the Surety
hereunder.

In the event of such termination, the CONTRACTOR and the Surety shall remain fully liable to
the OWNER for the CONTRACTOR'S failure to timely complete the Contract, any additional costs
incurred by the OWNER in completing the Contract, and liquidated damages from the originally
scheduled completion date to the date of the actual completion of the work by the OWNER.

In the event of such termination, the Surety company may elect to take over and complete
performance of the Contract by giving written notice to the OWNER of such determination within seven
(7) days of the OWNER'S mailing of notice of termination to the Surety and actually commencing
completion with fourteen (14) days of the OWNER'S notice to the Surety. The Surety shall fully
complete the work by the originally scheduled date of completion and the CONTRACTOR and the
Surety shall remain liable to the OWNER for all damages sustained by the OWNER and for liquidated
damages for delay.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due or before the expiration of two (2) years from the Date of Substantial Completion of the Project, whichever is later.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the OWNER named herein or the heirs, executors, administrators or successors of the OWNER.

Signed and sealed this _____ day of _____, 20__.

WITNESS:

(Witness)

CONTRACTOR (SEAL)

By _____

Title _____

WITNESS:

(Witness)

(Name of Surety) (SEAL)

By _____

(Attach Power of Attorney)

Title _____

Exhibit B
LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that _____,
having an office at _____, as Principal, hereinafter
called CONTRACTOR, and _____,
having an office at _____, as Surety, hereinafter
called Surety, are held and firmly bound unto the _____ **(Water Company name)**
_____, having an office at **(Water**
Company address), as Obligee, hereinafter called OWNER, for the use and benefit of claimants as
hereinbelow defined, in the amount of _____ (\$ _____), for
the payment whereof CONTRACTOR and Surety bind themselves, their heirs, executors,
administrations, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, CONTRACTOR has by written agreement dated _____, 20____, entered into a
Contract with the OWNER for the construction of the project entitled **(Project Title)**, in accordance with
Drawings and Specifications prepared by **(Engineer or Engineer's consultant as appropriate)**, which
Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if
CONTRACTOR shall promptly make payment of all claimants as hereinafter defined, for all labor and
material used or reasonably required for use in the performance of the Contract, then this obligation shall
be void; otherwise it shall remain in full force and effect, subject, however to the following conditions:

1. A claimant is defined as one having a direct contract with the CONTRACTOR or with a
Subcontractor of the CONTRACTOR for labor, material, or both, used or reasonably required for use
in the performance of the Contract, labor and material being construed to include that part of water,
gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to
the Contract.
2. The above named CONTRACTOR and Surety hereby jointly and severally agreed with the OWNER
that every claimant as herein defined, who has not been paid in full before the expiration of a period
of ninety (90) days after the date on which the last of such claimant's work or labor was done or
performed, or materials were furnished by such claimant, may sue on this bond for the use of such
claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant,
and have execution thereon. The OWNER shall not be liable for the payment of any costs or
expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
 - a. Unless claimant, other than one having a direct contract with the CONTRACTOR, shall
have given written notice to any two of the following: the CONTRACTOR, the
OWNER or the Surety above named, within ninety (90) days after such claimant did or
performed the last of the work or labor, or furnished the last of the materials for which

said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the CONTRACTOR, OWNER or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

- b. After the expiration of one (1) year following the date on which CONTRACTOR ceased Work on said Contract or after the expiration of one (1) year following the Date of Substantial Completion of the Project, whichever is later, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
- c. Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, on any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against such improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this _____ day of _____, 20__.

WITNESS:

(Witness)

CONTRACTOR (SEAL)

By _____

Title _____

WITNESS:

(Witness)

(Name of Surety) (SEAL)

By _____

(Attach Power of Attorney)

Title _____

EXHIBIT C

Contractor's Bid

Exhibit E
WORK CHANGE DIRECTIVE

No. _____

PROJECT: _____ DATE OF ISSUANCE: _____

OWNER: _____
(Name,
Address): _____

CONTRACTOR: _____
(Name,
Address): _____

ENGINEER: _____

You are directed to proceed promptly with the following change(s):

Description: _____

Purpose of Work Directive Change: _____

Attachments: (list documents supporting change) _____

If a claim is made that the above change(s) have affected Contract Price or Contract Times, any claim for a Change Order based thereon will involve one of the following methods of determining the effect of the change(s).

Method in Contract Price:	of Method of determining change in	determining	change
<input type="checkbox"/> Time and materials		Contract Times:	
<input type="checkbox"/> Unit prices		<input type="checkbox"/> Contractor's records	
<input type="checkbox"/> Cost plus fixed fee		<input type="checkbox"/> Engineer's records	
<input type="checkbox"/> Other _____		<input type="checkbox"/> Other _____	

Estimated increase (decrease) in
Contract Price: \$ _____

Estimated increase (decrease) in
Contract Times: _____ days.

If the change involves an increase, the estimated amount is not to be exceeded without further authorization.

If the change involves an increase, the estimated amount is not to be exceeded without further authorization.

RECOMMENDED:

AUTHORIZED:

by _____
Engineer

by _____
Owner

Exhibit F
CHANGE ORDER

Owner: California-American Water Company

No. _____

Contractor: _____

Issue Date: _____

Project: _____

P/BusUnit: _____

ITEM NO.	DESCRIPTION OF THE CHANGE	COST INCREASE	COST DECREASE
	SUB-TOTAL:		

EXHIBIT K

List of Required Additional Insureds

1. California-American Water Company
2. Michael Baker International, Inc.
3. [Any additional TBD]

DRAFT

EXHIBIT L

Insurance Requirements

GC 5.04 Contractor's Insurance is hereby supplemented to include the following:

The limits of liability for insurance required by General Conditions paragraph 5.04 are as shown on the attached ACORD sample Certificate of Insurance.

Insurance Requirements.

(A) At no expense to American Water (hereinafter referred to as Company), Contractors and subcontractors shall, at its expense, obtain and keep in force during the term of this Agreement, and any renewals or extensions hereof, the following minimum insurance limits and coverage during the term of the agreement/contract to cover his legal liability to third parties in accordance with the Conditions of Contract. The insurance coverage limits stated below are minimum coverage requirements, not limitations of liability, and shall not be construed in any way as Owner's acceptance of the responsibility of the Contractor:

- | | |
|---|--|
| 1. Commercial General Liability: | \$1,000,000 per occurrence |
| | Combined Single Limits |
| | \$1,000,000 General Aggregate |
| | \$1,000,000 Products and Completed
Operations Aggregate |

Occurrence form including Premises and Operations Coverage, Products and Completed Operations, Coverage for Independent Contractors, Personal Injury Coverage and Blanket Contractual Liability. Contractor's Protective Liability if the Contractor subcontracts to another all or any portion of the Work. Completed Operations shall be maintained for a period of ten (10) years following Final Completion. The renewal of each annual policy shall include a three year extension of Completed Operations coverage.

2. **Workers Compensation:**

- | | |
|--|-----------------------------|
| A. Applicable Federal or State Requirements: | Statutory minimum |
| B. Employer's Liability | Each Accident - \$1,000,000 |
| | Policy Limit - \$1,000,000 |
| | Disease |
| | Each Employee - \$1,000,000 |
| | Disease |
| C. Voluntary workers compensation insurance covering all employees not subject to the applicable workers compensation act or acts. | |

The Workers' Compensation policy shall also include U.S. Longshoremen and Harbor Workers' Compensation Act Coverage, if any work shall be done over or within 100 feet of any body of water, or otherwise at the sole discretion of Company. It shall also provide maritime (Jones Act) coverage if a boat or vessel of any type is to be used.

3. Automobile Liability

Including owned, hired, borrowed and non-ownership liability.

Bodily Injury and Property	\$1,000,000 each occurrence
Damage Liability	Combined Single Limits

4. Umbrella Liability \$9,000,000 each occurrence and annual aggregate in

excess of Employer's Liability, General Liability and Automobile Liability (no more restrictive than the underlying insurance).

The minimum liability limits required may be satisfied through the combination of the primary General Liability, Employer's Liability, and Automobile Liability limits with an Umbrella Liability policy, with coverage no more restrictive than the underlying insurance, providing excess limits at least equal to or greater than the combined primary limits.

All Commercial General Liability including completed operations-products liability coverage and Automobile liability insurance shall designate Owner and Company, its parent, affiliates and subsidiaries, its directors, officers and employees as Additional Insured. All such insurance should be primary and non-contributory, and is required to respond and pay prior to any other insurance or self-insurance available to Owner and Company. In addition to the liability limits available, such insurance will pay on behalf or indemnify Owner and Company for defense costs. Any other coverage available to the Owner and Company applies on a contingent and excess basis. Such insurance shall include appropriate clauses pursuant to which the insurance companies shall waive its rights of subrogation against Owner and Company.

Contractor and subcontractors shall furnish prior to the start of work, certificates or adequate proof of the foregoing insurance including, if specifically requested by Company, copies of the endorsements and insurance policies naming Owner and Company as an Additional Insured. Current certificates of insurance shall be provided prior to the commencement of work and be maintained until completion of the contract. Owner shall be notified in writing at least thirty (30) days prior to cancellation of or material change in a policy. Carriers providing coverage will be rated by A.M. Best with at least an A- rating and a financial size category of at least Class VII. Such cancellation or material alteration shall not relieve

Contractor of its continuing obligation to maintain insurance coverage in accordance with this contract.

(B) If Contractor shall fail to procure and maintain said insurance, Owner or Company, upon written notice, may, but shall not be required to, procure and maintain same, but at the expense of Contractor. In the alternative, Owner or Company may declare a default hereunder and, unless such default is timely cured, terminate the Lease. Unless and until the default is cured, neither Contractor nor its servants, employees or agents will be allowed to enter upon the Premises.

ACORD CERTIFICATE OF INSURANCE		ISSUE DATE:				
PRODUCER VENDOR'S INSURANCE BROKER AND ADDRESS <hr/> INSURED [I. A. APPLICABLE TO MAJOR PLANT CONSTRUCTION AND EXPANSION] VENDOR/CONTRACTOR/TRADE Address	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.					
COMPANIES AFFORDING COVERAGE						
COMPANY LETTER A. ABC INSURANCE COMPANY						
COMPANY LETTER B. XXX INSURANCE COMPANY						
COMPANY LETTER C. YYY INSURANCE COMPANY						
COMPANY LETTER D.						
COMPANY LETTER E						
COVERAGES						
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A.	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR. <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT. <input checked="" type="checkbox"/> PER PROJECT AGG. <input checked="" type="checkbox"/> CGL FORM #	CGL1234	1/1/2008 or Current	1/1/2009 or 1 year from Current Effective Date	GENERAL AGGREGATE PRODUCTS-COMP/OP AGG. \$ 1,000,000 PERSONAL & ADV. INJURY EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one Fire) \$ 1,000,000 MED. EXPENSE (Any one person) \$ 300,000 \$ 10,000	
A.	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> COMP DED \$500 <input checked="" type="checkbox"/> NON-OWNED AUTOS	AL5678	1/1/2008 or Current	1/1/2009 or 1 year from Current Effective Date	COMBINED SINGLE LIMIT \$ 1,000,000 BODILY INJURY (Per Person) \$ BODILY INJURY (Per Accident) \$ PROPERTY DAMAGE \$	
B.	EXCESS LIABILITY <input checked="" type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM	XS 9876	1/1/2008 or Current	1/1/2009 or 1 year from Current Effective Date	EACH OCCURRENCE AGGREGATE \$9,000,000 \$9,000,000	
A	WORKER'S COMPENSATION AND EMPLOYERS LIABILITY	WC 5432	1/1/2008 or Current	1/1/2009 or 1 year from Current Effective Date	<input checked="" type="checkbox"/> STATUTORY LIMITS EACH ACCIDENT \$1,000,000 DISEASE-POLICY LIMIT \$1,000,000 DISEASE-EACH EMPLOYEE \$1,000,000	
	OTHER				Personal Property: \$250,000 Deductible:	
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS (Reference Project Location or Contract No.) Certificate holder is included as Additional Insured, except for workers compensation, with respect to liability arising out of the named insured's operations as required by written contract. Any coverage afforded to the Additional Insured shall apply as primary and not excess to any other insurance or self insurance available to Additional Insured. Waiver of Subrogation shall apply to all insurance.						
CERTIFICATE HOLDER			CANCELLATION			
American Water Works Service Company, Inc., its subsidiary and affiliated companies 4701 Beloit Drive Sacramento, CA 95838			SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, <hr/> AUTHORIZED REPRESENTATIVE			
ACORD 25-S (7/90)			INS 4 of 4	ACORD CORPORATION 1990		

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant:

Name of Customer:

Job Location:

Owner:

Through Date:

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check:

Amount of Check: \$

Check Payable to:

Exceptions

This document does not affect any of the following:

- (1) Retentions.
 - (2) Extras for which the claimant has not received payment.
 - (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:
 - Date(s) of waiver and release: _____
 - Amount(s) of unpaid progress payment(s): \$ _____
 - (4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.
-

Signature

Claimant's Signature:

Claimant's Title:

Date of Signature:

EXHIBIT Q

**AFFIDAVIT OF PAYMENT TO SUBCONTRACTORS
PROGRESS PAYMENT**

The undersigned warrants that the monies received from this progress payment have been or will be used to promptly pay in full all laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the job of California-American Water Company

located at _____,
up to the date of this waiver.

Dated: _____
_____ Company Name

By: _____
Name and Title

**AFFIDAVIT OF PAYMENT TO SUBCONTRACTORS
FINAL PAYMENT**

The undersigned warrants that the monies received from this final payment have been or will be used to promptly pay in full all of laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the job of California-American Water Company

located at _____.

Dated: _____
_____ Company Name

By: _____
Name and Title

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant:

Name of Customer:

Job Location:

Owner:

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check:

Amount of Check: \$

Check Payable to:

Exceptions

This document does not affect any of the following:
Disputed claims for extras in the amount of: \$

Signature

Claimant's Signature:

Claimant's Title:

Date of Signature:

ATTACHMENT C

BID PACKAGE

CONTRACTOR: _____

BID SCHEDULE

Item No.	Spec./ Section or Sheet	Item Quantity	Item Unit	Item Description	Unit Cost	Total Item Cost
1	-	1	LSUM	General Conditions, Mobilization, Limits of Construction Boundary Fencing, and Demobilization	\$	\$
2	G2, 01025	1	LSUM	MSHA Training for ALL Possible Workers that Work on the CEMEX Sand Mining Site.	\$	\$
3	SGC Section 4	1	LSUM	Environmental Mitigation Measures	\$	\$
4	C17-C18 01025, 02540	1	LSUM	Stormwater BMP Installation & Maintenance	\$	\$
5	C2-C,7 01025	1	LSUM	As-Needed Site Grading for Level Well Site (working) Pads and Access Roads	\$	\$
6	C8-C11, 01025, 15000	1	LSUM	30" to 42" Feed Water Pipeline (HDD segment covered in Bid Item #6)	\$	\$
7	C10-C11 01025,	700	LF	42" Feed Water Pipeline – Installed using Horizontal Directional Drilling (HDD)	\$	\$
8	01025, 15020, 15025, 15030	1	LSUM	Pipeline Disinfection, Bacteriological Testing, and Pressure Testing (ALL PIPELINES).	\$	\$
9	M1, 01025, 15151, 15171, 15034, 15065 15191, 16520	1	LSUM	Well Site #1 Mechanical Piping (1 Well)	\$	\$
10	M2, 01025, 15151, 15155, 15171, 15034, 15065 15191, 16520	1	LSUM	Well Site #2 Mechanical Piping (2 Wells)	\$	\$
11	M1, 01025, 15151, 15171, 15034, 15065 15191, 16520	1	LSUM	Well Site #3 Mechanical Piping (1 Well)	\$	\$
12	M1, 01025, 15151, 15171, 15034, 15065 15191, 16520	1	LSUM	Well Site #4 Mechanical Piping (1 Well)	\$	\$

CONTRACTOR: _____

Item No.	Spec./ Section or Sheet	Item Quantity	Item Unit	Item Description	Unit Cost	Total Item Cost
13	M2, 01025, 15151, 15155, 15171, 15034, 15065, 15191, 16520	1	LSUM	Well Site #5 Mechanical Piping (2 Wells)	\$	\$
14	01025, 03480; S1	7	EA	Concrete Precast Vault with Access Hatch	\$	\$
15	S1 0102	5	EA	Pump-To-Waste Basins	\$	\$
16	C3-C7, C12-C13 01025	1,050	LF	8' PVC Coated Chain Link Fence and Gates with Tan (Sand) Colored Privacy Slats	\$	\$
17	C12, M5, 01025, 11700, 09900	1	LSUM	3,000 Gallon Surge Tank #1	\$	\$
18	C13, M6, 01025, 11700, 09900	1	LSUM	8,000 Gallon Surge Tank #2	\$	\$
19	01025, 03300	1	LSUM	Concrete and Reinforcing Steel	\$	\$
20	E8, S2, M4, 01025	1	LSUM	Well Site #1 Enclosure, Electrical, Controls, and HVAC	\$	\$
21	E9, S2, M4, 01025	1	LSUM	Well Site #2 Enclosure, Electrical, Controls, and HVAC	\$	\$
22	E10, S2, M4, 01025	1	LSUM	Well Site #3 Enclosure, Electrical, Controls, and HVAC	\$	\$
23	E11, S2, M4, 01025	1	LSUM	Well Site #4 Enclosure, Electrical, Controls, and HVAC	\$	\$
24	E12, S2, M4, 01025	1	LSUM	Well Site #5 Enclosure, Electrical, Controls, and HVAC	\$	\$
25	01025, 16430	1	LSUM	1,500 KVA & 1,000 KVA Transformers	\$	\$
26	01025; 16000, 16050, 16051; 16345, 16430,	1	LSUM	All Other Electrical Components including main switchgear, etc.	\$	\$

CONTRACTOR: _____

Item No.	Spec./ Section or Sheet	Item Quantity	Item Unit	Item Description	Unit Cost	Total Item Cost

TOTAL BID AMOUNT

\$

CONTRACTOR:

DATE:

California American Water
(Bid Verification Only)

Name	Date

ATTACHMENT D

DIVERSE BUSINESS ENTERPRISE STATEMENT



DIVERSE BUSINESS ENTERPRISES REQUIREMENT STATEMENT

Owner utilizes the established guidelines from the California Public Utilities Commission (“CPUC”) to qualify diverse suppliers and requires certification as a Diverse Business Enterprise (“DBE”) by the Supplier Clearinghouse and/or the California Department of General Services. To be eligible for award of a contract from this solicitation, the bidder/proposer must execute and submit, as part of his or her bid/proposal, this statement. DBEs are divided into four classifications, as follows: Minority Business Enterprises (“MBE”), Women-Owned Business Enterprises (“WBE”), Disabled Veteran Business Enterprises (“DVBE”), and Lesbian, Gay, Bi-Sexual and Transgender Business Enterprises (“LGBTBE”). This statement shall be deemed a material factor in the Owner’s evaluation of the bid/proposal. Failure to complete and submit this statement, or the inclusion of a false statement, shall render the bid/proposal non-responsive.

The CPUC has set a goal for Owner to achieve at least 21.5% of total contract spend on DBEs, divided into the four classifications as follows: MBE – 15%, WBE – 5%, DVBE – 1.5%, and LGBTBE – goal to be established in 2020.

Owner has established certain minimum requirements, as set forth below, for the percentage of the total Contract Price that must be paid to DBEs (the “DBE Minimum”). The DBE Minimum for a contract will depend upon the total Contract Price for that contract, as set forth below. For example, for a contract with a Contract Price of \$1,200,000, the DBE Minimum is 25% and, therefore, at least \$300,000 must be paid to DBEs either as the primary contractor or as one or more subcontractors. Further, for a contract with a Contract Price of \$4,000,000, the DBE Minimum is 30% and, therefore, at least \$1,200,000 must be paid to DBEs either as the primary contractor or as one or more subcontractors.

<u>Total Contract Price</u>	<u>DBE Minimum</u>
\$100,000 - \$500,000	15%
\$500,001 - \$1,000,000	20%
\$1,000,001 - \$3,000,000	25%
\$3,000,001 and higher	30%

Notwithstanding the DBE Minimum set forth above, a bidder/proposer may propose, and is strongly encouraged to propose, a higher percentage of the Contract Price to be paid to DBEs. As part of its submission, the must respond to the questions below and identify the percentage of the Contract Price that will be paid to DBEs (such percentage must be NO LOWER THAN the DBE Minimum set forth above). The percentage of the Contract Price that will be paid to DBEs (to the bidder/proposer as primary contractor or to subcontractors), as indicated on this form, will be a contractual requirement (the “DBE Requirement”) that must be met by the bidder/proposer in performing the Contract Services. Failure to meet the DBE Requirement will be considered a breach of the contract and may result in termination of the contract by the Owner.



Complete the items below:

1. Is bidder/proposer certified as a Diverse Business Enterprise with the CPUC Supplier Clearinghouse and/or the California Department of General Services?

Respond YES or NO: _____

If YES, provide a copy of your certification with your bid/proposal and identify which classification your firm is certified under (i.e., MBE, WBE, DVBE, or LGBTBE):

2. What is the DBE Requirement (the percentage of the Contract Price that will be paid to DBEs) that bidder/proposer will agree to in the contract for the Contract Services?

_____ % of Contract Price (such percentage must be equal to or greater than the DBE Minimum as set forth above)

Bidder/Proposer Name: _____

Printed Name of Authorized Person: _____

Signature of Authorized Person: _____

Title of Authorized Person: _____