



**VSD**

**VALLEY SANITARY DISTRICT  
REQUEST FOR QUALIFICATIONS  
For  
Progressive Design Build Services for  
Influent Pump Station Rehabilitation Project  
Contract No. 2020-0105**

**ISSUE DATE:   MAY 28, 2020**

**SUBMITTALS DUE:   JULY 23, 2020   (4:00 P.M. PST)**

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## Proposer RFQ Checklist

- Read the *entire* document.** Note critical items such as mandatory requirements; supplies/services required; submittal dates; format and number of copies required for submittal; contract requirements (i.e., insurance, performance and or reporting, etc.).
- Note the District's contact name, address, phone numbers, and email address.** This is the only person you are allowed to communicate with regarding this RFQ and is an excellent source of information for any questions you may have.
- Attend the pre-qualification conference** if one is offered. These conferences provide an opportunity to ask clarifying questions, obtain a better understanding of the project, or to notify the District of any ambiguities, inconsistencies, or errors in the RFQ.
- Take advantage of the "question and answer" period.** Submit your questions to the District contact by the due date listed on the front page of the RFQ document. View all answers given in the formal addenda issued for the RFQ. All addenda issued for an RFQ are posted on the District's website: <http://www.valley-sanitary.org/procurement> and will include all questions asked and answered concerning the RFQ.
- Follow the format required in the RFQ** when preparing your response. Provide point-by-point response to all sections in a clear and concise manner. The qualifications are evaluated based solely on the information and materials provided in your response.
- Use forms provided**, i.e., cover page, sample budget form, certification forms, etc.
- Check the District's website for RFQ addenda.** Before submitting your response, check whether any addenda were issued for the RFQ. If so, you must submit a signed acknowledgment for each addendum issued along with your response
- Submit your response on time.** Note all the dates and times listed on the front page of the RFQ document, and be sure to submit all required items on time. Late qualifications will not be opened and will be returned.

## Section 1. Background

### 1.1 Introduction

This Request for Qualifications (RFQ) for the Influent Pump Station Rehabilitation Project (Project) invites Statements of Qualifications (SOQ) according to the requirements set forth in this RFQ, including the format and content guidelines in Section 5. The SOQs will be reviewed and evaluated to generate a short list of up to three Respondents, as described in Section 6.

At completion of the SOQ evaluation process, Valley Sanitary District (District) intends to issue a Request for Proposals (RFP) to the short-listed Respondents for award of the Progressive Design-Build Contract.

The capitalized terms in this RFQ have the meanings as first used in the text of this RFQ and as defined in Attachment A (Definition of Terms).

Once the Progressive Design-Builder has been selected and contract executed for the Work, the Project is to be designed and constructed in three phases using the progressive design-build delivery method:

- Preconstruction phase: Prepare design to 60% complete, as defined in Attachment B (Scope of Design-Build Services), and a guaranteed maximum price (GMP) proposal
- Construction phase: Complete design, construction and post-construction tasks (if GMP is approved by the Owner in preconstruction phase)
- Post-Construction phase: Startup and commissioning

This RFQ is subject to revision after the date of issuance via written addenda. Any such addenda will be posted on the District's website, and distributed directly to potential Respondents via email from the Proposal Holder Contact Form. It is each Respondent's responsibility to obtain all RFQ addenda prior to submitting its SOQ.

In no event will the District be liable for any costs incurred by any Respondent or any other party in developing or submitting an SOQ.

### 1.2 RFQ Organization

This RFQ consists of seven Sections and seven Attachments. The contents of the RFQ Attachments take priority over any conflicting statements in the RFQ Sections.

Certain project background documents are being made available as Attachment D (Project Background Documents) for the purpose of preparing SOQs. The District is providing these

documents only for the purpose of obtaining SOQs for the Project and does not confer a license or grant for any other use.

### 1.3 District's Objectives

The District's objectives for delivery of the Project are as follows:

- **Single Point of Accountability:** To have the Progressive Design-Builder provide the District with a single point of contract accountability for design, construction, commissioning and project performance. The single point of accountability is responsible for providing the District with complete resolutions to design and construction issues that may arise during all phases of project execution.
- **Quality:** Provide pumping facilities and equipment that will be sustainable and will reliably convey raw wastewater with full isolation capability that meets the contractual requirements defined for the Project.
- **Schedule:** Achieve the scheduled completion date within sixteen (16) months of contract execution of the progressive design-build contract for design, construction and startup of the Project.
- **Minimizing Risk for Change Orders:** Achieve an optimal balance of risk allocation between the District and the Progressive Design-Builder and manage risk to reduce the likelihood of change orders.
- **Safety:** Implement an effective safety program incorporating industry best practices.
- **Selection of Qualified Design Builders:** Selection of an experienced design-build team that understands District objectives, has experience in the design-build marketplace, and can design and construct the Project at or under the prescribed budget.
- **Innovative Solutions:** Opportunities to provide innovative solutions for accelerated project scheduling, maximum cost control, improved constructability and minimization of operations and maintenance costs to ensure the Project fits within the District's budget.
- **Guaranteed Maximum Price:** Design and construction of the Project at an agreed price within the District's \$1.85 million budget.
- **Competitive Bidding of Qualified Subcontractors and Equipment Suppliers:** To have the ability to select or reject subcontractors and equipment vendors bids based on cost or non-cost factors.
- **Collaboration with Design Elements:** Review and participate with Progressive Design-Builder's selection of design elements that will minimize overall future operation concerns and maintenance costs.

By selecting the progressive design-build delivery method for the Project, the District is committed to working in close collaboration with the Progressive Design-Builder during the preconstruction phase to develop a design that achieves Project objectives and to obtain a mutually agreeable GMP.

## Section 2. Project Overview

### 2.1 Project Scope

The Influent Pump Station (IPS) was constructed in 1999 and was modified to add more pumps to the empty pump bays and an additional parallel magnetic flow meter in 2008. The IPS is equipped with submersible pumps, with six pump bays (and five pumps) with stop gates to isolate each bay from the influent channel. An inlet slide gate in the IPS forebay was provided to allow bypassing of the pump station. Attachment D shows the plan and section views of the IPS as originally constructed as well as changes due to the recently completed Requa Interceptor project and the Shadow Hills inverted siphon connection.

Over the years, the IPS has experienced equipment and coating wear and failures that may cause catastrophic failure of the pump station. A summary of the deficiencies is listed as follows:

- a) The main inlet gate in the forebay has corroded and partially detached from the forebay wall. The gate has fallen in the partly closed position and cannot be moved due to failure of the gate operating shaft.
- b) Each of the six pump bays has a riser pipe from the pump base to the above-grade header. The coating is degraded for the portion of the ductile iron riser pipes below the top slab.
- c) The original Pump Bay #3 was designed with a 14-inch riser pipe for a jockey pump, the other full-size pump bays have 18-inch risers. The District no longer uses the jockey pump and wants to upsize this pump riser, valves, and base elbow to the same 18-inch size as the other five pump bays.
- d) Gates that allow for isolation of pump bays are leaking, complicating work to be done within the pump bays.
- e) In some areas where PVC liner was installed on the IPS interior concrete walls, the PVC liner may have detached from the concrete walls inside the wet well and needs inspection and spot repairs.
- f) Isolation plug valves and check valves in the above-grade piping are leaking and in need of repair.
- g) Additional plug valves are needed to isolate each side of the pump station discharge piping.
- h) Each of the two blind flanges on the existing 30-inch steel pipe headers needs a 3-inch tap and valve for drainage and flushing.
- i) Two slabs on grade (SOG) that extend north of the IPS structure were used to support the gantry crane rails, they have settled several inches and no longer align with the plane of the top of the IPS. These two SOGs should be demolished and replaced after compacting the subsoil. The gantry crane rails were cut off due to the non-planar surface that supported them. The gantry crane rails should be repaired or replaced.
- j) Existing electrical conduits around the IPS and level floats inside the IPS have corroded and need repair or replacement.

The Project scope, design standards and requirements are described in more detail in Attachment B (Scope of Progressive Design-Build Services).

## **2.2 Project Budget and Funding**

The cost for design and construction of the Project is currently budgeted at \$1.85 million. Such budget does not include District's other Project costs, such as professional advisory services, site investigations, taxes, etc. The District intends to use their capital replacement fund to provide the capital funding needed for the Project.

## **2.3 Project Schedule**

As indicated in Section 4, it is anticipated that the Progressive Design-Build Contract will be executed on or about November 2020. The design, construction and startup of Project are expected to be completed within sixteen (16) months of the executed contract.

## Section 3. Progressive Design-Build Services

### 3.1 General

As noted in Section 1 and more fully described in Attachment B (Scope of Progressive Design-Builder Services), the Progressive Design-Builder will provide services in three phases.

Preconstruction-phase services will generally consist of preliminary engineering, inspections and design development, as well as preparation, in close collaboration with the District, of a proposed price and schedule. The proposed price and schedule includes the Project's design (developed to the District's required level of completion), a GMP, Project schedule, and supporting documentation, such as detailed open-book costing for the GMP. The District is requesting that the design be progressed to the 60% completion level before execution of the GMP. Preconstruction-phase services shall include:

- Develop the Project execution plan, including Project schedule.
- Produce the basis-of-design report.
- Perform engineering studies (such as IPS interior observations, existing trunk sewers tributary to the IPS, detailed plan for IPS bypass, etc.) to support design and cost estimating. This will require pumping bypass influent wastewater and dewatering the IPS wet well.
- Develop the engineering design (including preparing and submitting intermediate design review packages) in conjunction with the District.
- Prepare a project cost model and provide detailed cost estimates as the design is advanced.
- Submit and negotiate a GMP to complete the construction-phase services.
- Identify Project permitting requirements and initiate permitting activities as necessary.

Construction-phase services generally encompass completing the Project's final design and construction and shall include:

- Complete the final design.
- Procure equipment and subcontractors.
- Secure necessary permits if needed.
- Construct the Project.

Start up and commissioning services shall include:

- Conduct startup and commissioning.
- Provide warranty coverage.

### 3.2 Roles and Responsibilities

**Valley Sanitary District:** The District will cooperate with the Progressive Design-Builder and will fulfill its responsibilities in a timely manner to facilitate the Progressive Design-Builder's timely and efficient performance of services. District responsibilities include:

- Review design submissions and provide comments to Progressive Design-Builder.
- Furnish existing studies and provide data and information regarding the Project, including record drawings, preliminary studies, environmental impact assessments, etc.
- Provide adequate funding.
- Provide access to the Project site.
- Obtain the governmental approvals and permits the District is responsible for.

**Valley Sanitary District Owner's Representative or Agent:** The Owner's agent will support the District to fulfill its responsibilities in a timely manner to facilitate the Progressive Design-Builder's timely and efficient performance of services.

**Progressive Design-Builder:** The Progressive Design-Builder will cooperate with the District and will provide in a timely manner the services necessary to complete the Project scope specified in this RFQ (and in the RFP following) and the Progressive Design-Build Contract. Progressive Design-Builder responsibilities include:

- The Progressive Design-Builder shall provide proof of proper licensure for itself and all subcontractors pursuant to all local, state and federal requirements.
- Prepare design and construction documents.
- Perform all construction related activities, including bypass pumping.
- Supervise subcontractors and Progressive Design-Builder personnel.
- Obtain all construction related governmental approvals and permits unless specifically excluded from the Progressive Design-Builder scope of work.
- Maintain site security.
- Conduct commissioning and startup.
- Implement quality-management procedures.
- Implement Project health and safety program.
- Be responsible for warranty management and completion.
- Construct the work within the limits of the GMP.

The roles and responsibilities of the District and the Progressive Design-Builder are more fully described in Attachment C (Draft Progressive Design-Build Contract).

## Section 4. Procurement Process

### 4.1 List of Proposal Holders Contact Form

For the District to prepare a List of Proposal Holders, each Respondent must complete and submit the Proposal Holder Contact Form included within this RFQ as Attachment G. This form shall identify and provide full contact information for the Respondent's Contact, who shall be the Respondent's single point of contact for the receipt of any future documents and notices associated with this RFQ. The form is due to the District by the date listed in Section 4.4. Failure to complete and submit this form by the deadline will result in disqualification of Respondent.

### 4.2 Optional Pre-Proposal Conference

The District will have an optional Pre-Proposal Conference on the date listed in Section 4.4 at the District Administration Office.

### 4.3 Communications and District Contact

Ron Buchwald will be the sole point of contact for this RFQ and shall administer the RFQ process. All communications shall be submitted by email, and shall specifically reference this RFQ for the Influent Pump Station Rehabilitation Project. All questions or comments should be directed to the District contact as follows:

Ron Buchwald, PE – District Engineer  
Valley Sanitary District  
45-500 Van Buren Street  
Indio, CA 92201  
(760) 238-5408  
rbuchwald@valley-sanitary.org

No oral communications from the District's contact or other individual is binding. All communications concerning the Project shall be through the District's Contact and contact with District staff, board members or any public official is prohibited during the procurement process, including this RFQ.

### 4.4 Procurement Schedule

The current procurement schedule is as follows:

STEP	EVENT	DATE
1	Issue RFQ	Thursday, May 28, 2020
2	(Optional) Pre-Proposal Conference	Wednesday, June 24, 2020 At 9:30 AM
3	<b>Proposal Holder Contact Form Submission</b>	<b>Thursday, July 2, 2020</b>

<b>STEP</b>	<b>EVENT</b>	<b>DATE</b>
4	Questions Due to VSD	Friday, July 10, 2020
5	Response to Questions	Friday, July 17, 2020
6	<b>SOQ Due to VSD</b>	<b>Thursday, July 23, 2020 At 4:00 PM</b>
7	Announce Short List	Monday, August 10, 2020
8	Issue RFP	Monday, August 24, 2020
9	Questions Due to VSD	Friday, September 11, 2020
10	Response to Questions	Friday, September 18, 2020
11	<b>Proposal Due to VSD</b>	<b>Thursday, September 24, 2020 At 4:00 PM</b>
12	Recommendation by Staff	Thursday, October 8, 2020
13	Intent to Award by VSD Board	Tuesday, October 13, 2020
14	Notice of Award	Wednesday, October 14, 2020
15	Estimated Notice to Proceed	Monday, November 2, 2020
16	Estimated Project Completion	March 2022

## Section 5. SOQ Submission Requirements

### 5.1 Submittal Place and Deadline

Three (3) paper documents (one original and two copies), as well as one electronic version of the SOQ on a flash-drive in PDF format, must be received no later than **July 23, 2020 at 4 PM**, addressed to:

Valley Sanitary District  
Attention: Ron Buchwald  
District Engineer  
45-500 Van Buren  
Indio, CA 92201

Each Respondent assumes full responsibility for timely delivery of its SOQ at the required location by the date and time specified above. Any SOQ received after the submittal deadline will be deemed nonresponsive. The SOQ will not be opened and returned to Respondent. The delivered packaging containing the SOQ documents must note “Statement of Qualifications for the Influent Pump Station Rehabilitation Project” as well as Respondent’s name on the outside of a sealed envelope.

### 5.2 Submission Format

The SOQ shall not exceed 30 total pages with 1-inch or greater margins, excluding the transmittal letter, index or table of contents, front and back covers, title pages/separation tabs, and appendices. A maximum of 5 of the total pages may be 11 x 17-inch tri-fold format. Font size shall be 10-point or larger.

### 5.3 Submission Content

The content requirements set forth in this RFQ represent the minimum content requirements. It is the Respondent’s responsibility to include information in its SOQ to present all relevant qualifications and other materials. The SOQ, however, should not contain standard marketing or other general materials. It is the Respondent’s responsibility to modify such materials so that only directly relevant information is included in the SOQ.

The SOQ must include the following information in the order listed:

- Transmittal Letter
- Part 1 – Executive Summary
- Part 2 – Progressive Design-Builder Profile
- Part 3 – Project Understanding, Project Approach and Key Issues
- Part 4 – Project Team
- Part 5 – Qualifying Experience

- Appendix A – Skilled and Trained Workforce Certification
- Appendix B – Resumes
- Appendix C – Supporting Documentation

### *5.3.1 Transmittal Letter*

Respondents must submit a transmittal letter (maximum two pages) on the Respondent’s letterhead. It must be signed by a representative of the Respondent who is authorized to sign such material and to commit the Respondent to the information and obligations contained in the SOQ. The transmittal letter must include the name, address, phone number and email address for the Respondent’s contact, and must specify who would be the Progressive Design-Builder’s signatory to any contract documents executed with the District. Such letter may include other information deemed relevant by the Respondent.

The information provided in the SOQ must be certified under penalty of perjury by the proposed Progressive Design-Builder, including the Builder and Designer. To that end, the following shall be executed as part of the transmittal letter.

I, the undersigned, am authorized to make this verification on behalf of \_\_\_\_\_. I have read the Statement of Qualifications. I am familiar with its contents and, based upon information available to me, the contents are true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

### *5.3.2 Part 1 – Executive Summary*

The executive summary (maximum three pages) must include a concise overview of the key elements of the SOQ and must summarize and refer to information in the SOQ concerning satisfaction of the Minimum Qualification Requirements (Section 6.3). The executive summary shall not be used to convey additional information not found elsewhere in the SOQ.

### *5.3.3 Part 2 – Progressive Design-Builder Profile*

- General
  - It is the District’s intent to contract directly with a single Progressive Design-Builder entity for all design, construction, quality control, start-up and commissioning services necessary to complete the Project. This entity will be the single point of contact and have contractual responsibility for all Progressive Design-Build services contracted by the District for this Project. Indicate the total number of years the entity has worked in the water infrastructure business sector.

- **Legal Structure**  
 Provide the legal name and address of the Respondent; legal structure of the entity (partnership, corporation, joint venture, etc.); parent company (if applicable); contact person (name, title, telephone number); and California Class A Contractor's License number (required). If the Respondent is a joint venture, all information required of a single entity must be submitted by each member of the joint venture. If the proposed Progressive Design-Builder is a corporation, limited liability company, partnership, or other legal entity, a copy of the organizational documents or agreement committing to form the organization must be submitted. Respondent and each subconsultant in the team shall provide all information disclosing their subsidiary(ies), parent company(ies), holding company(ies) and identify changes in ownership within last three (3) years.
- **Project Office**  
 Identify where the Respondent intends to maintain its project office(s) and where the majority of the design work will be performed. The project office shall be within a 150-mile radius of the Project site. The project principal and project manager must be based at the Project office.
- **Bonding Capacity**  
 Respondent shall provide a notarized letter(s) from its surety(ies) verifying the Respondent has a minimum bonding capacity of \$10 million available for this Project for performance and payment bonds. The selected Progressive Design-Builder will be required by the District to provide 100% payment and performance bonds equal to the total GMP of the Project provided under the Progressive Design-Build Contract with the District. The Respondent's surety(ies) must have a rating of minimum A in the latest revision of the A.M. Best Company's Insurance Report, must be authorized by law to do business in the State of California, and must be listed in the U.S. Department of Treasury Circular 570. The Progressive Design-Builder's performance bond shall remain in place through the completion of the commissioning period and as long as the obligations of the Progressive Design-Builder remain. Provide a list of current projects under construction and related bonding information for those projects.
- **Financial Condition**  
 In order to assure the District that the Respondent is capable of performing the Project, the Respondent must demonstrate sufficient financial strength by providing evidence of financial capability commensurate with the Project cost. Accordingly, the Respondent shall submit financial information, which will be used to assess the capability of the Respondent to successfully complete the Project and provide all required services.

The Respondent will be evaluated on the capability of its financial resources as it relates to supporting the Project design, construction, start-up and commissioning activities. Factors to be considered include but are not limited to:

- Strength of the Respondent's balance sheet identifying net worth, liquidity, leverage, and summary of assets;

- Availability of cash flow and profitability as reflected in the income statements provided;
- Strength of the Respondent's credit rating and references.

The Respondent shall provide financial information to demonstrate their ability to manage and have the cash flow to complete a project of similar size. In addition, the Respondent shall submit the following information:

- Audited financial reports with income statements and balance sheets for the past three (3) fiscal years;
- Copies of the latest quarterly financial reports for the prior fiscal year as established by the Respondent for their annual reporting period;
- A statement regarding any material changes in their business for the past three (3) years
- Statements of changes in financial position based on the last three (3) fiscal years of financial reports.

The Respondent shall submit, when applicable for the entity, copies of the most recent three (3) years of audited annual reports filed with the Securities and Exchange Commission on Form 10-K, including supporting documents, and all related quarterly reports filed with the SEC on Form 10-Q. Provide all other SEC reports filed that describe the Respondent's financial condition during the most recent three (3) years.

The Respondent shall provide credit ratings provided by major agencies such as Standard & Poors, Moody's, Fitch or other recognized credit reporting agencies for the last three (3) years. The Respondent shall also disclose any changes in the rating in the past three (3) years.

- Insurance Coverage

The Progressive Design-Builder and its subcontractor shall be required to maintain insurance coverage for the duration of the Progressive Design-Build Contract and provide certifications of insurance coverage(s). Respondents are required to provide a notarized declaration from their insurance carrier(s) for the insurance coverage limits as required in Article 5 of Attachment C - Draft Progressive Design-Build Contract.

- Litigation/Dispute History

The Respondent must not be subject to a material adverse condition, such as pending litigation regarding a significant amount, insufficient liquidity, or excessive leverage, that could raise to reasonable doubt concerning its ability to continue to operate and/or to provide payment or performance bonds, insurance, or to maintain sufficient financial strength to undertake and successfully complete the Project.

The Progressive Design-Builder and all its consultants and subcontractors shall provide the following information related to the design, construction, operation, design-build and/or progressive design-build assignments undertaken within the last five (5) years:

- Identification of any contract that has been terminated for default;

- Identification of any criminal conviction, and any violation of any federal, state, or local statute or regulation, or of any court order addressing or governing antitrust, public contracting, employment discrimination, false claims, misrepresentation, fraud, theft, dishonesty or prevailing wages;
- Identification of any debarment, or any consideration for debarment, on public contracts by federal, state, or local governments;
- Identification of any prior disqualification from performing work for any owner;
- Identification of any fines, assessments or penalties by any public entity for any violation of local, state or federal law;
- Identification of all claims, arbitration, and litigation by or against any owner including but not limited to issues related to poor workmanship, incomplete performance, assessment of liquidated damages, or termination due to nonperformance.

If any of the above information is identified, the Respondent shall also provide the following for each:

- Detailed description of the unfavorable factor/event;
- Sufficient information to demonstrate that the unfavorable factor/event will not adversely impact the Respondent's ability to perform any contractual commitments for this Project.

The Respondent shall provide information on the revocation or suspension of any license, credential, or registration that is pending or has occurred during the last five (5) years. The Respondent shall also identify claims, negotiated settlements, lawsuits, and legal actions against the Respondent on going and occurring in the last five (5) years.

Additional information may be included in Appendix C in the SOQ.

### ***5.3.4 Part 3 – Project Understanding, Project Approach and Key Issues***

The Respondent shall demonstrate an understanding of the District's goals and objectives for the Project. The Respondent shall identify any key issues or challenges that could potentially impact the Project and discuss their approach to overcoming them in cooperation with the District.

The Respondent shall format and provide content that meets the following requirements:

- Provide a summary of the Respondent's understanding of the Project and discuss key issues to be addressed during the design, construction, start-up and commissioning services of the Project.
- Provide a narrative of Respondent's proposed approach to coordinating with their team members. Discuss briefly how the proposed Project Team would establish procedures in managing the Project that would assist in anticipating any major problems, and how the Project Team would work cooperatively in approaching effective solutions.

- Discuss how the project management approach would deliver a high level of communication, teamwork, emphasis on quality, accurate documentation, and schedule and budget control.
- Discuss the Respondent's record of successfully completing design-build projects on time and within fixed budgets while meeting performance specifications. Address how this experience will be applied to meeting the District's goals of delivering the Project, and what specific actions will be taken to meet or exceed this objective.
- Describe innovative approaches to save construction cost, without sacrificing quality, which may be employed on the Project.
- Describe the Respondent's approach to developing GMPs and how costs will be controlled throughout GMP development and construction.

Provide a description of the Respondent's approach to quality. Discuss how quality of equipment and materials will be considered during design and construction, and how Respondent leadership will be involved in this process.

#### *5.3.5 Part 4 – Project Team*

Describe the composition, organization and management of the Project Team in two separate subsections.

- Progressive Design-Builder/other firms:

Identify any firms (such as subcontractors and subconsultants) included on the Project Team along with the Progressive Design-Builder and describe the scope of the Progressive Design-Builder's and each firm's services and responsibilities throughout the Project. Clearly identify the firm(s) serving as the Designer and the Builder.

Describe the Respondent's approach to the management of subcontractors and subconsultants.

- Key Personnel

Identify Key Personnel, including their names and phone numbers. The District expects Key Personnel named in this SOQ to remain on the Project Team for the duration of the Project. Provide resumes for all Key Personnel as Appendix B in the SOQ. Resumes shall include a narrative describing:

- Total years of experience in design and/or construction of water/wastewater public works projects with Respondent's firm and indicate prior years with firms;
- Academic and professional qualifications;
- Professional registration (as applicable) and certifications;
- Experience as it relates to the Project and to the individual's specified role on the Project;
- Contractor's License number

- The agency or firm the individual worked for on each project and what their role was (designer, contractor, owner's engineer, design-builder, etc.);
- State Operator Certification for the training and transition period.

Provide names, telephone numbers, email, addresses, and a minimum of three (3) references for each of the Respondent's:

- Project Manager;
- Design Manager;
- Construction Manager.

- **Project-Specific Organization**

Provide a project-specific organization chart clearly illustrating the management structure, roles, and lines of communication of all proposed project team members. Respondents must identify all key personnel by name and title and their anticipated percent availability to complete work on the Project.

The District reserves the right to disqualify any Respondents for changes made to key personnel staffing between the RFQ and RFP stages without written notification to the District. After submittal of the SOQ, the District will review and, if acceptable, approve all requested substitutions of Key Personnel.

Teaming with specific equipment vendors is not recommended, as open-book procurement will be used.

### *5.3.6 Part 5 – Qualifying Experience*

- **Reference Projects**

The Respondent must provide specific project-related experience and individual team histories in design-build delivery, indicating relevance of size, scope, and complexity to the Project. To qualify as relevant, the information submitted must demonstrate that the teams or the individual key personnel's involvement with the referenced project began at the initial stages and extended through completion and acceptance of the project. If applicable, provide examples of projects that the team members and key personnel have previously completed together. Please include the role the firm played on each project (designer, contractor, owner's engineer, design-builder, etc.)

Present qualifying experience of the Respondent in successfully completing design-build projects with similar complexity to the Project over the last five (5) years. Additionally, list similar retrofit projects that are currently underway. The District prefers the Respondent to have experience with wastewater pumping and treatment facilities in California and have experience with raw sewage bypass systems of similar or larger volumes.

Teams may include individual project experience with previous partners.

The qualifying experience shall include the following:

- Name of the client, facility, and facility type;
- Description of design-only, construction-only, or design-build services provided;
- Information regarding quality of performance (as appropriate):
  - o Project value;
  - o Project duration;
  - o Change orders by type (e.g. changed condition, owner requested, etc.), value and percentage of bid.
- Owner reference and contact information: Names, telephone numbers and addresses of a minimum of three (3) existing or former clients. Contacts should be for similar wastewater pumping projects within the last five (5) years;
- Firms and Key Personnel who participated in the project and are included in this SOQ, along with a clear description of the project role and responsibility of each;
- Other pertinent information.

The Respondent may choose to provide additional information related to Respondent contributions to projects that facilitated time efficiency, cost savings, project value, team building, partnering and related issues important to the progressive design-build process.

District staff and its agent reserve the right to contact references and obtain information about representative projects to confirm the information provided by the Respondent. The Respondent's score on this section may be negatively impacted by the inability to contact and verify references.

Design and construction teams may include individual project experience that was gained or obtained with previous partners.

- Safety Record

The SOQ shall include the Respondent's safety information for the past three (3) years.

Safety information shall be included as Appendix C in the SOQ.

- Experience modification rate (EMR) calculated by the National Council on Compensation Insurance or similar rating bureau
- Completed Occupational Safety and Health Administration (OSHA) Form 300A, Summary of Work-Related Injuries and Illness
- Per Public Contract Code section 22164(b)(3)(G), a Respondent's safety record shall be deemed acceptable if its EMR for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category or if the Respondent is a party to an alternative dispute resolution system as provided for in Section 3201.2 of the Labor Code.
- Describe any OSHA violations and, per Public Contract Code section 22164(b)(3)(E), information concerning workers' compensation experience history and a worker safety program of the Respondent.

### ***5.3.7 Appendix A – Skilled and Trained Workforce Certification***

Pursuant to Public Contract Code section 22164(c)(1), each Respondent must provide an enforceable commitment that, if selected for the Project, the Respondent and its subcontractors at every tier will use a skilled and trained workforce to perform all of the work on the Project that falls within an apprenticeable occupation in the building and construction trades. Therefore it is mandatory for each Respondent to submit as part of its SOQ a completed Skilled and Trained Workforce Certification, attached hereto as Attachment E and incorporate herein by this reference.

## Section 6. SOQ Evaluation and Selection

### 6.1 General

The District's selection committee will review and evaluate the SOQs according to the requirements and criteria outlined in this Section 6. During the SOQ evaluation process, written questions or requests for clarifications may be submitted to one or more Respondents regarding their SOQ or related matters. Failure to respond within one week to any such questions or requests may be grounds for elimination of the Respondent from further consideration. In addition, the District may require that all or a limited number of Respondents participate in interviews.

### 6.2 Responsiveness

Each SOQ will be reviewed to determine whether it is responsive to the RFQ. Failure to comply with any of the requirements of this RFQ may result in an SOQ being rejected as nonresponsive. At its sole discretion, however, the District may waive any such failure to meet a requirement of this RFQ and may request clarification or additional information to remedy a failure.

### 6.3 Minimum (Pass/Fail) Qualification Requirements

Each responsive SOQ will be reviewed to determine whether it meets the Minimum Qualification Requirements outlined in this subsection. At its sole discretion, the District may waive any failure to satisfy such requirements and may request clarification or additional information to address any questions that may arise in this regard. Any SOQ that does not satisfy all the Minimum Qualification Requirements may be rejected.

- **Bonding Capability**  
Respondent must provide notarized letter(s) from its surety(ies) verifying the Progressive Design-Builder has a minimum bonding capacity of \$10 million available for this Project.
- **Material Adverse Condition**  
The Respondent must not be subject to a material adverse condition, such as pending litigation, insufficient liquidity, weak operating net income or cash flow, or excessive leverage, that gives rise to reasonable doubt concerning its ability to continue to operate as an ongoing concern, to provide performance bonds or insurance, or to maintain sufficient financial strength to undertake and successfully complete the Project and to mitigate/absorb Project risks.
- **Licensing and Registration**  
The Respondent must demonstrate that the proposed Builder possess the necessary California construction licenses and are properly registered with the Department of Industrial Relations, and that the proposed Designer and the individual who will act as the

engineer of record possess the necessary engineering license for the type of work to be performed.

- **Total Years in Water/Wastewater Infrastructure Business Sector**  
Respondents must have minimum of ten (10) years of business operations in the water and wastewater infrastructure sector.
- **Safety Record**  
Respondent should demonstrate its capability to deliver the Project safely. Evaluation will consider past safety performance of the Builder and any subcontractors. See Section 5.3.6 for acceptable qualifications of Respondent's safety record.

#### **6.4 Comparative Evaluation Criteria**

The selection committee will evaluate and rank the responsive SOQs that satisfy the Minimum Qualification Requirements by applying the weighted comparative evaluation criteria set forth below to generate a short list of three Respondents.

- **Respondent Profile, Legal Structure, Management, Financial Capacity (20%)**  
Respondent should demonstrate the legal form of the Respondent to which the contract would be awarded; provide a detailed description of the proposed team's organizational structure as it is related to the legal relationship between the Respondent and proposed team members; and describe the organizational management of the Project Team.

Evaluation of the history of litigation/disputes related to design, construction, operating, and/or Respondent assignments undertaken in the past.

Evaluation of the Respondent's financial capabilities and credit rating.

- **Project Understanding, Project Approach and Key Issues (20%)**  
Respondent should demonstrate an understanding of the Project and discuss key issues to be addressed during the design, construction, start-up and commissioning of the proposed facilities.

Evaluation of the Respondent's approach to a collaborative environment, communications of the team, team's project management approach that would deliver a high level of communication, teamwork, emphasis on quality, accurate documentation, and schedule and budget control. Evaluation of the Respondent's discussion about its record of successfully completing projects on time, how this experience will be used to expedite delivery of this Project, how to save capital as well as operating cost, and/or expedite schedule, without sacrificing quality, the approach to development of a GMP, and how the team plans to manage these costs within these established limits.

Evaluation of the Respondent's approach to ensuring quality, how all team members will be involved in the process, including Respondent's leadership.

- **Key Personnel (30%)**  
Respondent should demonstrate qualifications and experience and that Respondent's Key Personnel have the ability to fulfill their roles and responsibilities and will enable the Respondent to successfully complete the design, construction, startup and commissioning of the Project. Evaluation of qualifications will include appropriate education, training, and experience of the team members and the firm's relative experience with this type of project. Special emphasis will be placed on the qualifications of key members such as the Project Manager, Design Manager, Construction Manager, Construction Superintendent, and any special capabilities the team may bring to the Project.
- **Past Experience and Reference Checks (30%)**  
Respondent should demonstrate experience by showing that the Respondent's Project Team has the ability to successfully complete the design, construction, startup and commissioning of the Project. Evaluation will consider Respondent's history in successfully completing similar progressive design-build projects involving projects of similar complexity and size to the Project, construction of similar facilities, and history of completing projects on time and within budget. The Project involves design and operation of temporary sewage bypass; therefore, the District prefers the Respondents have experience with raw sewage bypass systems of similar or larger volumes.

District staff and advisors reserve the right to contact references and obtain information about representative projects and Key Personnel to confirm the accuracy of the information provided by the Respondent. The Respondent's score on this section may be negatively impacted by the inability to contact and verify references.

## **6.5 Term of Evaluation**

The Valley Sanitary District, through the Board of Directors (Board) has the sole authority to select the successful Respondent and reserves the right to reject any and all Respondents.

The District reserves the right to prequalify any number of the Respondents. In addition, the District reserves the right to issue written notice to all prospective Respondents of any changes in the RFQ terms or qualification submission schedule, should the District determine in its sole and absolute discretion that such changes are necessary. The District reserves the right to request additional information from any Respondent and to reject any and all SOQs. All original work products, including computer files, shall remain the property of the District.

The District reserves the right to retain an expert to evaluate the Respondent's work or qualifications at all stages in the selection process.

The District is the sole and exclusive judge of quality and compliance with qualification specifications in any of the matters pertaining to this RFQ.

Review the Draft Progressive Design-Build Contract prior to submitting an SOQ. The District intends to use the Progressive Design-Build Contract as the agreement with the successful Progressive Design-Builder. The District will not make material changes to the Draft Progressive Design-Build Contract once Respondents have been shortlisted. If the Respondent wishes to request changes to the Draft Progressive Design-Build Contract, they must be submitted with this SOQ.

The RFQ document and the successful Respondent SOQs may become part of the contract documents. After the evaluation process is complete, the District will notify Respondents of the rankings. The top-ranked Respondents will be selected for inclusion in the short list of up to three (3) Respondents for receipt of the RFP. No oral explanation or instruction of any kind or nature whatsoever given before the SOQ shall be binding.

## **Section 7. Conditions Governing Procurement**

### **7.1 Owner Authority**

Valley Sanitary District is a Special District in the State of California governed by the California Sanitary Act of 1923. The procurement process for this Project is authorized under Public Contract Code section 22160 *et seq.*

### **7.2 Ineligible Firms and Individuals**

Stantec Consulting Services, Inc. is serving in an advisory capacity to the District for this Project and is therefore not eligible to assist or participate with any Respondent that submits an SOQ.

### **7.3 Conflict of Interest**

The District's Conflict-Of-Interest Policy Covering Design-Build Projects contains policies and guidelines for Respondents wishing to participate in the Project and this RFQ and Respondents shall follow said policies and guidelines. A copy of the Conflict-Of-Interest Policy Covering Design-Build Projects is attached hereto as Attachment F and incorporated herein by this reference.

### **7.4 Proprietary Information**

All SOQs submitted by Respondents to the District and any other correspondence in connection therewith will become exclusive property of the District. If the SOQ contains proprietary information that the Respondent does not want disclosed, each page containing such information must be identified and marked "PROPRIETARY" at the time of submittal and refer to the appropriate section of the California Public Record Act which provides the exemption as well as the factual basis of claiming the exemption. The District will, to the extent provided by law, endeavor to protect such information from disclosure. If a request is made for information marked PROPRIETARY, the District will provide Respondents who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction. Respondent shall have five (5) working days after receipt of such notice to give the District written notice of Respondent's objection to the release of proprietary information. Respondent shall indemnify, defend and hold harmless the District, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of proprietary information. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request. Respondent shall not be permitted to mark the entire proposal as proprietary and may be deemed nonresponsive and disqualified from further participation in this RFP.

## 7.5 Rights of the Owner

In connection with this RFQ, including the receipt and evaluation of SOQs and development of the short list, the District may (at its sole discretion):

- Cancel, withdraw, postpone, or extend this RFQ, in whole or in part, at any time, without incurring any obligations or liabilities
- Modify the RFQ schedule
- Waive deficiencies, informalities and irregularities in an SOQ and accept and review a non-conforming SOQ
- Suspend and terminate the RFQ or terminate evaluations of SOQs received
- Permit corrections to data submitted with any SOQ
- Hold meetings and interviews, and conduct discussions and correspondence, with one or more of the Respondents to seek an improved understanding of any information contained in an SOQ
- Seek or obtain, from any source, data that has the potential to improve the understanding and evaluation of the SOQs
- Seek clarification from any Respondent to fully understand information provided in the SOQ and to help evaluate and rank the Respondents
- Reject an SOQ containing exceptions, additions, qualifications or conditions not called for in the RFQ or otherwise not acceptable to the District
- Conduct an independent investigation of any information, including experience, identified in an SOQ by contacting project references, accessing public information, contacting independent parties, or any other means
- Request additional information from a Respondent during the evaluation of its SOQ

## 7.6 Obligation to Keep Project Team Intact

Respondents are advised that all firms and Key Personnel identified in the SOQ shall remain on the Project Team for the duration of the procurement process and execution of the Project. If extraordinary circumstances require a change, it must be submitted in writing to the District's contact, who, at his or her sole discretion, will determine whether to authorize a change, recognizing that certain circumstances (such as termination of employment) may occur that are beyond the Respondent's control. Unauthorized changes to the Project Team at any time during the procurement process may result in elimination of the Respondent from further consideration.

## 7.7 Addenda

If any revisions to the RFQ become necessary or desirable (at the District's sole discretion), the District may issue written addenda. The District will post all addenda on the District's website. It is Respondent's responsibility to obtain all addenda prior to submitting its SOQ.

## 7.8 Protests

A Respondent may protest if the Respondent is not short listed for the RFP and believes that the short listing of the other Respondents was inconsistent with this RFQ. A protest must be filed in writing with the District (email is not acceptable) within five (5) business days after receipt of notification of the intended short list. Any protest submitted after 5 p.m. of the fifth business day after notification of the intended short list will be rejected by the District as invalid and the Respondent's failure to timely file a protest will waive the Respondent's right to protest the short list. The Respondent's protest must include supporting documentation, legal authorities in support of the grounds for the protest and the name, address and telephone number of the person representing the Respondent for purposes of the protest. Any matters not set forth in the protest shall be deemed waived. The District will review and evaluate the basis of the protest provided the protest is filed in strict conformity with the foregoing. The District shall provide the Respondent submitting the protest with a written statement concurring with or denying the protest. Action by the District relative to the protest will be final and not subject to appeal or reconsideration. The procedure and time limits set forth in this section are mandatory and are the Respondent's sole and exclusive remedy in the event of protest. Failure to comply with these procedures will constitute a waiver of any right to further pursue the protest, including filing a Government Code claim or legal proceedings.

## **Attachment A**

### **Definition of Terms**

The definitions of some of the capitalized terms used in this RFQ are presented below:

**Progressive Design-Builder** – The entity that will enter into the Progressive Design-Build Contract with the District and that will be the single point of accountability to the District for delivering the services and the Project.

**Builder** – The Progressive Design-Builder or other firm (such as a subcontractor or joint venture partner) that will provide construction services and have responsible charge of construction of the Project.

**Designer** – The Progressive Design-Builder or other firm (such as a subconsultant or joint venture partner) that will provide professional design engineering services and have responsible charge of the design, including preparation of the construction documents.

**District** – Valley Sanitary District.

**Draft Progressive Design-Build Contract** – The draft contract, including the agreement and all of its attachments, presented as RFQ Attachment C (Draft Progressive Design-Build Contract).

**Final Design** – Design documents prepared to a level of completion whereby all required systems, equipment, controls and componentry to be incorporated into the Project area adequately represented in the documents and design development is near completion except for the final QA/QC review and approval.

**Key Personnel** – The individuals, employed by Progressive Design-Builder or other firm included on the Project Team, who would fill certain key roles in delivery of the Project and related services by the Progressive Design-Builder.

**Minimum Qualification Requirements** – The requirements set forth in Subsection 6.3 of this RFQ that, at a minimum, must be satisfied (or waived by the District) in order for the SOQ to be evaluated and ranked according to the comparative evaluation criteria.

**Owner** – Valley Sanitary District

**Project** – Influent Pump Station Rehabilitation Project

**Project Team** – The Progressive Design-Builder, Key Personnel and any additional firms (such as subcontractors and subconsultants) included in the SOQ.

**Respondent** – The entity responding to this RFQ by submitting the SOQ. The Respondent is also known as the Progressive Design-Builder.

## Attachment B

### Scope of Progressive Design-Build Services

The Scope of Services described in this Attachment B pertain to services to be provided as part of the progressive design build delivery of the Valley Sanitary District Influent Pump Station Rehabilitation Project. As such, the services shall be performed collaboratively with the District and the Progressive Design-Builder, and the scope of services shall incorporate workshops, meetings, and other forms of communication to facilitate the collaborative approach intended.

The anticipated scope of services shall include:

- Develop the Project execution plan, including the preliminary Project schedule;
- Evaluate all existing technical studies and reports and site conditions;
- Provide the basis of design report (BODR) based on inspection(s) of the Influent Pump Station to identify elements that require rehabilitation, repair or replacement. The BODR shall also include Project design data that will be used for developing the drawings and specifications;
- Develop a detailed critical path schedule and define all necessary tasks for implementation of the Project. Work in conjunction with District Staff and other District-retained consultants to successfully implement the Project in accordance with the schedule;
- Provide technical expertise to develop the design and specifications for the recommended improvements and all necessary studies and investigations including site survey, utility research, etc.;
- Provide the engineering design (including preparing and submitting design review packages) in conjunction with the District;
- Provide a detailed Guaranteed Maximum Price (GMP) at 60% design development for the construction of the Project;
- Identify Project permitting requirements and initiate certain permitting activities;
- Perform and complete open book procurement for labor, materials, equipment and testing;
- Prepare all applications and secure/obtain all necessary permits for the construction of the Project;
- Design and construct the Project to meet the requirements and mitigation measures identified in the Influent Pump Station Rehabilitation Preliminary Evaluation Technical Memorandum and applicable environmental requirements;
- Comply with all generally recognized industry codes and standards for materials and construction;
- Comply with all Owner and regulatory agencies general conditions, general requirements and construction regulations;

- Construct all components of the Project in accordance with all specified requirements and all applicable rules and regulations;
- Comply with insurance and bonding (performance, labor and material) requirements for all stages of the project including pre-design, design, construction, and commissioning;
- Provide project management for the Project implementation.

The engineering design effort shall include interim deliverables as well as final BODR for the design of the Project scope as generally outlined in the RFQ Section 2, and shall include the following elements:

- i. Influent Pump Station Deficiencies
- ii. Influent Pump Station Bypass Plan
- iii. Influent Pump Station Repair Plan
- iv. Influent Pump Station Startup Plan

**Attachment C**  
**Draft Progressive Design-Build Contract**

The draft contract, including the agreement and all its attachments, substantially in the form attached hereto as Attachment C (Draft Progressive Design-Build Contract). The District expressly reserves the right unilaterally to change any provision or provisions of the Draft Progressive Design-Build Contract prior to the execution of the agreement.

# **VALLEY SANITARY DISTRICT**



## **PROGRESSIVE DESIGN/BUILD CONTRACT FOR**

## **INFLUENT PUMP STATION REHABILITATION PROJECT**

**Contract No. 2020-0105**

**Valley Sanitary District  
45-500 Van Buren  
Indio, CA 92201**

**PROGRESSIVE DESIGN-BUILD CONTRACT BETWEEN  
VALLEY SANITARY DISTRICT AND  
[\*\*\*INSERT DBE NAME\*\*\*]  
FOR THE INFLUENT PUMP STATION REHABILITATION PROJECT**

This Progressive Design-Build Contract (“Contract”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2020 by and between the **Valley Sanitary District**, (hereinafter referred to as “Agency”) and **[\*\*\*INSERT DBE NAME\*\*\*]** (hereinafter collectively referred to as “Design-Build Entity” or “DBE”). Agency and DBE are sometimes individually referred to as “Party” and collectively as “Parties.”

**RECITALS**

- A. Agency desires to enter a single project for the turnkey design and construction for the Influent Pump Station Rehabilitation project (“Project”) as set forth in this Contract. Because of the unique nature of the Project, Agency desires to engage a single design-build entity to engineer and implement the Project.
- B. The DBE submitted a Proposal for the Project, which was selected as providing the best-value for the Project.
- C. DBE desires to perform and assume responsibility for the provision of the design and construction services, and such other services as required by the Agency on the terms and conditions set forth in this Contract and DBE represents that it is experienced in providing professional planning, design, and construction services to public entities, is appropriately licensed in the State of California to perform such services, and is familiar with the Scope of Work.

**TERMS**

**1. Incorporation of Contract Documents.**

The above referenced recitals are true and correct and are incorporated into this Contract by this reference. This Contract includes and hereby incorporates in full by reference the following Contract Documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- (a) Design-Build Contract
- (b) Attachment 1 to this Contract – Scope of Services
- (c) Attachment 1-1 to this Contract – Proposal
- (d) Attachment 2 to this Contract - General Conditions
- (e) Attachment 3 to this Contract – Special Conditions
- (f) Attachment 4 to this Contract – Performance Bond
- (g) Attachment 5 to this Contract – Payment Bond
- (h) Attachment 6 to this Contract – Rate Schedule
- (i) Attachment 7 to this Contract – Workers’ Compensation Certification
- (j) Request for Proposal (“RFP”) and all addenda, attachments and appendices

- (k) Request for Qualifications (“RFQ”) and all addenda, attachments and appendices
- (l) Design-Build Entity Statement of Qualifications in response to Request for Qualifications
- (m) Agency approved Change Orders
- (n) Completed and approved Construction Documents in accordance with the General Conditions

2. **The DBE’s Basic Obligations: Compensation**

The DBE promises and agrees, at its own cost and expense, to furnish to the Agency all design and construction services, labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete the Project as described in the Contract Documents (hereinafter the “Scope of Work” of “Work”).

2.1 **Construction Document Phase**

For the Construction Document Phase, DBE shall receive compensation, including authorized reimbursements, at the rates set forth in Attachment 6. The total compensation for this phase of work shall not exceed [\*\*\*\*INSERT AMOUNT\*\*\*\*] without written approval of Authority’s Representative. Additional Work may be authorized, and if authorized, said Additional Work will be compensated at the rates and manner set forth in this Contract. For the purposes of this Contract, the billing rates will remain effective through the entire term of this Contract. The level of completion required for the Construction Document Phase is defined in Attachment 1 Scope of Services.

The Contract Price and Guaranteed Maximum Price (“GMP”) for the Construction Phase shall be developed during the Construction Document Phase on an “open-book” basis. The Contract Price and GMP for the Construction Phase shall be determined no later than at 60% completion of the Construction Documents. The DBE shall submit a proposal to the Agency (the “Proposal”) for completion of the design and construction of the Project as part of the Construction Phase for the Contract Price and GMP. The Proposal and its requirements are discussed herein.

2.2 **Construction Phase**

The Construction Phase shall consist of DBE completing the design and performing all construction services, labor, materials, tools, equipment, services, engineering and incidental and customary work necessary to fully and adequately complete the Construction Phase as defined in Attachment 1 Scope of Services.

3. **The Proposal**

3.1 The Proposal shall include the following:

(a) **The Contract Price.**

(i) The Contract Price shall be equal to the DBE’s Fee, as defined herein, and the estimated cost of the Construction Phase Work, as defined herein, subject to a GMP and any adjustments made in accordance with the Contract Documents. Except as otherwise provided in this Contract, the DBE shall assume the risk of all costs in excess of the

GMP in the performance the Work and to provide a fully completed and successfully operational Project, complete in every detail according to the provisions of the Contract Documents and shall not be entitled to additional payments because of such excess costs.

(ii) The estimated cost of the Construction Phase Work may include the DBE's contingency. The contingency shall cover all additional and unforeseen expenses that DBE may incur in performing the Construction Phase and as a result of all conditions and events which do not entitle DBE to a Change Order. DBE shall not be entitled to draw against the contingency without Agency's prior written approval, which consent shall not be unreasonably withheld.

(b) Basis for the Contract Price and GMP

(i) A list of the drawings and specifications, including all addenda, used as the basis for the Contract Price and GMP;

(ii) A list of the assumptions, exceptions, and clarifications made by DBE in the preparation of the Proposal, which list is intended to supplement the information contained in the drawings and specifications;

(iii) The DBE's proposed GMP, including a statement of the estimated cost and a schedule of values organized by trade categories, allowances, contingency, and other items and the DBE's fee that comprise the GMP for the Construction Phase Work; and

(iv) Any other information required by the Agency.

3.2 Review of the Proposal.

(a) Upon receipt of DBE's Proposal for the Construction Phase, the Agency may enter into negotiations with DBE on the Contract Price and GMP to achieve a mutually acceptable basis on which to proceed. The determination of the Contract Price and GMP shall be by written Change Order duly executed by the Parties. Unless otherwise expressly stated by the Parties in writing, the Change Order shall not modify any portion of this Contract except establishing or confirming the final Contract Price for the Construction Phase.

(b) If the Parties are unable to reach an agreement on DBE's Proposal, the Agency and DBE shall meet and confer as to how the Project shall proceed, with the Agency, in addition to any other options allowed by the Contract Documents, having the following options;

(i) Allow the DBE to complete the Construction Document Phase, if not yet completed, and once completed, the Agency may terminate the Contract for convenience. The Agency shall pay DBE only for the compensation agreed to for the Construction Document Phase. All deliverables including but not limited to documents, engineering, budget costs, preliminary design, schedule and data shall become the exclusive property of the Agency.

(ii) Allow the DBE to complete the Construction Document Phase, if not yet completed, and authorize the DBE to complete the Construction Documents as Additional Work at the rates set forth in Attachment 6 by written Change Order duly executed by the Parties. All deliverables including but not limited to documents, engineering, budget costs, design, schedule and data shall become the exclusive property of the Agency upon receipt of

payment. The deliverables shall include the complete Construction Documents. Once this work is complete, the Contract shall be deemed complete.

(c) The Parties acknowledge that Agency's ability to successfully complete the Project may be significantly impacted if Agency elects to terminate DBE's services at the end of the Construction Document Phase, rather than proceeding to the Construction Phase, and certain design subconsultants are not available to continue working on the Project. Consequently, DBE hereby agrees that if Agency terminates DBE for any reason, Agency shall have the right to contract directly with such design subconsultants for design-related services on this Project, and DBE shall take such steps as are reasonably necessary to enable Agency to implement such relationship. DBE shall provide in any design subconsultant agreements that Agency shall have the right to negotiate directly with such design subconsultants for the continuation of their services with respect to the Project, and that any provisions with respect to copyright or the ownership of instruments of service confirm such right of Agency.

#### 4. **Establishment of Contract Price; Guaranteed Maximum Price**

The following shall be used in establishing the Contract Price and GMP.

##### 4.1 **DBE's Fee.**

(a) The DBE's Fee shall be [REDACTED] percent ([REDACTED]%) of the cost of the Construction Phase Work. The DBE's Fee shall compensate the DBE for all field and home office overhead, profit, and other costs and expenses not specifically included in the cost of the Construction Phase Work.

##### 4.2 **Cost of the Construction Phase Work.**

(a) The cost of the Construction Phase Work include all costs necessarily and properly incurred by the DBE to design, construction, test, and commission the Project ("Reimbursable Costs"), which is defined as all costs reasonably and properly incurred in performing the Work at competitive rates, including: wages paid for direct labor; contributions applicable to the DBE's payroll; fringe benefits; payroll taxes; contributions for unemployment; social security, disability, and similar payments and assessments; salaries of clerical, supervisory and other personnel at the job site or in the field and employed in the construction of the Project; travel and subsistence; materials, supplies, and equipment incorporated or consumed in the Work; the cost of subcontracts; temporary facilities and hand tools consumed in the Work; reasonable equipment rental charges whether the equipment is owned by or rented to DBE; power, utility, and telephone charges; permits, licenses and inspections for which the DBE is required by the Contract Documents to pay, other than those permits for which Agency pays directly; sales and use taxes incurred about the Work; fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work; premiums for bonds and insurance the DBE is required by the Contract Documents to maintain; demolition, clean-up and removal costs; professional fees of consultants, engineers, designers or schedulers that the DBE is required by the Contract Documents to employ; and all other costs properly and reasonably incurred in the performance of the Work.

##### 4.3 **Cost of the Construction Phase Work Not Reimbursable.**

(a) The cost of the Construction Phase Work does not include: compensation for the DBE's personnel stationed at the DBE's principal or branch offices; overhead and



(f) DBE acknowledges that the Contract Price is to be administered on an open book arrangement relative to the costs of the Work. With each Application for Payment, the DBE shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the DBE to demonstrate that cash disbursements already made by the DBE on account of the cost of the Work equal or exceed (1) progress payments already received by the DBE; less (2) that portion of those payments attributable to the DBE's Design and Construction Fee; plus (3) payrolls for the period covered by the present Application for Payment.

5. **Standard of Care.**

The DBE's performance shall be consistent with the standards set forth in the Contract and the General Conditions. The DBE warrants to Agency that all Design Work will be performed in accordance with the highest professional standards and degree of care applicable to those design professionals who specialize in designing and providing services for projects of the type, scope, quality and complexity of the Project utilizing the Design-Build contracting mode. The DBE warrants to Agency that all labor, materials, equipment and furnishings used in, or incorporated into, the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents), and all work will be free of liens, claims and security interests of third parties; that the work will be of the highest quality and free from defects and that all work will conform with the requirements of the Contract Documents. The DBE shall supervise, inspect, and direct the Project competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Project in accordance with the Contract Documents. The DBE shall be solely responsible for the means, methods, techniques, sequences, and procedures of design and construction of the Project. DBE shall perform, at its own cost and expense and without reimbursement from the Agency, any services necessary to correct errors or omissions which are caused by the DBE's failure to comply with the standard of care provided for herein.

6. **Period of Performance; Liquidated Damages.**

Time is of the essence. The DBE shall commence the Construction Document Phase after receipt of Agency's Notice to Proceed and complete the Construction Document Phase work within [REDACTED] days of the Notice to Proceed date.

The DBE guarantees that it shall perform and complete all Work required by the Contract Documents for completion by the Project Completion Date. The Project Completion Date shall be [\*\*\*INSERT CALENDAR DAYS\*\*\*] from the commencement date stated in the Notice to Proceed with Construction.

The DBE agrees that it shall be liable to the Agency for liquidated damages in an amount of [REDACTED] Dollars (\$ [REDACTED]) per day for each and every calendar day beyond the Project Completion Date that completion of the Project has not been achieved at the Project Site. If not completed by the Project Completion Date, it is understood that the Agency will suffer damage, and that it is and will be difficult and/or impossible to ascertain and determine the actual damage which the Agency will sustain in the event of and by reason of the DBE's failure to complete the work, and therefore the DBE shall pay to the Agency the stipulated sum as fixed and liquidated damages and not as a penalty. Any money due or to become due the DBE may be retained to cover liquidated damages.

In compliance with the provisions of California Public Contract Code section 7102, the DBE will be compensated for damages incurred due to delays in completing the Work by the Project Completion Date due solely to the fault of the Agency, where such delay to the critical path is unreasonable under the circumstances and not contemplated by the parties, and such delay is not the result of Additional Work. The DBE and Agency agree that determining actual damages is impracticable and extremely difficult. As such, the DBE shall be entitled to the appropriate time extension and to payment of liquidated damages in an amount of \_\_\_\_\_ Dollars (\$) \_\_\_\_\_ per day for each and every calendar day in excess of the Project Completion Date. Such amount shall constitute the only payment allowed and shall necessarily include all overhead (direct or indirect), all profit, all administrative costs, all bond costs, all labor, materials, equipment and rental costs, and any other costs, expenses and fees incurred or sustained as a result of such delay. The amount of reverse liquidated damages shall be reduced by DBE's concurrent delays. The DBE expressly agrees to be limited solely to the liquidated damages for all such delays as defined in this Article.

7. **Approval of Design; Commencement of Construction.**

\*\*\*THIS CAN BE ADJUSTED TO FIT THE PROJECT\*\*\*

(a) DBE shall submit the following to Agency for approval:

- (i) Schematic Design;
- (ii) 60% Construction Documents; and
- (iii) 100% Construction Documents.

(b) The Agency's review and approval of the design shall not relieve the DBE from its responsibilities under the Contract. Such review shall not be deemed an approval or waiver by the Agency of any deviation from, or of the DBE's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted by the DBE and approved by the Agency. The Agency Representative, or an Agency Engineer designated to review and approve Construction Documents, shall be authorized to approve the Construction Documents and any amendments or changes to the design.

(c) The Contract Schedule shall indicate the time for the Agency to review the proposed Construction Documents and shall provide a reasonable time for review of same, not less than \_\_\_\_\_ days. DBE shall not be entitled to damages, liquidated or otherwise, for any delays during the Construction Document Phase.

(d) DBE shall not commence construction until the Agency executes a Change Order for the Contract Price and GMP, approves the completed Construction Documents and issues a Notice to Proceed with Construction. DBE may request a Notice to Proceed with Construction prior to completion of the 100% Construction Documents, and Agency may issue same, provided that DBE shall not construct any portion of the Project until the design of such portion has been approved. The Project Completion Date shall run from the Notice to Proceed with Construction even if issued prior to completion of the 100% Construction Documents.

8. **Agency's Representative.**

The Agency hereby designates [\*\*\*INSERT NAME\*\*\*] or his or her designee, as the person to act as its representative for the performance of this Contract ("Agency's Representative"). The Agency's Representative shall be authorized to act as liaison between Agency and the DBE in the administration of this Contract and all work on the Project. The Agency's Representative shall have the power to act on behalf of the Agency for all purposes under this Contract, including for the purpose of approving the design. Agency may designate new and/or different individuals to act as Agency's Representative from time to time upon written notice to the DBE.

9. **DBE's Representative.**

The DBE hereby designates [\*\*\*INSERT NAME\*\*\*], or his or her designee, to act as its representative for the performance of this Contract ("DBE's Representative"). DBE's Representative shall have full authority to represent and act on behalf of the DBE for all purposes under this Contract. DBE's Representative shall supervise and direct all work on the Project, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the work pursuant to this Contract.

10. **DBE's Contractor's License and Registration.**

The DBE shall have only appropriately licensed contractors performing work on the Project as required by the Business and Professions Code. The DBE (**License No. CA# [REDACTED]**) shall act as the licensed contractor for the Project. DBE shall perform all services required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California, and the DBE shall be fully responsible to the Agency for any damages and/or delays to the Project as specified in the Contract. The licensed contractor shall be registered with the Department of Industrial Relations to perform public work (**DIR Registration No. [REDACTED]**).

11. **DBE's Design Professional.**

The DBE shall name a specific person to act as the Design Professional as described in the General Conditions, subject to the approval of the Agency. The DBE hereby designates [\*\*\*INSERT NAME\*\*\*] (**License No.: CA# [REDACTED]**) to act as the Design Professional for the Project. DBE's Design Professional shall perform all services required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California, and the DBE shall be fully responsible to the Agency for any damages and/or delays to the Project as specified in the indemnification provisions of the Contract. Any change in the Design Professional shall be subject to the Agency's prior written approval, which approval shall not be unreasonably withheld. The new Design Professional shall be of at least equal competence as the prior Design Professional. In the event that Agency and DBE cannot agree as to the substitution of a new Design Professional, the Agency shall be entitled to terminate this Contract as described in the General Conditions.

12. **Authority of Signatories.**

The persons executing this Contract on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

**[SIGNATURES CONTINUED ON NEXT PAGE]**

Entered into as of the Effective Date first above written, the Parties hereby execute this Design-Build Contract, as follows:

VALLEY SANITARY DISTRICT

**\*\*\*INSERT NAME OF DBE\*\*\***

By: \_\_\_\_\_  
MIKE DURAN  
BOARD PRESIDENT

**[IF CORPORATION, TWO SIGNATURES,  
PRESIDENT OR VICE PRESIDENT AND  
SECRETARY OR TREASURER REQUIRED]**

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

ATTEST:

Its: \_\_\_\_\_

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

By: \_\_\_\_\_  
**[INSERT NAME]**

**[DELETE THE FOLLOWING SIGNATURE  
LINE IF NOT REQUIRED]**

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

Its: \_\_\_\_\_

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
ROBERT HARGREAVES,  
GENERAL COUNSEL

\_\_\_\_\_  
Contractor's License Number

\_\_\_\_\_  
DIR Registration Number

**ATTACHMENT 1  
SCOPE OF SERVICES**

**\*\*\*INSERT CONSTRUCTION DOCUMENT PHASE AND CONSTRUCTION  
PHASE SCOPE OF SERVICES\*\*\*]**

**ATTACHMENT 1-1  
PROPOSAL**

## ATTACHMENT 2 GENERAL CONDITIONS

### ARTICLE 1 -DEFINITIONS AND TERMINOLOGY

#### 1.1 Defined Terms.

- A. Wherever used in the 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 below, 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. Act of God -- Act of God is an earthquake of magnitude 3.5 or higher on the Richter Scale or a tidal wave.
  2. Additional Work -- New or unforeseen work will be classified as "Additional Work" when Agency's Representative determines that it is not covered by the Contract.
  3. Applicable Laws -- The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities or private authorities with jurisdiction (including utilities), to the extent they apply to the Work.
  4. Application for Payment -- The form acceptable to Agency's Representative which is to be used by the Design-Build Entity 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.
  5. Architect of Record or Engineer of Record ("A/E") -- The individual, partnership, corporation, joint venture, or other legal entity named as the Design Professional in the Contract or any succeeding entity designated by Agency.
  6. Bridging Documents -- Includes, but is not limited to, the portions of the Contract Documents which constitute an outline of design requirements, Work, Project Program, Performance Specifications and schematic drawings.
  7. Certificate for Payment -- The form signed by Agency's Representative attesting to the Design-Build Entity's right to receive payment for certain completed portions of the Work on the Project in accordance with Article 12.
  8. Change Order ("CO") -- A document that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Project Completion Date, issued on or after the Effective Date of the Contract, in accordance with the Contract Documents and in the form contained in the Contract Documents.
  9. Change Order Request ("COR") -- A request made by the Design-Build Entity for an adjustment in the Contract Price and/or Project Completion Date as the result of a Design-Build Entity-claimed change to the Work.

10. Claim -- A demand or assertion by Agency or Design-Build Entity seeking an adjustment of the Contract Price or Project Completion Date, 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. Construction Documents -- The plans and Technical Specifications prepared by the Design-Build Entity for the Project and approved by Agency. The Construction Documents shall set forth in detail all items necessary to complete the construction (other than such details customarily provided by others during construction) of the Project in accordance with the Contract Documents. Following commencement of the Construction Phase, Construction Documents become part of the Contract Documents upon their completion and approval by Agency. All amendments and modifications to the Construction Documents must be approved by Agency in writing.
12. Construction Documents Phase -- The first phase of the Work and will commence with the issuance of the Notice to Proceed.
13. Construction Phase -- The second phase of the Work and will commence upon final approval of the Construction Documents by Agency and a Notice to Proceed with Construction.
14. Construction Work -- That portion of the Work on the Project consisting of the provision of labor, materials, furnishings, equipment and services in connection with the construction of the Project as set forth in the Contract Documents.
15. Contract -- The entire integrated written agreement between Agency and Design-Build Entity concerning the Work. "Contract" may be used interchangeably with "Agreement" in the Contract Documents. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral, and includes all Contract Documents.
16. Contract Documents -- The documents listed in Section 1 of the Contract. Some documents provided by Agency, including but not limited to reports and drawings of subsurface and physical conditions are not Contract Documents.
17. Contract Times -- The number of days or the dates stated in the Contract Documents and Project Schedule to achieve defined Milestones, if any, and to complete the Work so that it is ready for final payment.
18. Critical Supply Shortage -- An unusual shortage in materials that is (a) supported by documented proof that Design-Build Entity made every effort to obtain such materials from all available sources; (b) such shortage is due to the fact that such materials are not physically available from single or multiple sources or could have been obtained only at exorbitant prices entirely inconsistent with current and standard rates taking into account the quantities involved and the usual industry practices in obtaining such quantities; and (c) such shortages and the difficulties in obtaining alternate sources of materials could not have been known or anticipated by Design-Build Entity at the time it submitted its bid or entered the Contract. Market fluctuations in prices of materials, whether or not resulting from a Force Majeure Event, does not constitute a Critical Supply Shortage.

19. Daily Rate – The Reverse Liquidated Damages amount stipulated in the Contract Documents as full compensation to the Design-Build Entity due to Agency's unreasonable delay to the Project that was not contemplated by the parties.
20. Day -- A calendar day of 24 hours measured from midnight to the next midnight.
21. Defective Work -- Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.
22. Demobilization – The complete dismantling and removal by the Design-Build Entity of all of the Design-Build Entity's temporary facilities, equipment, and personnel at the Site.
23. Design-Build Entity -- The individual or entity with which Agency has contracted for performance of the Work.
24. Design-Build Entity Representative -- The person or firm identified as the primary contact person and representative of the Design-Build Entity as designated in the Contract and who shall not be changed without prior written consent of Agency.
25. Design Materials -- Any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by, or for, the Design-Build Entity: (1) to Agency under the Contract Documents or; (2) developed or prepared by or for the Design-Build Entity specifically to discharge its duties under the Contract Documents.
26. Design Professional -- The individuals or entities who will provide the Design-Build Entity with the required architectural, engineering, and other professional services required for the coordinated design of the Project and the administration of construction.
27. Design Work -- The portion of the Work on the Project consisting of the Design services and design deliverables required to be provided in connection with the Design of the Project as set forth in the Contract Documents.
28. Drawings -- The graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work to be done on the Project, generally including plans, elevations, sections, details, schedules, and diagrams prepared as part of the Design Materials. The Drawings are listed in the List of Drawings.
29. Effective Date of the Contract – The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.

30. Equipment Manufacturer -- Any Separate Contractor that fabricates and/or supplies any of Agency's provided equipment which is installed in the Project by the Design-Build Entity.
31. Force Majeure Event -- An event that materially affects a party's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the Site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the Work); (4) pandemics, epidemics or quarantine restrictions; (5) strikes and other organized labor action occurring at the Site and the effects thereof on the Work, only to the extent such strikes and other organized labor action are beyond the control of Contractor and its Subcontractors, of every Tier, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (6) a Critical Supply Shortage. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of the Agency in its capacity as a municipal authority.
32. Governmental Approvals -- Those governmental actions required to be obtained by Agency and necessary for the completion of the Project.
33. Hazardous Materials -- Any substance: the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy, or common law; which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant, or contaminant under any federal, state or local law, statute, regulation, rule or ordinance, or amendments thereto, including, without limitations, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"), as amended, or the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq. ("RCRA"); which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA including, without limitation, gasoline, diesel fuel, or other petroleum hydrocarbons; which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any regulatory agency or instrumentality of the United States; the presence of which on the Site causes or threatens to cause a nuisance upon the Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Site; the presence of which on adjacent properties could constitute a trespass by the Design-Build Entity or the Agency; or as defined in the California Health and Safety Code. For the purposes of this Contract, "Hazardous Materials" shall also include, but are not limited to, "Underground Storage Tanks." "Underground Storage Tank" shall have the definition assigned to that term by Section 9001 of RCRA, 42 U.S.C. Section 6991, and also shall include: any tank of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel; any tank used for storing heating oil for consumption on the premises where stored; any septic tank; and any pipes connected to the above items.

34. Holidays -- Holidays occur on:

New Year's Day - January 1  
Martin Luther King Jr. Day – Third Monday of January  
President's Day – Third Monday of February  
Memorial Day - Last Monday in May  
Independence Day - July 4  
Labor Day - First Monday in September  
Veteran's Day - November 11  
Thanksgiving Day - Fourth Thursday in November  
Friday after Thanksgiving  
Christmas Eve – December 24  
Christmas Day - December 25

If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both Holidays. If the Holiday should fall on a Sunday, Sunday and the following Monday are both Holidays.

35. Liens – Charges, security interests, or encumbrances upon Project funds, or personal property, including without limitation Stop Payment Notices.
36. Milestones – A principal event specified in the Contract Documents associated with a required completion date or time prior to Completion of all the Work. Failure to achieve Milestones may result in Liquidated Damages as described in the Contract Documents.
37. Notice of Award – The written notice by Agency to the Design-Build Entity stating that upon timely compliance by the Design-Build Entity with the conditions precedent listed therein, Agency will sign and deliver the Contract.
38. Notice of Completion – The form which may be executed by Agency and recorded by the county where the Project is located constituting final acceptance of the Project.
39. Notice to Proceed -- A written notice given by Agency to the Design-Build Entity fixing the date on which the Design-Build Entity may proceed with the Work and when Contract Time will commence to run.
40. Partial Utilization – Use by Agency of a substantially completed part of the Work prior to Completion of all the Work.
41. Performance 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 included within the Bridging Documents.
42. Project -- The total design and construction of which the Work performed under the Contract Documents may be the whole, or a part, and which may include separate design or construction work performed by Agency or by Separate Contractors for the Project.

43. Project Completion Date -- The date by which the Design-Build Entity agrees that all Work described in the Contract Documents shall be completed. The Project Completion Date is set forth in the Contract.
44. Project Schedule -- The graphical representation of a practical plan to complete the Work on the Project within the Project Completion Date and other Contract Times. The detailed requirements for the Project Schedule are stated in Article 6.
45. Proposal -- The proposal submitted by the Design-Build Entity in response to the Request for Proposal for this Project.
46. Request for Proposal ("RFP") -- The request for proposal issued by Agency for the Project and includes all documents, exhibits, attachments, and addenda thereto.
47. 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.
48. Separate Contractor -- A person, or firm, under separate contract with Agency performing other work at the Project site which may affect the Work.
49. Shop Drawings -- All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Design-Build Entity and submitted by Design-Build Entity to illustrate some portion of the Work.
50. Site -- Lands or areas indicated in the Contract Documents as being furnished by Agency upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Agency which are designated for the use of Design-Build Entity.
51. Stop Payment Notice -- A written notice as defined in Civil Code section 8044.
52. Subcontractor -- An individual or entity that has a contract with the Design-Build Entity or with a Subcontractor of the Design-Build Entity to perform a portion of the Work on the Project. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers.
53. Submittal - Written or graphic information and physical samples prepared and supplied by the Design-Build Entity demonstrating various portions of the Work.
54. Supplier -- A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Design-Build Entity or with any Subcontractor to furnish materials or equipment used in the performance of the Work or to be incorporated in the Work.
55. Technical Specifications -- All documents developed by the Design-Build Entity and which are ready for final construction.

56. Tier -- The contractual level of a Subcontractor or supplier or consultant with respect to the Design-Build Entity. For example, a first tier Subcontractor is under subcontract with the Design-Build Entity, a second tier Subcontractor is under subcontract with a first tier Subcontractor, and so forth.
57. Warranty A written guarantee provided to Agency by the Design-Build Entity that the Work remain free of defects and suitable for its intended use for the period required by the Contract Documents or the longest period permitted by the law of this State, whichever is longer.
58. Work -- The entire design and 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 design and construction, and furnishing, installing, and incorporating all materials and equipment into such design and construction, all as required by the Contract Documents.

## 1.2 Terminology.

- A. The words and terms below are not defined but, when used in the Contract Documents, have the indicated meaning.
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 Project 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. Regardless of whether “furnish,” “install,” “perform,” or “provide” is used in connection with services, materials, or equipment, an obligation of Design-Build Entity is implied.
- B. Unless stated otherwise in the Contract Documents, words or phrases that 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**

### 2.1 Delivery of Contract Documents.

- A. Within fifteen (15) Days after receipt of the Notice of Award and before Agency will execute the Contract, the Design-Build Entity shall furnish and file with Agency a signed Contract in duplicate and the necessary Performance Bond, Payment Bond, Certificates of Insurance and Endorsements, Escrow Agreement (if used) and Tax

Identification Number, as well as any other documents specified in the Contract Documents. Notwithstanding the foregoing, if the Contract Price has yet to be established at Notice of Award, then the Performance Bond and Payment Bond may be provided after establishing the Contract Price and prior to the Construction Phase.

## 2.2 Bonds.

- A. Design-Build Entity shall submit the bonds on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to Agency conditioned upon the faithful performance by the Design-Build Entity of all requirements of the Contract Documents. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Contract Price.

## 2.3 Evidence of Insurance.

- A. Design-Build Entity shall obtain, at its sole cost and expense, all insurance required by Article 5. Certificates of such insurance and copies of the insurance policies and endorsements shall be delivered to Agency within fifteen (15) Days after receipt of the Notice of Award and before execution of the agreement for construction by Agency.

## 2.4 Execution of Contract.

- A. Upon receipt of the required Contract Documents, Agency will execute the Contract, establishing the Effective Date of the Contract.

## 2.5 Commencement of Contract Times; Notice to Proceed with Construction.

- A. The Agency will not issue a Notice to Proceed until after the Effective Date of the Contract. Construction Work shall commence within fifteen (15) Days of the date stated in Agency's Notice to Proceed with Construction. No Construction Work shall be done at the Site prior to the date on which the Contract Time commence to run. Nothing herein shall affect the Project Completion Date.

## 2.6 Copies of Documents.

- A. Agency will furnish to Design-Build Entity one (1) copy of the Bridging Documents. Additional copies will be furnished upon request at the cost of reproduction.

## 2.7 Preconstruction Conference; Designation of Authorized Representatives.

- A. Before any Work at the Project site is started, a conference attended by Agency, Design-Build Entity, Agency's Representative, 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 herein, procedures for handling Shop Drawings

and other submittals, processing Applications for Payment, and maintaining required records.

2.8 Initial Acceptance of Schedules.

- A. At least ten (10) Days before submission of the first Application for Payment, a conference attended by Design-Build Entity, Agency's Representative, and others as appropriate will be held to review for acceptability to Agency's Representative the schedules submitted, as required by the Contract Documents. Design-Build Entity shall have an additional ten (10) Days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Design-Build Entity until acceptable schedules are submitted to Agency's Representative. Acceptance of the schedules by Agency's Representative will not impose on responsibility for accuracy, for sequencing, scheduling, or progress of the Work, or compliance with the Contract Documents. Acceptance will not interfere with or relieve Design-Build Entity from Design-Build Entity's full responsibility therefor.

**ARTICLE 3 -CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

3.1 Intent.

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be designed and constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may 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 Agency. Clarifications and interpretations of the Contract Documents shall be issued by Agency's Representative as provided in these General Conditions.
- B. If utilities to equipment/fixtures are not shown but are necessary to operate the equipment/fixtures, the utilities service installation is considered to be part of the Work. The implied Work will conform to the appropriate sections of the Contract Documents.
- C. Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Design-Build Entity in dividing Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

3.2 Reference Standards.

- A. Standards, Specifications, Codes, Laws, and Regulations.
1. Reference to federal specifications, federal standards, other standards, specifications, manuals, or codes of any technical society, organization, or association, or to Applicable Laws, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Applicable Laws in effect at the time of opening of proposals (or on the

Effective Date of the Contract if there were no proposals), 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 Agency, Design-Build Entity, or Agency's Representative, 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 Agency or Agency's Representative, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, 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.

### 3.3 Order of Precedence.

- A. The intent of the Contract Documents is to include all necessary criteria to establish the scope and quality for completion of the Work on the Project by the Design-Build Entity. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Performance by the Design-Build Entity shall be required to the extent consistent with, and reasonably inferable from, the Contract Documents.
- B. 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 the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or the provisions of any Applicable Laws (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Applicable Law).
- C. In resolving conflicts among any of the Contract Documents, the order of precedence shall be as follows:
  1. Permits from other agencies as may be required by law;
  2. Change Orders or Pending Change Orders, most recent first;
  3. Design-Build Contract;
  4. Special Conditions;
  5. General Conditions;
  6. RFP and all addenda, attachments and appendices;
  7. Design-Build Entity Proposal in response to RFP;
  8. Construction Documents prepared by Design-Build Entity; and
  9. Drawings prepared by Design-Build Entity;

10. Request for Qualifications and all addenda, attachments and appendices; and
  11. Design-Build Entity Statement of Qualifications in response to Request for Qualifications.
- D. With reference to the Drawings the order of precedence shall be as follows:
1. Figures govern over scaled dimensions;
  2. Detail drawings govern over general drawings;
  3. Change Order drawings govern over Drawings;
  4. Drawings govern over standard drawings.
- E. Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality and most expensive shall always apply.

### 3.4 Amending and Supplementing Contract Documents.

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof only by a Change Order.

### 3.5 Interpretation and Use of Contract Documents.

- A. Agency and the Design-Build Entity acknowledge that the Contract Documents may differ in some respect(s) from the other documents included in the RFP upon which the Design-Build Entity based its Proposal. Prior to the commencement of construction on the Project, the parties shall confirm, in writing, the final form of the Contract Documents that are to be utilized. Specifically, once approved by Agency, the Construction Documents become a part of the Contract Documents and define the entire scope of work, so long as such documents incorporate all minimum requirements of the Bridging Documents. The Design-Build Entity shall certify that the Construction Documents are in full compliance with the Contract Documents, except as noted.
- B. Organization of the Performance Specifications into various subdivisions and the arrangement of the Drawings shall not control the Design-Build Entity in dividing portions of the Work necessary for the Project among Subcontractors or in establishing the extent of Work to be performed by any trade.
- C. Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood design professional and construction industry meanings; nontechnical words and abbreviations are used in accordance with their commonly understood meanings.
- D. The Contract Documents may omit modifying words such as "all" and "any," and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word "including," when following any general

statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non limiting language (such as “without limitation,” “but not limited to,” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

- E. Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include a corporation, partnership, trust, or other legal entity, whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.
- F. Each and every provision of law required by law to be inserted in the Contract Documents shall be deemed to be inserted herein, and the Contract Documents shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Contract shall be amended in writing to make such insertion or correction.
- G. Before commencing any Work on the Project, the Design-Build Entity shall check and review the Contract Documents, including the Construction Documents, for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the physical plant of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract. In the event the Design-Build Entity observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract, the Design-Build Entity shall immediately notify Agency’s Representative in writing of the same and shall cause to be corrected any such violation or inconsistency in the manner provided hereunder. The Design-Build Entity shall be solely liable for any such violation, inconsistency or special requirement, if Design-Build Entity fails to conduct such review or notification to Agency.
- H. Before commencing any Work on the Project, the Design-Build Entity shall carefully examine all Performance Specifications, the Contract, the Contract Documents and other information given to the Design-Build Entity as to Project requirements. The Design-Build Entity shall immediately notify Agency’s Representative of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in such documents in writing. Neither the Design-Build Entity nor any Subcontractor shall take advantage of any apparent error or omission which may be found in the Performance Specifications, the Contract, the Contract Documents or other information given to Design-Build Entity. If the Design-Build Entity or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract, which it knows or should have known to be in error, inconsistent, or

ambiguous, or not sufficiently detailed or explained, the Design-Build Entity shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Contract Price or the Project Completion Date. In no case shall any Subcontractor proceed with Work if uncertain without the Design-Build Entity's written direction and/or approval.

### 3.6 Reuse of Documents.

- A. Design-Build Entity and any Subcontractor shall not: have or acquire any title to or Ownership rights in any of the Construction Documents or other documents (or copies of any thereof) prepared by or bearing the seal of the A/E or its consultants, including electronic media editions; or reuse of any such Construction Documents, other documents, or copies thereof on extensions of the Project or any other project without written consent of Agency and A/E and specific written verification or adaptation by the A/E. The prohibitions of this Article will survive final payment, or termination of the Contract. Nothing herein shall preclude Design-Build Entity from retaining copies of the Contract Documents for record purposes.

### 3.7 Electronic Data.

- A. The data furnished by Agency or Agency's Representative to Design-Build Entity, or by Design-Build Entity to Agency or Agency's Representative, 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 sixty (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.

### 3.8 Ownership and Use of Construction Documents.

- A. The Construction Documents, and all copies thereof, furnished to, or provided by, the Design-Build Entity are the property of Agency. Agency and the Design-Build Entity explicitly agree that all materials and documents developed in the performance of this Contract are the property of Agency pursuant to the requirements of Agency. Agency shall have unlimited rights, for the benefit of Agency, in all drawings, designs, technical specifications, notes and any other documentation and other Work developed in the performance of this Contract for the Project, including the right to re-use details of the Design on any other Agency Work at no additional cost to

Agency. The Design-Build Entity agrees to, and hereby does, grant to Agency a royalty free license to all such data that the Design-Build Entity may cover by copyright and to all designs as to which the Design-Build Entity may assert any right or establish any claim to under the patent or copyright laws. The Design-Build Entity, for a period up to five (5) years from the date of Completion of the Project, agrees to furnish and to provide access to the originals or copies of all such materials immediately upon the written request of Agency. Any use or reuse by Agency of the Construction Documents on any project other than this Project without employing the services of the Design-Build Entity shall be at Agency's own risk with respect to third parties. If Agency uses or re-uses the Construction Documents on any project other than this Project, it shall remove the A/E's seal from the Construction Documents and hold harmless Design-Build Entity, A/E, and their officers, directors, agents and employees from claims arising out of the use or re-use of the Construction Documents on such other project. Design-Build Entity shall not be responsible or liable for any revisions to the Construction Documents made by any party other than the Design-Build Entity, a party for which the Design-Build Entity is legally responsible or liable, or anyone approved by the Design-Build Entity.

### 3.9 Administration of the Contract by Agency's Representative.

- A. During the term of this Design-Build Contract, Agency's Representative shall have the right to review the Design-Build Entity's Work at such intervals as deemed appropriate by Agency's Representative. However, no actions taken during such review or site visit by Agency's Representative shall relieve the Design-Build Entity of any of its obligations of single point responsibility for the design and construction of this Project nor form the basis for a Claim if such actions extend beyond the Project Completion Date.
- B. Agency's Representative will not have control over, will not be in charge of, and will not be responsible for design or construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work on the Project, since these are solely the Design-Build Entity's responsibility.
- C. Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, Agency and the Design-Build Entity shall communicate through Agency's Representative. Communications by the Design-Build Entity with Agency's consultants and Agency's Representative's consultants shall be through Agency's Representative. Communications by Agency and Agency's Representative with Subcontractors will be through the Design-Build Entity. Communications by the Design-Build Entity and Subcontractors with Separate Contractors shall be through Agency's Representative. The Design-Build Entity shall not rely on oral or other non-written communications.
- D. Based on Agency's Representative's Project site visits, review of the Work, and evaluations of the Design-Build Entity's Applications for Payment, Agency's Representative will recommend amounts, if any, due the Design-Build Entity and will issue Certificates for Payment in such amounts.

- E. Agency's Representative will have the authority to reject Work on the Project, or any portion thereof, which does not conform to the Contract Documents. Agency's Representative will have the authority to stop Work on the Project, or any portion thereof. Whenever Agency's Representative considers it necessary, or advisable, for implementation of the intent of the Contract Documents, Agency's Representative will have the authority to require additional inspection or testing of the Work on the Project in accordance with the Contract Documents, whether or not such Work is fabricated, installed, or completed. However, no authority of Agency's Representative conferred by the Contract Documents nor any decision made in good faith either to exercise, or to not exercise such authority, will give rise to a duty or responsibility of Agency or Agency's Representative to the Design-Build Entity, or any person or entity claiming under, or through, the Design-Build Entity.
- F. Agency's Representative will have the authority to conduct inspections in connection with beneficial occupancy and to determine the dates of Completion; will receive for review and approval any records, written warranties, and related documents required by the Contract Documents and assembled by the Design-Build Entity; and will issue a final Certificate for Payment upon the Design-Build Entity's compliance with the requirements of the Contract Documents.
- G. Agency's Representative will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance thereunder by the Design-Build Entity. Should the Design-Build Entity discover any conflicts, omissions, or errors in the Construction Documents or the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether Work is within the scope of the Contract Documents; then, before proceeding with the Work affected, the Design-Build Entity shall notify Agency's Representative in writing and request interpretation, or clarification. Agency's Representative's response to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should the Design-Build Entity proceed with the Work affected before receipt of a response from Agency's Representative, any portion of the Work on the Project which is not done in accordance with Agency's Representative's interpretations, clarifications, instructions, or decisions shall be removed or replaced and the Design-Build Entity shall be responsible for all resultant losses.
- H. Agency may at any time and from time to time, without prior notice to or approval of the Design-Build Entity, replace Agency's Representative with a new Agency Representative. Upon receipt of notice from Agency informing the Design-Build Entity of such replacement and identifying the new Agency's Representative, the Design-Build Entity shall recognize such person or firm as Agency's Representative for all purposes under the Contract Documents.

#### **ARTICLE 4 -AVAILABILITY AND OWNERSHIP OF LANDS AND MATERIALS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

##### **4.1 Availability of Lands.**

- A. Agency shall furnish the Project site. Agency shall notify Design-Build Entity of any encumbrances or restrictions not of general application but specifically related to use

of the Project site with which Design-Build Entity must comply in performing the Work. Agency will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. Design-Build Entity shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment at no additional cost to Agency.

#### 4.2 Ownership of Site Materials Found.

- A. The title to water, soil, rock, gravel, sand, minerals, timber and any other materials developed or obtained in the excavation or other operations of Design-Build Entity or any of its Subcontractors in the performance of the Contract, and the right to use said items in carrying out the Contract, or to dispose of same, is hereby expressly reserved by Agency. Neither Design-Build Entity nor any of its Subcontractors nor any of their representatives or employees shall have any right, title, or interest in said materials, nor shall they assert or make any claim thereto. Design-Build Entity will, as determined by Agency's Representative, be permitted to use in the Work without charge, any such materials which meet the requirements of the Contract Documents, provided Agency shall have the right to use or consume these materials without payment to a third party.

#### 4.3 Hazardous Material at Site.

- A. The Design-Build Entity shall have no responsibility for detection, abatement, remediation, removal or disposal of any Hazardous Material, except Hazardous Materials introduced onto the Project Site by the Design-Build Entity, its employees, subcontractors, agents, or other parties acting on behalf of the Design-Build Entity. In the event that the Design-Build Entity becomes aware of the presence of, or exposure of persons to, any Hazardous Material at the Project Site, the Design-Build Entity shall inform Agency by notice immediately. Notwithstanding anything to the contrary herein, the Design-Build Entity shall not be responsible for, and the Agency shall bear full responsibility and remediation costs relating to any Hazardous Materials uncovered, removed or disturbed by the Design-Build Entity on the Project Site resulting from the Design-Build Entity's performance of the work hereunder, except Hazardous Materials introduced onto the Project Site by the Design-Build Entity, its employees, subcontractors, agents, or other parties acting on behalf of the Design-Build Entity. The Agency shall not be responsible for, and the Design-Build Entity shall bear full responsibility and remediation costs relating to any Hazardous Materials introduced onto the Project Site by the Design-Build Entity, its employees, subcontractors, agents, or other parties acting on behalf of the Design-Build Entity.
- B. The Design-Build Entity hereby specifically agrees to indemnify, defend and hold the Agency, its present and future directors, officers, employees, agents, representatives, successors and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of: (a) the existence, uncovering or unveiling, or any release by the Agency or Design-Build Entity of, a Hazardous Material introduced onto the Project Site by the Design-Build Entity, its employees, subcontractors, agents, or other parties acting on

behalf of the Design-Build Entity; (b) any enforcement or compliance proceeding commenced by or in the name of any governmental authority because of the presence on the Project Site of Hazardous Materials introduced onto the Project Site by the Design-Build Entity, its employees, subcontractors, agents, or other parties acting on behalf of the Design-Build Entity; and (c) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Hazardous Material laws by the Design-Build Entity.

4.4 Protection and Restoration of Existing Improvements and Reference Points.

- A. Design-Build Entity 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 Agency. Design-Build Entity shall report to Agency's Representative 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.

**ARTICLE 5 - BONDS AND INSURANCE**

- 5.1 Time for Compliance. Design-Build Entity shall not commence Work under this Contract until it has provided evidence to Agency that it has secured all insurance required under this Article. Design-Build Entity shall require and verify that all subconsultants and subcontractors maintain insurance meeting all the requirements stated herein. Design-Build Entity shall not allow any subconsultant or subcontractor to commence work on any subcontract until it has provided evidence to Agency that the subconsultant or subcontractor has secured all insurance required under this Article.

- 5.2 Minimum Requirements. Design-Build Entity shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise out of or result from the performance of the Work and Design-Build Entity's other obligations under the Contract Documents whether by Design-Build Entity, its agents, representatives, employees or subcontractors. Design-Build Entity shall also require all of its subconsultants and subcontractors to procure and maintain the same insurance for the duration of the Contract and verify the subconsultants' and subcontractors' compliance. Design-Build Entity's and subconsultants' and subcontractors' insurance shall meet at least the minimum levels of coverage set forth in this Article:

- A. Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto) or if Design-Build Entity has no owned autos, non-owned, leased or hired autos Code 8 (hired) and Code 9 (non-owned); (3) Workers' Compensation and Employer's Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance; (4) Installation Floater/Builder's Risk: "All Risk All Perils" form; (5) Professional Liability/Errors and Omissions; and (6) Pollution Liability Insurance. The policies shall not contain any exclusion contrary to

the Contract, including but not limited to endorsements or provisions limiting coverage for (1) contractual liability or (2) cross liability for claims or suits by one insured against another.

B. Minimum Limits of Insurance. The Design-Build Entity shall maintain limits no less than:

1. The total liability limits for the general and automobile liability equals \$10,000,000. Design-Build Entity may opt to utilize umbrella or excess liability insurance in meeting these requirements. The umbrellas or excess policy must contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.
2. Design-Build Entity shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$2,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 25 03, either the general aggregate limit shall apply separately to the Project or the general aggregate limit shall be twice the required occurrence limit.
3. Automobile Liability: \$1 million per accident for bodily injury and property damage.
4. Workers' Compensation and Employer's Liability:
  - a. Workers' Compensation: statutory limits.
  - b. Employer's Liability limits of \$1 million per accident for bodily injury or disease.
  - c. Should any of the Work be upon or contiguous to navigable bodies of water, Design-Build Entity shall carry insurance covering its employees for benefits available under the Federal Longshoremen's and Harbor Worker's Act to the extent required by law;
5. Excess/Umbrella Liability Policy may be provided to insure the total limits required for Commercial General Liability and Automobile Liability and must apply to all primary coverage afforded, including but not limited to general liability, owned and non-owned automobiles, leased and hired cars.
6. Professional Liability/Errors and Omissions: \$2,000,000 per claim.
7. Pollution Liability Insurance: \$2,000,000 dollars per occurrence and in the aggregate

C. Notices; Cancellation or Reduction of Coverage. At least fifteen (15) Days prior to the expiration of any such policy, evidence showing that such insurance coverage has

been renewed or extended shall be filed with Agency. If such coverage is cancelled or materially reduced, Design-Build Entity shall, within ten (10) Days after receipt of written notice of such cancellation or reduction of coverage, file with Agency evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Contract does not comply with these specifications or is canceled and not replaced, Agency has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Agency will be promptly reimbursed by Design-Build Entity or Agency may withhold amounts sufficient to pay premium from Design-Build Entity payments. In the alternative, Agency may suspend or terminate this Contract.

5.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Design-Build Entity shall provide endorsements on forms approved by Agency to add the following provisions to the insurance policies:

A. General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37 (including completed operations), or endorsements providing the exact same coverage, Agency, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be covered as additional insureds with respect to the Work or ongoing and completed operations performed by or on behalf of the Design-Build Entity, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects Agency, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions, or if excess, shall stand in an unbroken chain of coverage excess of the Design-Build Entity's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of Agency, before Agency's own primary insurance or self-insurance shall be called upon to protect it as a named insured. Any insurance or self-insurance maintained by Agency, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be excess of the Design-Build Entity's insurance and shall not be called upon to contribute with it in any way. The insurer shall agree, using CG 24 04 05 09 or the equivalent, to waive all rights of subrogation against Agency, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions for losses paid under the terms of the insurance policy.

B. Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) Agency, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Design-Build Entity or for which the Design-Build Entity is responsible; and (2) the insurance coverage shall be primary insurance as respects Agency, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions, or if excess, shall stand in an unbroken chain of coverage excess of the Design-Build Entity's scheduled

underlying coverage. Any insurance or self-insurance maintained by Agency, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be excess of the Design-Build Entity's insurance and shall not be called upon to contribute with it in any way.

- C. Workers' Compensation and Employer's Liability Coverage. The insurer shall agree, using WC 00 04 03 06 or the equivalent, to waive all rights of subrogation against Agency, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions for losses paid under the terms of the insurance policy.
- D. Professional Liability/Errors and Omissions. Professional Liability Insurance insuring the A/E, its officers, directors, stockholders, employees, agents, or partner, and all other persons for whose acts the A/E may be liable, against any and all liabilities arising out of or in connection with the negligent acts, errors or omissions of any of the foregoing in connection with the carrying out of their professional responsibilities described in this Contract. Professional Liability Insurance shall remain in full force and effect, and shall be so certified to Agency by the insurer, for a period of five (5) years after the completion of all of the Design-Build Entity's services hereunder and Agency's acceptance of the Project. All subconsultants shall have professional liability insurance with the same limits (additional requirements for Professional Liability/Errors and Omissions Insurance written on a "claims made" basis are set forth below).
- E. All Coverages. Each insurance policy required by this Agreement shall be endorsed to include the following provisions:
1. coverage shall not be suspended, voided, reduced or canceled except after thirty (30) Days (10 Days for nonpayment of premium) prior written notice by mail has been given to Agency and all additional insureds.
  2. any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to Agency and any other additional insureds.
  3. standard separation of insureds provisions.
  4. no special limitations on the scope of protection afforded to Agency, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions.
  5. waiver of any right of subrogation of the insurer against Agency, its officials, officers, employees, agents, and volunteers, or any other additional insureds, or shall specifically allow the Design-Build Entity or others providing insurance in compliance with these specifications to waive their right of recovery prior to a loss. By signing this agreement, the Design-Build Entity hereby waives its own right of recovery against Agency or any other additional insureds, and shall require similar written express waivers and insurance clauses from each of its subconsultants and subcontractors.

#### 5.4 Builder's Risk ["All Risk"]

- A. It is the Design-Build Entity's responsibility to maintain or cause to be maintained Builder's Risk ["All Risk"] extended coverage insurance on all work, material, equipment, appliances, tools, and structures that are or will become part of the Work and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. The Agency accepts no responsibility for the Work until the Work is formally accepted by the Agency. The Design-Build Entity shall provide a certificate evidencing this coverage before commencing performance of the Work.
- B. The named insureds shall be Design-Build Entity, all Subcontractors of any tier (excluding those solely responsible for design work), suppliers, and Agency, its elected officials, officers, employees, agents and authorized volunteers, as their interests may appear. Design-Build Entity shall not be required to maintain property insurance for any portion of the Work following acceptance by Agency.
- C. Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to Agency to ensure adequacy and sublimit.
- D. In addition, the policy shall meet the following requirements:
1. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.
  2. Coverage shall include all materials stored on site and in transit.
  3. Coverage shall include Design-Build Entity's tools and equipment.
  4. Insurance shall include boiler, machinery and material hoist coverage.
  5. Agency shall be named loss payee.
- 5.5 Pollution Liability Insurance. Contractor shall provide and maintain Pollution Legal Liability insurance protecting DBE and Agency from liability, injury or damage from pollution conditions caused by or arising out of DBE's work or operations on the Site or under this Contract, whether such liability results from bodily injury or property damage, and, whether such liability, injury or damage is progressive, continuous or intermittent. DBE's Pollution Legal Liability insurance shall name Agency as an additional insured.
- 5.6 Receipt and Application of Insurance Proceeds. Any insured loss under the policies of insurance required herein will be adjusted with Agency and made payable to Agency as fiduciary for the loss payees, as their interests may appear, subject to the requirements

of any applicable mortgage clause and of the provisions herein. Agency 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 Project and the cost thereof covered by an appropriate Change Order. Agency 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 to Agency's exercise of this power within fifteen (15) Days after the occurrence of loss. If such objection be made, Agency 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, Agency as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Agency as fiduciary shall give bond for the proper performance of such duties.

- 5.7 Partial Utilization, Acknowledgement of Property Insurer. If Agency finds it necessary to occupy or use a portion or portions of the Project prior to Completion of all the Work, no such use or occupancy shall commence before the insurers providing the property insurance 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.
- 5.8 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by Agency. Design-Build Entity shall guarantee that, at the option of Agency, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Agency, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions; or (2) the Design-Build Entity shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.
- 5.9 Claims Made Policies. Claims made policies are not acceptable other than for Professional Liability. In addition to the requirements above, for any claims made policy: The Retroactive Date must be shown and must be before the date of the Contract or the beginning of contract work; Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after Agency's acceptance of the Work; and If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Design-Build Entity must purchase "extended reporting" coverage for a minimum of five (5) years after Agency's acceptance of the Work.
- 5.10 Subcontractor Insurance Requirements. Design-Build Entity shall not allow any Subcontractors to commence work on any subcontract relating to the Work until Design-Build Entity has verified that all Subcontractors maintain insurance meeting all requirements under this Section and has provided evidence to Agency of such insurance. If requested by Design-Build Entity, Agency may approve different scopes or minimum limits of insurance for particular Subcontractors. Design-Build Entity shall confirm that Agency shall be named as additional insureds on all Subcontractors' policies of Commercial General Liability Insurance and Commercial Automobile Insurance.

- 5.11 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to Agency.
- 5.12 Verification of Coverage. Design-Build Entity shall furnish Agency with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to Agency. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by Agency before work commences. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.
- 5.13 Reservation of Rights. Agency reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- 5.14 Performance Bond and Payment Bond.
- A. The Design-Build Entity shall submit performance and payment bonds on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure Section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to Agency conditioned upon the faithful performance by the Design-Build Entity of all requirements of the Contract Documents. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Contract Price. The Design-Build Entity shall furnish bonds covering the faithful performance of the Contract (Performance Bond) and payment of obligations arising thereunder (Payment Bond) on the forms contained in the Contract. The obligations of the performance bond surety shall continue so long as any obligation of Design-Build Entity remains. Nothing herein shall limit the Agency's rights or the Design-Build Entity's or surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.
- B. The Payment Bond and Performance Bond shall be in effect on the date the Contract is signed by Agency. The Design-Build Entity shall promptly furnish such additional security as may be required by Agency to protect its interests and those interests of persons or firms supplying labor or materials to the Project. The premiums for the Payment Bond and Performance Bond shall be paid by the Design-Build Entity. The Design-Build Entity maintains and agrees that it has executed Payment and Performance Bonds in the amounts and manner required by the Contract Documents. No payment will be made to the Design-Build Entity until the Design-Build Entity's Payment Bond and Performance Bond have been approved by Agency.
- C. Should, in Agency's sole opinion, any bond become insufficient or surety found to be unsatisfactory, the Design-Build Entity shall renew or replace the effected bond within 10 Days of receiving notice from Agency. In the event the surety or the

Design-Build Entity intends to reduce or cancel any required bonds, at least thirty (30) Days prior written notice shall be given to Agency, and the Design-Build Entity shall post acceptable replacement bonds at least ten (10) Days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Article are accepted by Agency.

- D. To the extent, if any, that the Contract Price is increased in accordance with the Contract, the Design-Build Entity shall, upon request of Agency, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to Agency. The bonds shall further provide that no change or alteration of the Contract (including, without limitation, an increase in the Contract Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Design-Build Entity will release the surety. If the Design-Build Entity fails to furnish any required bond, Agency may terminate the Contract for cause.

## **ARTICLE 6 -DESIGN-BUILD ENTITY'S RESPONSIBILITIES**

### **6.1 Design-Build Entity Responsibility; Independent Contractor.**

- A. The Design-Build Entity shall be responsible to Agency for acts and omissions of the Design-Build Entity's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of Work on the Project under direct or indirect contract with the Design-Build Entity or any of its Subcontractors. Agency retains the Design-Build Entity on an independent contractor basis. Design-Build Entity retains the right to perform similar or different services for others during the term of this Contract. The Design-Build Entity is not an employee, agent or representative of Agency. The Design-Build Entity represents that it is fully experienced and properly qualified to perform the class of Work provided for in this Contract and that it is properly licensed, equipped, organized, and financed to perform Work on the Project. Neither Agency, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Design-Build Entity or any of Design-Build Entity's officers, employees, or agents, except as set forth in this Contract. The Design-Build Entity shall maintain complete control over its employees and its Subcontractors and shall pay all wages, salaries and other amounts due such personnel in connection with their performance as required by law. The Design-Build Entity shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, and workers' compensation insurance.

### **6.2 Review of Contract Documents and Field Conditions by The Design-Build Entity; Single Point Responsibility of The Design-Build Entity.**

- A. In addition to the examination and reviews performed, and obligations assumed, incident to making the representations set forth in the Contract, the Design-Build Entity shall carefully study and compare each of the Contract Documents provided by Agency with the others and with information furnished by Agency, and shall promptly report in writing to Agency's Representative any errors, inconsistencies, or

- omissions in the Contract Documents provided by Agency or inconsistencies with Applicable Law observed by the Design-Build Entity. The Design-Build Entity shall be solely responsible for any errors, inconsistencies or omissions in the Contract Documents if the Design-Build Entity fails to perform such review and examination or fails to report such errors, inconsistencies or omissions to Agency in writing.
- B. The Design-Build Entity is responsible for the design and construction of the Project and shall use the highest design and engineering standards of care applicable to projects, buildings or work of similar size, complexity, quality and scope in performing Work on the Project. The Design-Build Entity shall be solely responsible for any and all design errors including, but without limitation, errors, inconsistencies or omissions in the Construction Documents. The Design-Build Entity shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to the Design-Build Entity before commencing Work on the Project. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to Agency's Representative.
  - C. If the Design-Build Entity performs any design and/or construction activity which it knows, or should know, involves an error, inconsistency, or omission referred to in this Article, without notifying and obtaining the written consent of Agency's Representative, the Design-Build Entity shall be responsible for the resultant losses, including, without limitation, the costs of correcting Defective Work.
  - D. Agency does not assume any obligation to employ the Design-Build Entity's services or pay the Design-Build Entity royalties of any type as to future programs that may result from Work performed under this Contract.
  - E. The Design-Build Entity shall be responsible for all plotting, printing, copying and distribution costs of any and all documents required in connection with Work on the Project.
  - F. The Design-Build Entity agrees that it has single point responsibility for the design and construction of this Project, and agrees to utilize the highest standard of excellent design, engineering and construction practices. The Design-Build Entity has the duty to act in Agency's best interests at all times throughout the course and performance of this Contract.

### 6.3 Design, Supervision and Construction Procedures.

- A. The Design-Build Entity shall supervise, coordinate, and direct all Work on the Project using the Design-Build Entity's best skill and attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The Design-Build Entity shall be solely responsible for, and have control over, the entire design effort, construction means, methods, techniques, sequences, procedures, and the coordination of all portions of Work on the Project, including, but without limitation, landscape and site work, utilities, and building systems.

- B. The Design-Build Entity shall be responsible to Agency for acts and omissions of the Design-Build Entity, its agents, employees, and Subcontractors, and their respective agents and employees.
- C. The Design-Build Entity shall not be relieved of its obligation to perform all Work on the Project in accordance with the Contract Documents either by acts or omissions of Agency or Agency's Representative in the administration of the Contract, or by tests, inspections, or approvals required, or performed, by persons or firms other than the Design-Build Entity.
- D. The Design-Build Entity shall be responsible for inspection of all portions of Work on the Project to determine that such portions conform to the requirements of the Contract Documents and are ready to receive subsequent Work.
- E. To facilitate communications and the management of the design process, the Design-Build Entity shall maintain an office in the Agency's County for the duration of the design process.
- F. Unless otherwise provided in the Contract Documents, the Design-Build Entity shall provide and pay for all professional design/engineering services, services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work on the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in Work on the Project. The Design-Build Entity shall furnish architectural and engineering services for the preparation of Construction Documents necessary to complete the Project in accordance with the requirements of the Contract Documents. From the Agency-approved Construction Documents, which are developed from the Agency-accepted Proposal, the Design-Build Entity shall furnish all labor, materials, equipment, services, and transportation necessary to complete construction of the Project, including site work, structures and utilities.
- G. The Design-Build Entity is required to deliver to Agency, if requested, any and all Design Materials including, but not limited to, calculations, preliminary drawings, construction drawings, shop drawings, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock ups, and other information developed, prepared, furnished, or delivered in the prosecution of the Design Work.
- H. The Design-Build Entity is responsible for preparation of the Construction Documents for the entire Project. The Design-Build Entity is responsible for construction of the entire Project as required by the Contract Documents.

#### 6.4 Labor; Working Hours.

- A. The Design-Build Entity shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The Design-Build Entity shall at all times maintain good discipline and order at the Site. The Design-Build Entity will provide all labor needed to complete the Work within the Contract Times.

- 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, which are defined as hours between 7:00 a.m. and 3:30 p.m. any day Monday through Friday of any week except on Holidays and/or during Schedule Constraints defined in the Contract Documents. The Design-Build Entity will not permit the performance of Work on a Saturday, Sunday, any Holiday or during identified Schedule Constraints without Agency's written consent given after prior written notice to Agency's Representative. The Design-Build Entity shall be responsible for, and shall reimburse Agency for, all inspection costs outside regular working hours, including overtime.

#### 6.5 Progress Meetings.

- A. The Design-Build Entity shall schedule and hold regular on-Site progress meetings at least weekly and at other times as requested by the Agency or as required by progress of the Work. The Design-Build Entity, Agency's Representative, and all Subcontractors active on the Site shall attend each meeting. The Design-Build Entity may at its discretion request attendance by representatives of its Suppliers, manufacturers, and other Subcontractors. Agency's Representative will preside at the progress meetings and will arrange for keeping and distributing the minutes. The purpose of the meetings is to review the progress of the Work, maintain coordination of efforts, discuss changes in scheduling, and resolve other problems which may develop. During each meeting, the Design-Build Entity shall present any issues which may impact its progress with a view to resolve these issues expeditiously.

#### 6.6 Cost-Loaded CPM Progress Schedule and Recovery Schedule.

- A. Design-Build Entity shall adhere to the Project Schedule, which shall be a cost-loaded CPM progress schedule established in accordance with the Contract Documents as it may be adjusted from time to time as provided below:
  - 1. Design-Build Entity shall submit to Agency's Representative for acceptance proposed adjustments in the Project Schedule that will not result in changing the Project Completion Date. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
  - 2. Proposed adjustments in the Project Schedule that will change the Project Completion Date shall be submitted in accordance with the requirements of the Contract Documents. Adjustments in the Project Completion Date may only be made by a Change Order.
  - 3. Should any of the following conditions exist, Agency may require Design-Build Entity to prepare, at no extra cost to Agency, a plan of action and a recovery schedule for completing the Work and achieving all contractual milestones within the Project Completion Date:
    - a. The Design-Build Entity's monthly progress report indicates delays that are, in the opinion of Agency, of sufficient magnitude that Agency questions the Design-Build Entity's ability to complete the Work;

- b. The Project Schedule shows the Design-Build Entity to be thirty (30) or more Days behind the critical path at any time during construction;
  - c. The Design-Build Entity desires to make changes in the logic or the planned duration of future activities of the Project Schedule which, in the opinion of Agency, are major in nature.
  - d. The recovery schedule shall include proposed revisions to the Project Schedule, demonstrating how Design-Build Entity intends to achieve all contractual milestones including contract completion within the Project Completion Date. The submittal shall include a narrative describing the actions planned by the Design-Build Entity to recover the schedule.
  - e. Design-Build Entity shall submit the recovery schedule within seven (7) Days of Agency's request:
    - (i) If Design-Build Entity asserts that Agency is responsible for the delay, failure to submit the recovery schedule within seven (7) Days of Agency's request will be considered a concurrent delay event attributable to Design-Build Entity, and Design-Build Entity shall only be entitled to non-compensable adjustments to the Project Completion Date.
    - (ii) If Design-Build Entity is responsible for the delay, this provision will not limit or affect Design-Build Entity's liability and failure to submit the recovery schedule with seven (7) Days of Agency's request may result in Agency withholding progress payments or other amounts due under the Contract Documents.
  - f. Design-Build Entity is responsible for all costs associated with the preparation and execution of the recovery schedule, including any necessary recovery actions, which may include, but are not limited to, assignment of additional labor, and/or equipment, shift or overtime work, expediting of submittals or deliveries, overlapping of activities or sequencing changes to increase activity concurrence.
  - g. Regardless of whether Agency directs Design-Build Entity to prepare a recovery schedule pursuant to this Article, Design-Build Entity shall promptly undertake appropriate action at no additional cost to Agency to recover the schedule whenever the current Project Schedule shows that the Design-Build Entity will not achieve a milestone and/or complete the Work within the Project Completion Date.
- B. Unless otherwise specified in the Contract Documents, Design-Build Entity 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 within the Project Completion Date.
- C. Failure of Agency's Representative to discover errors or omissions in schedules that it has reviewed, or to inform the Design-Build Entity that the Design-Build Entity,

Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Project Schedule shall not relieve the Design-Build Entity from its sole responsibility to perform and complete all Work on the Project within the Project Completion Date and shall not be a cause for an adjustment of the Project Completion Date or the Contract Price.

- D. The Design-Build Entity shall perform all Work on the Project in accordance with the current accepted Project Schedule.

#### 6.7 Materials.

- A. 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 materials furnished by the Design-Build Entity shall be of the most suitable grade for the purpose intended considering strength, ductility, durability, and best industry practice.
- B. All special warranties and guarantees required by the Contract Documents shall expressly run to the benefit of Agency. If required by Agency's Representative, Design-Build Entity 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.
- D. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. Design-Build Entity shall be entirely responsible for damage or loss by weather or other causes to materials or Work until Agency has accepted the Work. Materials shall be stored on the Project site in such manner so as not to interfere with any operations of Agency or any independent contractor.
- E. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Design-Build Entity warrants good title to all material, supplies, and equipment installed or incorporated in the work and agrees upon completion to deliver the Work to Agency free from any claims, liens, or encumbrances.
- F. Inspection of Materials.
  - 1. Materials furnished by the Design-Build Entity which will become a part of the Project shall be subject to inspection at any one or more of the following locations, as determined by Agency's Representative: at the place of production or manufacture, at the shipping point, or at the site of the Work. To allow sufficient time to provide for inspection, the Design-Build Entity shall submit to Agency's Representative, at the time of issuance, copies of purchase orders or other written instrument confirming procurement of the

materials, including drawings and other pertinent information, covering materials on which inspection will be made.

2. No later than fourteen (14) Days prior to manufacture of material, Design-Build Entity shall inform Agency's Representative, in writing, the date the material is to be manufactured.
3. The inspection of materials at any of the locations specified above or the waiving of the inspection thereof shall not impact whether the materials and equipment conform to the Contract Documents. Design-Build Entity will not be relieved from furnishing materials meeting the requirements of the Contract Documents due to Agency's inspection or lack of inspection of the equipment or materials. Acceptance of any materials will be made only after materials are installed in the Project.

## 6.8 Submittals.

### A. Industry Standard Submittals.

1. Design-Build Entity will identify in the Construction Documents all industry standard submittals for all materials, systems, and equipment incorporated into the Work.

### B. Schedule of Submittals.

1. Design-Build Entity will prepare and deliver a Schedule of Submittals to Agency's Representative that has been fully integrated with the Cost-Loaded CPM Progress Schedule and identifies each Submittal required by the Construction Documents as well as the date on which Design-Build Entity will deliver each Submittal to Agency's Representative. Each Submittal must be delivered to Agency's Representative at least thirty (30) Days prior to the date the material or equipment is scheduled to be incorporated into the Work. The Design-Build Entity is responsible for any schedule delays resulting from the Submittal process.
2. Design-Build Entity must submit all submittals required by the Construction Documents in accordance with the Schedule of Submittals. If Design-Build Entity fails to submit the submittals in accordance with the Schedule of Submittals, Design-Build Entity will be solely liable for any delays or impacts caused by the delayed submittal, whether direct or indirect. Design-Build Entity will be liable for the time calculated from the date the submittal is due until the date a compliant submittal is made. A compliant submittal will be one that is complete and satisfies the requirements of the Contract Documents.
3. Where a Submittal, Shop Drawing or Sample is required by the Construction Documents, any related Work performed prior to Agency's Representative's review and approval of the pertinent Submittal will be at the sole expense and responsibility of the Design-Build Entity.

### C. Submittal Procedures.

1. The Design-Build Entity will follow the following procedures for each Submittal, Shop Drawing and Sample required by the Contract Documents:
  - a. Transmit three (3) copies of each with a Submittal Transmittal.
  - b. Transmittals will be sequentially numbered. The Design-Build Entity to mark revised Submittals with original number and sequential alphabetic suffix.
  - c. Each Submittal will identify the Project, the Design-Build Entity, Subcontractor and supplier, pertinent Construction Document and detail number, and specification section number appropriate to the Submittal.
  - d. The Design-Build Entity must sign each Submittal, certifying that it has reviewed and approved the Submittal, verified products required, field dimensions, adjacent construction work, and that coordination of information is according to requirements of the Project and Contract Documents.
  - e. Identify variations in Contract Documents and product or system limitations that may differ and/or be detrimental to successful performance of completed Work.
  - f. When a Submittal is revised for resubmission, the Design-Build Entity shall promptly address Agency comments and resubmit. The Design-Build Entity shall identify changes made since previous submission.
  - g. Agency's review of Submittals shall not relieve the Design-Build Entity from responsibility for deviations from the Contract Documents unless the Design-Build Entity has, in writing, called Agency's attention to such deviations at time of submission and Agency's has taken no exception to the deviation. Agency's review of Submittals shall not relieve the Design-Build Entity from responsibility for errors in the Submittals.
  - h. Submittals not required by the Construction Documents or requested by Agency's Representative will not be acknowledged or processed.
  - i. Incomplete Submittals will not be reviewed by Agency's Representative. Delays resulting from incomplete submittals are not the responsibility of Agency's Representative.
  - j. The Design-Build Entity shall not be entitled to any extension of the Project Completion Date as a result of the Submittal process.

#### 6.9 Shop Drawing and Sample Submittal Procedures.

A. Before submitting each Shop Drawing or Sample, Design-Build Entity shall have:

1. 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;

2. Determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
  3. Determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
  4. Determined and verified all information relative to the Design-Build Entity's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
- B. With each Submittal, the Design-Build Entity shall give Agency's Representative 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, a specific notation made on each Shop Drawing or Sample submitted to Agency's Representative for review and approval of each such variation.

C. Shop Drawings.

1. 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 Agency's Representative the services, materials, and equipment Design-Build Entity proposes to provide and to enable Agency's Representative to review the information Representative for assessing conformance with information given and design concept expressed in Contract Documents. When required by individual Specification Sections, provide Shop Drawings signed and sealed by a professional engineer responsible for designing components shown on Shop Drawings. Shop Drawings must include signed and sealed calculations to support design in a form suitable for submission to and approval by authorities having jurisdiction. Design-Build Entity shall make revisions and provide additional information when required by authorities having jurisdiction.

D. Samples.

1. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as required to enable Agency's Representative to review the submittal for assessing conformance with information given and design concept expressed in Contract Documents. Samples should be of appropriate size and detail to assess functional, aesthetic, color, texture, patterns and finish selection.

E. Agency's Representative's Review.

1. Agency's Representative will review Shop Drawings and Samples in accordance with the Schedule of Submittals. Agency's Representative's review and acceptance will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Project, 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. Agency's Representative'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 design or 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. Agency's Representative's review and acceptance shall not relieve the Design-Build Entity from responsibility for any variation from the requirements of the Contract Documents unless Agency's Representative has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Submittal.
- F. The Design-Build Entity shall make corrections required by Agency's Representative and shall return three (3) corrected copies of Shop Drawings and Product Data, and submit, as required, new Samples for review and approval. The Design-Build Entity shall direct specific attention in writing to revisions other than the corrections called for by Agency's Representative on previous Submittals. Agency will review the first resubmittal of Shop Drawings at its cost. Agency reserves the right to reduce the Contract Price by Change Order for its cost for any subsequent reviews of Shop Drawing resubmittals.

#### 6.10 Construction Documents.

##### A. Construction Documents.

1. The A/E shall design the building systems and prepare the Construction Documents. The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. Agency's review of the Construction Documents shall be conducted in accordance with the approved Project Schedule with procedures set forth in this Article. Such review shall not relieve the Design-Build Entity from its responsibilities under the Contract. Such review shall not be deemed an approval or waiver by Agency of any deviation from, or of the Design-Build Entity's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the Document submitted by the Design-Build Entity and approved by Agency.
2. However, it is acknowledged by the parties hereto that inherent in a Design-Build concept, bridging or otherwise, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The Design-Build Entity will submit the Construction Document packages to Agency for review and approval in accordance with the agreed upon

schedule, unless otherwise approved in writing by Agency. The Project Schedule shall indicate the times for Agency to review the completion of each such portion of the Construction Documents and a reasonable time for review of same.

3. The Design-Build Entity shall submit completed packages of the Construction Documents for review by Agency at the times indicated on the Project Schedule and as defined in the Scheduling Specification. Meetings between the Design-Build Entity and Agency to review the Construction Document packages, shall be scheduled at least every two weeks, or as otherwise agreed to by the parties, and held so as not to delay Work on the Project. The Design-Build Entity will conduct these design meetings with Agency in accordance with the schedule approved by Agency. The Design-Build Entity will be responsible for preparing and circulating for the parties review, design meeting minutes from all such meetings.

B. Field Engineering.

1. The Design-Build Entity shall retain and pay expenses of a civil engineer or land surveyor to establish on the Project site the required reference points and benchmarks, establish building lines and elevations, check for building framing, plumbness, and establish on building frame the required basic grid lines. The engineer or land surveyor shall be properly licensed in the State of California.
2. The Design-Build Entity shall locate and protect control points prior to starting Work on the Project site and preserve permanent reference points during construction, and shall require the engineer or surveyor to replace control points which become lost or destroyed.

C. Geotechnical and Survey.

1. Agency may provide a geotechnical report to Design-Build Entity that shall not be considered a part of the Contract Documents and shall be informational only and may not be relied upon by Design-Build Entity to form its basis of design. Design-Build Entity shall be responsible for obtaining its own geotechnical report which includes supporting data, findings and recommendations; and also with a legal description and a project survey, as necessary, which shall become a part of the Contract Documents. The Design Work shall be consistent with both the findings and recommendations of the Design-Build Entity's geotechnical report and legal description and Project survey, or such other geotechnical recommendations obtained by Design-Build Entity at its sole cost and expense.
2. The Design-Build Entity shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation work.
3. Any additional tests, borings, etc. necessary to support the Construction Documents shall be the responsibility of the Design-Build Entity.

6.11 Dust Control.

- A. Design-Build Entity, at its expense, shall maintain all excavations, embankments, haul roads, permanent access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry accepted methods of dust control suitable for the area involved, such as sprinkling, chemical treatment, light bituminous treatment or similar methods, will be permitted.

6.12 Air Pollution.

- A. To the extent applicable, Design-Build Entity must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management Agency (SCAQMD) and/or California Air Resources Board (CARB). Although the SCAQMD and CARB limits and requirements are more broad, Design-Build Entity shall specifically be aware of their application to "portable equipment", which definition is considered by SCAQMD and CARB to include any item of equipment with a fuel-powered engine. Design-Build Entity shall indemnify Agency against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Design-Build Entity, its sub-consultants, or others for whom Design-Build Entity is responsible under its indemnity obligations provided for in this Agreement.
- B. The Design-Build Entity shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements. Design-Build Entity shall not discharge into the atmosphere from any source whatever smoke, dust, or other air contaminants in violation of the laws, rules, and regulations of the governmental entities having jurisdiction.

6.13 Patent Fees and Royalties.

- A. Design-Build Entity 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 Agency or Agency's Representative, 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 Agency in the Contract Documents.
- B. To the fullest extent permitted by Applicable Laws, Design-Build Entity shall indemnify, defend, and hold harmless Agency and Agency's Representative, and the officers, directors, members, 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 or specified in the Contract Documents and identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

6.14 Permits and Licenses.

- A. Design-Build Entity shall obtain and pay for all other permits and licenses required for the Work, including excavation permit and permits for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under jurisdiction of public agencies other than Agency.
- B. The Design-Build Entity shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the Performance Specifications, drawings, or by governing authorities, except for such off-site inspections identified as Agency's responsibility in the Contract Documents.
- C. Before acceptance of the Work, the Design-Build Entity shall submit all licenses, permits, certificates of inspection and required approvals to Agency.

6.15 Applicable Laws.

- A. Design-Build Entity shall give all notices required by and shall comply with all Applicable Laws applicable to the performance of the Work. Except where otherwise expressly required by Applicable Laws, neither Agency nor Agency's Representative shall be responsible for monitoring Design-Build Entity's compliance with any Applicable Laws. If Design-Build Entity performs any Work knowing or having reason to know that it is contrary to Applicable Laws, Design-Build Entity 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.

6.16 Labor Laws and Design-Build Entity's Obligations.

A. Hours of Work.

- 1. The Design-Build Entity and Subcontractors shall furnish sufficient forces to ensure the prosecution of the Work on the Project in accordance with the Construction Schedule and in such a manner to allow for the full and adequate completion of the Project within the Project Completion Date.
- 2. Work on the Project shall be performed during regular working hours, except that in the event of an emergency or when required to complete the Work on the Project in accordance with job progress, Work may be performed outside of regular working hours with advance written notice to Agency. Permissible working hours shall be between 7:00 a.m. to 3:30 p.m. and shall not be changed except with consent of Agency.

3. Eight (8) hours of work shall constitute a legal day's work. The Design-Build Entity and each Subcontractor shall forfeit, as penalty to Agency, twenty-five dollars (\$25) for each worker employed in the execution of Work on the Project by the Design-Build Entity or any Subcontractor for each day during which such worker is required or permitted to work more than eight (8) hours in any one day and forty (40) hours in any week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, except as provided in Labor Code Section 1815.
4. If the work done after hours is required by the Contract to be done outside the Design-Build Entity's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by Agency. If Agency allows the Design-Build Entity to do Work outside regular working hours for the Design-Build Entity's own convenience, the costs of any inspections required outside regular working hours shall be invoiced to the Design-Build Entity by Agency and deducted from the next progress payment. If the Design-Build Entity elects to perform Work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be invoiced to the Design-Build Entity by Agency and deducted from the next progress payment.
5. No Work on the Project or other activities by or on behalf of the Design-Build Entity which presents a hazard or unreasonable disruption to Agency staff shall be allowed during normal working hours. The determination as to whether Work on the Project or some other activity presents a hazard or constitutes an unreasonable disruption to Agency staff shall be made by and pursuant to the sole discretion of a representative of Agency. All Work on the Project or other activities which could present a hazard or unreasonable disruption to Agency staff shall be performed before or after normal working hours, on weekends, or on an Agency recognized holiday. Neither the Design-Build Entity nor its Subcontractors or anyone working on behalf of the Design-Build Entity or Subcontractors shall be entitled to additional compensation or an extension of the Project Completion Date for having to arrange their Work schedule so as not to violate the provisions of this Article 6.17A. The Design-Build Entity, Subcontractors and persons working on behalf of the Design-Build Entity shall be expected to arrange such Work and other activities in advance so as to avoid creating monetary or time impacts.

**B. Wage Rates, Travel, and Subsistence.**

1. The Design-Build Entity is aware of the requirements of Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since the Work on the Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, the Design-Build Entity agrees to fully comply with such Prevailing Wage Laws. Agency has obtained the prevailing wage rates from the Director of the Department of Industrial Relations, State of California. Copies of the prevailing

wage rates are on file at Agency's office and shall be made available to any interested party on request. the Design-Build Entity shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform the Project available to interested parties upon request, and shall post copies at the Design-Build Entity's principal place of business and at the Project site. The Design-Build Entity shall defend, indemnify and hold Agency, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws.

2. Pursuant to Labor Code Section 1775, the Design-Build Entity is hereby advised that in the event that the Design-Build Entity fails to pay prevailing wages, the Design-Build Entity will be held liable for penalties and for shortfalls in wages and such amounts may be withheld from progress payments. the Design-Build Entity and each Subcontractor shall forfeit as a penalty to Agency not more than two hundred dollars (\$200) for each Day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each Day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Design-Build Entity.
3. The Design-Build Entity shall post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

C. Labor Compliance/Payroll Records.

1. Pursuant to Labor Code Section 1776, the Design-Build Entity and each Subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the Project. The Design-Build Entity shall certify under penalty of perjury that records maintained and submitted by the Design-Build Entity are true and accurate. The Design-Build Entity shall also require Subcontractor(s) to certify weekly payroll records under penalty of perjury.
2. In accordance with Labor Code section 1771.4, the Design-Build Entity and each Subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on a weekly basis and in the format prescribed by the DIR. This may include electronic submission. Design-Build Entity shall ensure full compliance with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement and all other applicable labor law.
3. Any stop orders issued by the DIR against Design-Build Entity or any Subcontractor that affect Design-Build Entity's performance of Work, including any delay, shall be Design-Build Entity's sole responsibility. Any delay arising

out of or resulting from such stop orders shall be considered Design-Build Entity caused delay subject to any applicable liquidated damages and shall not be compensable by the Agency. Design-Build Entity shall defend, indemnify and hold the Agency, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Design-Build Entity or any Subcontractor.

4. The payroll records described herein shall be certified and submitted by the Design-Build Entity at a time designated by the Agency. The Design-Build Entity shall also provide the following:
  - a. A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
  - b. A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.
5. Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.
6. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, the Agency, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Design-Build Entity awarded the Contract or performing the contract shall not be marked or obliterated.
7. In the event of noncompliance with the requirements of this Article 6.17C, the Design-Build Entity shall have ten (10) Days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance with this Article 6.17C. Should noncompliance still be evident after such ten (10) day period, the Design-Build Entity shall, as a penalty to the Agency, forfeit One Hundred Dollars (\$100.00) for each day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of DIR, such penalties shall be withheld from contract payments.
8. In submitting the Proposal on this Project, it shall be the Design-Build Entity's sole responsibility to evaluate and include the cost of complying with all labor compliance requirements under this Contract and Applicable Law in its Proposal.
9. The Design-Build Entity shall include provisions of this Article 6.17C in all Subcontracts and require Subcontractors to comply with these provisions at no additional cost to Agency.

D. Apprentices.

1. The Design-Build Entity's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of

apprentices by the Design-Build Entity or any Subcontractor. The Design-Build Entity shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Sections 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from DIR, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices. Knowing violations of Labor Code section 1777.5 will result in forfeiture not to exceed one hundred dollars (\$100.00) for each calendar day of non-compliance pursuant to Labor Code section 1777.7.

E. Nondiscrimination.

1. Pursuant to Labor Code section 1735 and other applicable provisions of law, the Design-Build Entity and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap on this Work. The Design-Build Entity will take affirmative action to insure that employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap.

F. Workers' Compensation.

1. Pursuant to Labor Code section 1860, Design-Build Entity shall secure the payment of workers' compensation to its employees in accordance with the provisions of Labor Code section 3700. By its signature hereunder, Design-Build Entity certifies that he is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Work.

G. Public Works Registration.

1. Pursuant to Labor Code sections 1725.5 and 1771.1, the Design-Build Entity and its Subcontractors must be registered with the Department of Industrial Relations prior to the execution of a contract to perform public works. By entering into this Contract, Design-Build Entity represents that it is aware of the registration requirement and is currently registered with the DIR. Design-Build Entity shall maintain a current registration for the duration of the Project. Design-Build Entity shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any Subcontract and ensure that all Subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Project.

6.17 Debarment

- A. Contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a

subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the Agency. The Design-Build Entity shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

6.18 Taxes.

- A. The Design-Build Entity shall pay all sales, consumer, use, and other similar taxes required to be paid in accordance with the Applicable Law of the place of the Project which are applicable during the performance of the Project. In accordance with Revenue and Taxation Code Section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which the Design-Build Entity will be responsible.

6.19 Use of Site and Other Areas.

- A. Limitation on Use of Site and Other Areas. The Design-Build Entity shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Applicable Laws, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Design-Build Entity shall assume full responsibility for any damage to any such land or area, or to the Agency or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work. Should any claim be made by any such Agency or occupant because of the performance of the Work, Design-Build Entity shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
- B. Removal of Debris. During the progress of the Work Design-Build Entity shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to Applicable Laws.
- C. Cleaning. Prior to Completion of the Work, Design-Build Entity shall clean the Site and the Work and make it ready for utilization by Agency. At the completion of the Work Design-Build Entity 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. Design-Build Entity shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Build Entity subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.20 Utility Usage.

- A. All temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by Design-Build Entity. Design-Build Entity shall provide necessary temporary distribution systems, including

meters, if necessary, from distribution points to points on the Work where the utility is needed. Upon completion of the Work, Design-Build Entity shall remove all temporary distribution systems. All permanent meters installed shall be listed in the Design-Build Entity's name until the Work is accepted. If Work is to be performed in existing Agency's facilities, Design-Build Entity may, to the extent authorized by Agency in writing, use Agency's existing utilities. If Design-Build Entity uses Agency utilities, it shall compensate Agency for utilities used.

#### 6.21 Record Drawings.

- A. Design-Build Entity shall maintain in a safe place at the Site one record copy of the Contract Documents and written interpretations and clarifications in good order and annotated to show changes made during construction. On these, it shall mark all Project conditions, locations, configurations, and any other changes or deviations which may vary from the information represented in the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Said record drawings shall be supplemented by any detailed sketches as necessary or directed to fully indicate the Work as actually constructed. These master record drawings of the as-built conditions, including all revisions made necessary by Addenda and Change Orders shall be maintained up-to-date during the progress of the Project. Red ink shall be used for alterations and notes. Notes shall identify relevant Change Orders by number and date.
- B. Record drawings shall be accessible to Agency's Representative at all times during the construction period. Upon Completion of the Project and as a condition of final acceptance, the Design-Build Entity shall finalize and deliver a complete set of record drawings to Agency's Representative. The information submitted by the Design-Build Entity will be assumed to be correct, and the Design-Build Entity shall be responsible for, and liable to Agency, for the accuracy of such information, and for any errors or omissions which may or may not appear on the record drawings.

#### 6.22 Safety and Protection.

- A. Design-Build Entity shall be solely responsible for 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. Design-Build Entity 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. Design-Build Entity shall comply with all Applicable Laws 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. Design-Build Entity 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. Design-Build Entity shall comply with the applicable requirements of Agency's safety programs, if any. Design-Build Entity shall inform Agency and Agency's Representative of the specific requirements of Design-Build Entity's safety program with which Agency's and Agency's Representative's employees and representatives must comply while at the Site.

- C. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Design-Build Entity, 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 Design-Build Entity.

6.23 Safety Representative.

- A. Design-Build Entity shall designate an OSHA-certified and experienced safety representative at the Project site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs. Design-Build Entity shall provide Agency's Representative the name and contract information of the safety representative in writing. Design-Build Entity shall provide Agency's Representative the name and contact information of the safety representative in writing.

6.24 Hazard Communication Programs.

- A. Design-Build Entity shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Project site in accordance with Applicable Laws.

6.25 Emergencies.

- A. In an emergency affecting safety of life or of Work or of adjoining property, Design-Build Entity, without special instruction or authorization from Agency, shall act to prevent such threatened loss or injury; and Design-Build Entity shall so act, without appeal, if directed or instructed by Agency. Any compensation claimed by Design-Build Entity on account of emergency work shall be determined in accordance with the Contract Documents.

6.26 Guarantee.

- A. The Design-Build Entity unconditionally guarantees all Work on the Project will be completed in accordance with the requirements of the Contract Documents, and will remain free of defects in workmanship and materials for a period of one (1) year from the date of Project Completion, unless a longer guarantee period is specifically called for in the Contract Documents. However, a shorter guarantee period shall apply to landscape plants, trees, turf, etc. Trees or shrubs greater than one gallon in size at the time of planting shall be guaranteed for one (1) year, and all other plant material

shall be guaranteed for six (6) months. The Design-Build Entity shall repair or replace any and all Work, together with any adjacent work that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the guarantee period specified in the Contract Documents, without any expense whatsoever to Agency; ordinary wear and tear and abuse excepted.

- B. The Design-Build Entity further agrees, within fourteen (14) Days, or as such shorter period as may be designated for emergency repairs, after being notified in writing by Agency, of any Work not in accordance with the requirements of the Contract Documents or any defects in the Work on the Project, that the Design-Build Entity shall commence and execute, with due diligence, all Work necessary to fulfill the terms of the guarantee. If Agency finds that the Design-Build Entity fails to perform any of the Work under the guarantee, Agency may elect to have the Work completed at the Design-Build Entity's expense and the Design-Build Entity will pay costs of the Work upon demand. Agency will be entitled to all costs, including reasonable attorneys' fees and consultants' expenses necessarily incurred upon the Design-Build Entity's refusal to pay the above costs.
- C. Where Defective Work (or damage to other Work resulting therefrom) has been corrected or removed and replaced, the Warranty period hereunder with respect to such Work shall be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.
- D. Design-Build Entity's obligations under this Article are in addition to any other obligation or warranty and do not limit Agency's rights and remedies pursuant to California Code of Civil Procedure sections 337.10 and 337.15. or any other Applicable Law.
- E. Notwithstanding the foregoing provisions, in the event of an emergency constituting an immediate hazard to health or safety of Agency employees, property, or licensees, Agency may undertake, at the Design-Build Entity's expense and without prior notice, all Work necessary to correct such condition(s) when it is caused by Work of the Design-Build Entity not being in accordance with the requirements of the Contract Documents.

#### 6.27 Warranty.

- A. The Design-Build Entity warrants to Agency that any and all materials, equipment and furnishings incorporated in the Project will be of good quality and new unless otherwise required or permitted by the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The foregoing warranty excludes improper operation, or normal wear and tear under normal usage under the control of Agency. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of Agency to maintain an action for breach of contract against the Design-Build Entity. Nothing contained in these Contract Documents pertaining to warranty or guarantee

shall be construed as limiting any other rights Agency may have at law, including rights for latent defects under Code of Civil Procedure Section 337.15.

6.28 Indemnification.

- A. To the fullest extent allowed by law (including without limitation Civil Code Sections 2782 and 2782.8), the Design-Build Entity shall defend (with counsel of Agency's choosing), indemnify and hold Agency, its officials, officers, agents, employees, and representatives free and harmless from and against any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, regardless of whether the allegations are false, fraudulent, or groundless, arising out of, related to, or in connection with any acts, omissions or willful misconduct of Design-Build Entity, its officials, officers, employees, agents, consultants, contractors, and Subcontractors arising out of or in connection with the performance of the Work or this Contract, including claims made by Subcontractors for nonpayment, and including without limitation the payment of all attorney's fees and other related costs and expenses except to the extent caused by the sole or active negligence or willful misconduct of the Agency. The Design-Build Entity shall defend, at the Design-Build Entity's own cost, expense and risk, with counsel of Agency's choosing, any and all such suits, actions or other legal proceedings of every kind that may be brought or instituted against Agency, its officials, officers, agents, employees and representatives. The Design-Build Entity shall pay and satisfy any judgment, award or decree that may be rendered against Agency, its officials, officers, agents, employees and representatives, in any such suit, action or other legal proceeding. The Design-Build Entity shall reimburse Agency, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The Design-Build Entity agrees to pay, or reimburse Agency and Agency's Representative, for regulatory agency or court imposed fees, fines, or penalties imposed on Agency and Agency's Representative arising from the Design-Build Entity's failure to complete the Project in a timely manner and/or in accordance with the Contract Documents and any applicable permits or Applicable Laws. The Design-Build Entity's responsibility and obligation to pay, or reimburse Agency and Agency's Representative, for these fees, fines, or penalties shall be in addition to the assessment of liquidated damages for late completion of the Project. This indemnity provision shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable. Insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Design-Build Entity.
- B. If the Design-Build Entity's obligation to defend, indemnify, and/or hold harmless arises out of the Design-Build Entity's performance as a "design professional" (as that term is defined under Civil Code Section 2782.8), then, and only to the extent required under Civil Code Section 2782.8, which is fully incorporated herein, the Design-Build Entity's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design-Build Entity, and, upon Design-Build Entity obtaining a final adjudication by a court of competent jurisdiction, Design-Build Entity's liability for such claim, including the cost to defend, shall not exceed the Design-Build Entity's proportionate percentage of fault.

- C. In claims against any person or entity indemnified under this Article that are made by an employee of the Design-Build Entity or any Subcontractor, a person indirectly employed by the Design-Build Entity or any Subcontractor, or anyone for whose acts the Design-Build Entity or any Subcontractor may be liable, the indemnification obligation under this Article shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for Design-Build Entity or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts or any other insurance limitations.
- D. In the event the Design-Build Entity and one or more than one other party is connected with an accident or occurrence covered by this indemnification, then all such parties shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among such indemnifying parties for the loss and expense of any such indemnification shall be resolved without jeopardy to any indemnitee listed in this Article.
- E. The provisions of this Article shall survive the termination of this Contract howsoever caused, and no payment, partial payment, or acceptance of occupancy in whole or part of the Work shall waive or release any of the provisions of this Article.

#### 6.29 Superintendent.

- A. The Design-Build Entity shall employ a competent Superintendent satisfactory to Agency who shall be in attendance at the Project site at all times during the performance of the Construction Work. Superintendent shall represent the Design-Build Entity and communications given to, and received from, Superintendent shall be binding on the Design-Build Entity. Superintendent must be able to proficiently speak, read and write in English. Failure to maintain a Superintendent on the Project site at all times Work on the Project is in progress shall be considered a material breach of this Contract, entitling Agency to terminate the Contract or, alternatively, issue a Suspension Order until the Superintendent is on the Project site. If, by virtue of issuance of said Suspension Order, the Design-Build Entity fails to complete the Contract by the Project Completion Date, the Design-Build Entity will be assessed Liquidated Damages in accordance with the Contract.
- B. Any changes to the assignment of the Superintendent shall receive prior written approval from Agency. The Superintendent may not perform the work of any trade, pick up materials, or perform any work not directly related to the supervision and coordination of the Construction Work at the Project site when work is in progress. In addition, the Design-Build Entity will provide all key personnel identified in the Contract for the time periods stipulated.

#### 6.30 Project Staffing.

- A. The Design-Build Entity and each Subcontractor shall: furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work on the Project; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of

skilled and fit workers on the job to complete all Work on the Project in accordance with all requirements of the Contract.

- B. Agency shall have the right, but not the obligation, to require the removal from the Project of the Design-Build Entity's Representative, or any other superintendent, staff member, agent, or employee of any contractor, Subcontractor, material or equipment supplier, or any other entity working on the Project. Removal may be required for any reason designated by Agency, including but not limited to, failure or refusal to perform Work on the Project in a manner acceptable to Agency, uncooperative or incompetent performance on the Project, threatening the adequate or timely completion of the Project, or threatening the safety of persons or property.

#### 6.31 Compliance With State Storm Water Permit for Construction.

- A. Storm, surface, ground, nuisance, or other waters may be encountered at various times during the Work. Design-Build Entity hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Proposal accordingly, and assumes any and all risks and liabilities arising therefrom.
- B. Design-Build Entity shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the Agency's ordinances regulating discharges of storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 et seq.); and any and all regulations, policies, or permits issued pursuant to any such authority. These include, but are not limited to California Regional Water Quality Control Boards (Santa Ana and San Diego Regions) Order No. R8-2009-0030 (NPDES Permit No. CAS 618030), Order No. R9-2009-0002, Order No. R8-2009-0045, Order No. R9-2013-0001 as amended by Order Nos. R9-2015-0001 and R9-2015-0100, and State Water Resources Control Board Order No. 2010-0014-DWQ, Order No. 2009-0009-DWQ, and Order No. 2012-0006-DWQ, and any amendment or renewal thereof.
- C. The Design-Build Entity shall be required to comply with all conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. The Design-Build Entity shall be responsible for filing the Notice of Intent and for obtaining the Permit. If applicable, the Design-Build Entity shall be solely responsible for preparing and implementing a Stormwater Pollution Prevention Plan ("SWPPP") prior to initiating work on the Project. It shall be the Design-Build Entity's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP to address storm water impacts. The Design-Build Entity shall comply with all requirements of the State Water Resources Control Board. The Design-Build Entity shall include all costs of compliance with specified requirements in the Price. For those Sites where construction activity results in the disturbance of less than one acre of total land area

and/or do not need coverage under the Permit, the Design-Build Entity shall be responsible for preparing and implementing an Erosion and Sediment Control Plan in accordance with California Regional Water Quality Control Board Order No. R8-2009-0030, Order No. R9-2013-0001 as amended by Order Nos. R9-2015-0001 and R9-2015-0100 and any amendment or renewal thereof.

- D. The Design-Build Entity shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. The Design-Build Entity shall provide copies of all reports and monitoring information to the Agency's Representative. The Design-Build Entity shall comply with the lawful requirements of any applicable municipality, the County, drainage authority, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- E. Failure to comply with laws, regulations, and ordinances listed in this Article is a violation of federal and state law. Notwithstanding any other indemnity contained in this Contract, Design-Build Entity agrees to indemnify and hold harmless the Agency, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the Agency, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the Agency, its officials, officers, agents, employees or authorized volunteers. Agency reserves the right to defend any enforcement action or civil action brought against the Agency for Design-Build Entity's failure to comply with any applicable water quality law, regulation, or policy. Design-Build Entity hereby agrees to be bound by, and to reimburse the Agency for the costs associated with, any enforcement action and/or settlement reached between the Agency and any relevant enforcement entity.

6.32 Monthly Report.

- A. The Design-Build Entity shall prepare and submit to Agency, during both the Construction Documents Phase and the Construction Phase, monthly reports on the Work accomplished during the prior monthly period. Such reports shall be prepared in a manner and in a format approved by Agency. Reports shall be furnished at the time of submission of each monthly application for payment. The monthly report shall also set forth the Design-Build Entity's projected progress for the forthcoming month.

6.33 Other Reports.

- A. The Design-Build Entity will cooperate with Agency in preparing, or causing to be prepared, all or part of, periodic project reports required by state or federal agencies.

6.34 Notice of Labor Dispute.

- A. If the Design-Build Entity has knowledge that any actual or potential labor dispute is delaying, or threatens to delay, the timely performance of Work on the Project, the

Design-Build Entity shall immediately give written notice including all relevant information to Agency.

- B. The Design-Build Entity agrees to insert the substance of this Article 6.36 in any subcontract to which a labor dispute may delay the timely performance of Work on the Project, except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify the next higher tier Subcontractor or the Design-Build Entity, as the case may be, of all relevant information concerning the dispute.

6.35 Documents and Samples At Project Site.

A. The Design-Build Entity shall maintain the following at the Project site:

1. One current copy of the Contract Documents (including Construction Documents), in good order and marked to record current changes and selections made during construction.
2. One copy of the prevailing wage rates applicable to the Project.
3. The current accepted Project Schedule.
4. Shop Drawings, Product Data, and Samples.
5. All other required submittals.

6.36 Cutting, Fitting, and Patching.

A. The Design-Build Entity shall do all cutting, fitting, or patching work required to make all parts of the Project come together properly and to allow the Project to receive or be received by the work of Separate Contractors shown upon, or reasonably implied by, the Contract Documents. The Design-Build Entity shall not endanger the Project, or adjacent property by cutting, digging, or otherwise. The Design-Build Entity shall not cut or alter the work of any Separate Contractor without the prior written consent of Agency's Representative.

6.37 Access to Work.

A. Agency, Agency's Representative, their consultants, and other persons authorized by Agency will at all times have access to the Work on the Project wherever it is in preparation or progress. The Design-Build Entity shall provide safe and proper facilities for such access and for inspection.

6.38 Concealed Or Unknown Conditions.

A. Except and only to the extent provided otherwise in Articles 9 and 10, by signing the Contract, the Design-Build Entity agrees:

1. To bear the risk of concealed or unknown conditions, if any, which may be encountered in performing the Contract, as described in the Contract

Documents, and/or can reasonably be inferred by the Design-Build Entity based on its experience and expertise; and

2. That the Design-Build Entity's Contract Price for the Contract was made with full knowledge of this risk.

In agreeing to bear the risk of concealed or unknown conditions, the Design-Build Entity understands that, except and only to the extent provided otherwise in Articles 9 and 10, concealed and/or unknown conditions shall not excuse the Design-Build Entity from its obligation to achieve full completion of the Project within the Project Completion Date, and shall not entitle the Design-Build Entity to an adjustment of the Contract Price.

- B. If concealed or unknown conditions are encountered which require, in the opinion of Agency's Representative, design details which differ from those details shown in the Bridging Documents and Agency's Representative finds that such revised design details will cause an increase or decrease in the cost of, or the time required for performance of the Contract, and if Agency agrees with Agency's Representative's determinations, Agency will issue a Change Order modifying the Contract to provide for the change in design details and to provide for an adjustment in the Contract Price and/or Project Completion Date pursuant to Articles 9 and 10 following receipt of a Change Order Request.
- C. If the Design-Build Entity encounters concealed or unknown conditions that differ materially from those anticipated or expected, the Design-Build Entity shall notify Agency's Representative within three (3) Days in writing of such conditions so that Agency's Representative can determine if such conditions require design details which differ from those design details shown in the Bridging Documents. Design-Build Entity shall be liable to Agency for any extra costs incurred as a result of the Design-Build Entity's failure to give such notice. Design-Build Entity's failure to give such notice shall constitute a waiver by Design-Build Entity of any additional compensation.

#### 6.39 Liability for and Repair of Damaged Work.

- A. Design-Build Entity shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to Agency's acceptance of the Project as fully completed.

#### 6.40 Environmental Quality Protection

##### A. Landscape and Vegetation Preservation

1. The Design-Build Entity shall exercise care to preserve the natural landscape and vegetation, and shall conduct operations so as to prevent unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the Work. Movement of crews and equipment within the rights-of-way and over routes provided for access to the Work shall be performed in a manner to prevent damage to property. When no longer required, construction roads shall be restored to original contours. Upon completion of the Work, and following removal of construction facilities and required cleanup, land used for

construction purposes and not required for the completed installation shall be scarified and regraded, as required, so that all surfaces are left in a condition that will facilitate natural revegetation, provide for proper drainage, and prevent erosion.

#### B. Protected Species

1. If, in the performance of the Work, evidence of the possible occurrence of any Federally listed threatened or endangered plant or animal is discovered, the Design-Build Entity shall notify the Agency Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to Agency within 2 Days. The Design-Build Entity shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the endangered plant or animal. If directed by the Agency Representative, Design-Build Entity will refrain from working in the immediate area, suspend the Work in its entirety, or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Any Agency directed changes to the Work as a result of a siting will be pursuant to the Contract Documents. Any costs or delays incurred by Agency or the Design-Build Entity due to unreasonable or false notification of an endangered plant or animal will be borne by the Design-Build Entity.

#### C. Preservation of Historical and Archeological Resources

1. If, in the performance of the Work, Design-Build Entity should unearth cultural resources (for example, human remains, animal bones, stone tools, artifacts and/or midden deposits) through excavation, grading, watering or other means, the Design-Build Entity notify the Agency Representative immediately, giving the location and nature of the findings. The Design-Build Entity shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the cultural resource. If directed by the Agency Representative, Design-Build Entity will refrain from working in the immediate area, suspend the Work in its entirety, or re-sequence and/or alter its performance to ensure full compliance with all applicable permits, laws and regulations. The Design-Build Entity shall provide such cooperation and assistance as may be necessary to preserve the cultural resources for removal or other disposition. Any Agency directed changes to the Work as a result of the cultural resource will be pursuant to the Contract Documents. Should Design-Build Entity, without permission, injure, destroy, excavate, appropriate, or remove any cultural resource on or adjacent to the Site, it will be subject to disciplinary action, arrest and penalty under applicable law. The Design-Build Entity shall be principally responsible for all costs of mitigation and/or restoration of cultural resources related to the unauthorized actions identified above. Design-Build Entity shall be required to pay for unauthorized damage and mitigation costs to cultural resources (historical and archeological resources) as a result of unauthorized activities that damage cultural resources and shall indemnify Agency pursuant to the Contract Documents.

#### 6.41 Technical Manuals; Spare Parts.

- A. The Design-Build Entity shall submit technical operation and maintenance information for each item of mechanical, electrical and instrumentation equipment in an organized manner in the Technical Manual. It shall be written so that it can be used and understood by Agency's operation and maintenance staff. The Design-Build Entity shall furnish to Agency six (6) identical Technical Manuals. Each set shall consist of one or more volumes, each of which shall be bound in a standard binder.
- B. The Design-Build Entity shall furnish to Agency six (6) identical sets of spare parts information for all mechanical, electrical, and instrumentation equipment. The spare parts list shall include the current list price of each spare part. The spare parts list shall include those spare parts which each manufacturer recommends be maintained by Agency in inventory. Each manufacturer or supplier shall indicate the name, address, and telephone number of its nearest outlet of spare parts to assist Agency in ordering. The Design-Build Entity shall cross-reference all spare parts lists to the equipment numbers designated in the Contract Documents. The spare parts lists shall be bound in standard size, 3-ring binder.

## ARTICLE 7 -OTHER WORK AT THE PROJECT SITE

### 7.1 Related Work At Project Site.

- A. Nothing contained in the Contract Documents shall be interpreted as granting to Design-Build Entity exclusive occupancy at the Project site. Agency reserves the right to award separate contracts for, or to perform with its own forces, construction or operations related to the Work or other construction or operations at or affecting the Project site, including portions of Work on the Project which have been deleted by Change Order. The Design-Build Entity shall cooperate with Agency's employees or through other direct contracts, or have other work performed by utility owners (collectively, "Other Contractors"). If such other work is not noted in the Contract Documents, then written notice thereof will be given to the Design-Build Entity prior to starting any such other work. The Design-Build Entity shall participate with Agency and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. The Design-Build Entity shall make necessary revisions to the Project Schedule after such joint review.
- B. Design-Build Entity shall be solely responsible for all costs associated with coordinating its Work with Separate Contractors. Design-Build Entity shall not be entitled to additional compensation from Agency for damages resulting from such simultaneous, collateral, and essential Work. If necessary to avoid or minimize such damage or delay, Design-Build Entity shall redeploy its work forces to other parts of the Work, or adjust its Work schedule including reasonable acceleration of the Work. If a portion of the Work on the Project is dependent upon the proper execution or results of other construction or operations by Agency or Separate Contractors, the Design-Build Entity shall inspect such other design or construction or operations before proceeding with that portion of the Work on the Project. The Design-Build Entity shall promptly report to Agency's Representative apparent discrepancies or defects which render the other design, construction or operations unsuitable to receive the Work on the Project. Unless otherwise directed by Agency's Representative, the Design-Build Entity shall not proceed with the portion of the Work on the Project affected until apparent discrepancies or defects have been corrected. Failure of the Design-Build Entity to so report within a reasonable time after discovering such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by Agency or Separate Contractors is suitable to receive the Work on the Project, except as to defects not then reasonably discoverable.
- C. Design-Build Entity shall afford each Separate Contractor proper and safe access to the Project site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Design-Build Entity 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. Design-Build Entity shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Design-Build Entity may cut or alter others' work with the written consent of Agency's Representative and the others whose work will be affected.

- D. If the proper execution or results of any part of Design-Build Entity's Work depends upon work performed by Separate Contractors, Design-Build Entity shall inspect such other work and promptly report to Agency's Representative in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Design-Build Entity's Work. Design-Build Entity's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Design-Build Entity's Work except for latent defects and deficiencies in such other work.
- E. If any claims are made by Separate Contractors arising out of Design-Build Entity's performance of the Work, Design-Build Entity shall be responsible to immediately resolve the dispute and indemnify Agency pursuant to the Contract Documents.
- F. Agency's Representative shall arrange meetings with Separate Contractors performing work to plan coordination of construction activities but will not be responsible to direct coordination efforts. Any difference or conflict arising between Design-Build Entity and any Separate Contractor shall be submitted to Agency's Representative for a decision in the matter. Design-Build Entity shall comply with direction from Agency's Representative whose decision on coordination matters will be final.

#### 7.2 For Delays by Others.

- A. By entering into this Contract, Design-Build Entity acknowledges that there may be Separate Contractors on the Project site whose work will be coordinated with that of Design-Build Entity. Design-Build Entity expressly warrants and agrees that Design-Build Entity will cooperate with Separate Contractors and will do nothing to delay, hinder, or interfere with the work of Separate Contractors, Agency, or Agency's Representative. Design-Build Entity also expressly agrees that, in the event its Work is hindered, delayed, interfered with, or otherwise affected by a Separate Contractor, its sole remedy will be a direct action against the Separate Contractor. Design-Build Entity will have no remedy, and hereby expressly waives any remedy, against Agency or Agency's Representative on account of delay, hindrance, interference, or other event caused by Separate Contractor.

#### 7.3 Design-Build Entity's Delay Or Damage.

- A. Design-Build Entity shall be liable to Agency and any Separate Contractor for the direct delay and disruption costs or damages incurred by such Separate Contractor as a result of Design-Build Entity's wrongful action or inactions.

### **ARTICLE 8 -SUBCONTRACTORS**

#### 8.1 Award of Subcontracts and Other Contracts for Portions of The Work.

- A. All Subcontractors shall be retained in accordance with the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 *et seq.*). The Design-Build Entity shall not, without the consent of Agency: substitute any person or entity as a Subcontractor in place of the Subcontractor designated in the Proposal; or permit any such Subcontractor to be assigned or transferred, or allow it to be performed by any person or entity other than the original Subcontractor listed in the

Proposal. Any assignment or substitution made without the prior written consent of the awarding authority or not in compliance with the Subletting and Subcontracting Fair Practices Act shall be void, and the assignees shall acquire no rights in the Contract. Any consent, if given, shall not relieve the Design-Build Entity or its Subcontractors from their obligations under the terms of the Contract. All requests by the Design-Build Entity for substitution will be handled through Agency's Representative.

- B. The Design-Build Entity shall submit to Agency's Representative after selecting Subcontractors pursuant to an open and competitive process, an updated expanded list of Subcontractors, along with their respective addresses, telephone numbers, e-mail addresses and contractor's license numbers. The expanded list of Subcontractors shall be provided and/or updated no later than ten (10) Days after the date which the Design-Build Entity awards a contract for any portion of the Work to a Subcontractor not originally listed in the Design-Build Entity's Proposal.
- C. Agency has the right to request all documentation that supports the Design-Build Entity's selection of a Subcontractor. Agency shall have the right of final approval as to the qualifications of a Subcontractor to perform its designated scope of Work. Within Agency's discretion, any Subcontractor may be deemed not qualified to perform Work on the Project if Agency or Agency's Representative determines that the Subcontractor fails to meet the requirements of the Contract Documents, or for any other reason.
- D. Any increase in the cost of the Work on the Project resulting from the replacement or substitution of a Subcontractor pursuant to this Article or as required by Agency or Agency's Representative pursuant to this Article, shall be borne solely by the Design-Build Entity. The Design-Build Entity shall not be entitled to any increase in Contract Price or an extension of Project Completion Date due to such replacement or substitution.
- E. Any part of the Work on the Project performed for the Design-Build Entity by a Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require the Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Design-Build Entity by the terms of the Contract Documents, to assume toward the Design-Build Entity all the obligations and responsibilities which the Design-Build Entity assumes towards the Agency by the Contract Documents, and to perform such portion of the work on the Project in accordance with the Contract Documents. Each such subcontract shall preserve and protect the rights of the Agency under the Contract Documents, with respect to the work to be performed by Subcontractor, so that subcontracting thereof will not prejudice such rights. The Design-Build Entity is responsible for reviewing and coordinating the Work of and among his Subcontractors and Design Professionals. This review and coordination includes, but is not limited to, resolution of any inconsistencies, errors or omissions.

## 8.2 Contingent Assignment of Subcontracts.

- A. The Design-Build Entity hereby assigns to Agency all its interest in first tier subcontracts now or hereafter entered into by the Design-Build Entity for

performance of any part of the Work on the Project. The assignment will be effective upon acceptance by Agency in writing and only as to those subcontracts which Agency designates in writing. Agency may accept said assignment at any time during the course of the Work on the Project and prior to Final Completion in the event of a suspension or termination of the Design-Build Entity's rights under the Contract Documents. Such assignment is part of the consideration to Agency for entering into the Contract with the Design-Build Entity and may not be withdrawn prior to Final Completion.

## **ARTICLE 9 -CHANGE IN CONTRACT PRICE; CHANGE IN CONTRACT TIMES**

### **9.1 Contract Change Orders.**

- A. Agency, without invalidating the Contract, may order changes in the work consisting of additions, deletions or other revisions, and the Contract Price and/or Contract Time shall be adjusted accordingly. All such changes in the Work shall be authorized by written Change Order and shall be performed under the applicable conditions of the Contract Documents. A Change Order signed by the Design-Build Entity indicates the Design-Build Entity's agreement therewith, including any adjustment in the Contract Price and/or Contract Time, and the full and final settlement of all costs (direct, indirect and overhead) related to the work authorized by the Change Order. No changes in the Work covered by this Contract shall exonerate any surety or any bond given in connection with this Contract. No dispute, disagreement or failure of the Parties to reach agreement on the terms of a Change Order shall relieve the Design-Build Entity from the obligation to proceed with performance of the changed work promptly and expeditiously. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract Documents, and shall be subject to all terms, conditions and provisions of the original Contract Documents.
  
- B. Design-Build Entity shall promptly execute changes in the Work as directed in writing by Agency even when the parties have not reached agreement on whether the change increases the scope of Work or affects the Contract Price or Contract Time, if any. All claims for additional compensation to the Design-Build Entity shall be presented in writing. No claim will be considered after the work in question has been done unless a written Change Order has been issued or a timely written notice of claim has been made by Design-Build Entity. Design-Build Entity shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done.

### **9.2 Contract Change Order Procedures.**

#### **A. Agency Directive**

- 1. The Agency may direct changes in the Work, including deletion of Work, by delivering a written work directive. To the extent the work directive results in a change to the Contract Price and/or Contract Time, Design-Build Entity must timely submit a Change Order Request and comply with all Change Order procedures in accordance with this Article. Notwithstanding issuance of a work directive, Design-Build Entity's failure to timely submit a Change Order

Request shall constitute a waiver by Design-Build Entity of any adjustment to the Contract Price and/or Contract Time for work performed under the directive. The Agency shall not be liable to Design-Build Entity for work performed or omitted by Design-Build Entity in reliance on verbal orders.

2. The Agency shall have the right to order changes in the Work by a unilateral Change Order setting forth the Agency's determination of the reasonable additions or savings in the Contract Price and/or Contract Time.

#### B. Design-Build Entity Change Order Requests

1. The Design-Build Entity agrees that one of the purposes of the Contract is to minimize the risk for Change Orders and reduce the likelihood of Change Orders. Change Order Requests shall be kept to a minimum.
2. The Design-Build Entity may request changes to the Contract Price and/or Contract Time for Agency directed changes in the Work or for Additional Work caused by the acts, errors, or omissions of the Agency, or caused by unforeseen conditions if, and only if, the Design-Build Entity follows the procedures specified in this Article. Work that should or could have been included as part of the Construction Documents or work resulting from ambiguities in the Construction Documents shall not be considered Additional Work and the Agency will not issue a Change Order for said work.
3. If Design-Build Entity intends to initiate a Change Order Request, then Design-Build Entity shall provide the Agency with written notice of the underlying facts and circumstances that give rise to the proposed change. Design-Build Entity shall submit the notice of change/delay prior to performance of the work and no later than five (5) Days after the Agency's work directive or Design-Build Entity discovers the circumstances causing the need for the Change Order. To be considered valid and complete, the notice of change/delay shall include a general statement of the circumstances giving rise to the notice of change/delay and a reasonable order of magnitude estimate of the additional costs and/or time. If the circumstances give rise to both a cost adjustment and time extension, Design-Build Entity shall submit the notice of change and notice of delay concurrently.
4. A Change Order Request will only be deemed timely submitted if it is submitted prior to incurring any expense and within fourteen (14) Days from Design-Build Entity's notice of change/delay.
5. A Change Order Request must state that it is a Change Order Request, state and justify the reason for the request, and specify the amount of any requested adjustment to the Contract Price and/or Contract Time, if any. The Change Order Request shall include all of the following information (unless inapplicable to the change): A detailed description of the circumstances giving rise to the request; A complete itemized cost proposal, including itemized pricing for costs; Supporting documentation for all costs; A time impact analysis showing the impact of the delay to the critical path to completion; If any added costs or information cannot be determined at the

time of the Change Order Request, the reason the costs or information cannot be determined at the time; and Certification to the accuracy of the Change Order Request under penalty of perjury. The time impact analysis shall be in the critical path method format and shall show the sequencing of all critical and non-critical new activities and/or activity revisions affected by the delay, with logic ties to all affected existing activities noted on the schedule. The Agency may demand, and Design-Build Entity shall provide, any additional information supporting the Change Order Request, including but not limited to native electronic format version of schedules and time impact analyses. Design-Build Entity shall provide the requested additional information within five (5) Days of the request.

6. If the Agency denies the Change Order Request or disagrees with the proposal submitted by Design-Build Entity, it will notify the Design-Build Entity, and the Agency will provide its opinion of the appropriate change to the Contract Price and/or Contract Time. If no agreement can be reached, the Agency shall have the right to order the work by a unilateral Change Order setting forth the Agency's determination of the reasonable additions or savings in the Contract Price and/or Contract Time, if any. The Agency's determination shall become final and binding if the Design-Build Entity fails to submit a Claim in writing to the Agency within fourteen (14) Days of the issuance of the unilateral Change Order, disputing the terms of the unilateral Change Order and providing such supporting documentation for its position as the Agency may reasonably require.

C. Change Order Format

1. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in compensation or extension of time, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.
2. The Agency may designate the forms to be used for notices, Change Order Requests, and Change Orders. If so designated, Design-Build Entity may only use such forms. Design-Build Entity shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the Change Order. No Claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The Design-Build Entity may not change or modify the Agency's Change Order form in an attempt to reserve additional rights.

9.3 Determining Adjustments to Compensation.

- A. Limitation on Costs. Design-Build Entity shall not be entitled to any compensation for Work subject to a Change Order except as expressly set forth in this Article. The mark-up added in instances of Additional Work shall constitute the entire amount of profit, any mark-ups, any field or home office overhead costs,

including personnel, equipment or office space, any materials, or any costs of equipment idle time for such Work.

- B. Lump Sum Change Orders. Whenever possible, any changes affecting compensation shall be in a lump sum mutually agreed by the Design-Build Entity and the Agency.
- C. Time and Materials Change Orders. The Agency may direct the Design-Build Entity to proceed with the Additional Work with payment to be made on the basis of actual cost of the labor and materials required to complete the Additional Work. If the Project is federally funded, a time and materials Change Order shall only be issued after a determination that no other Change Order is suitable and the Change Order shall include a ceiling price that the Design-Build Entity exceeds at its own risk.
- D. Federally Funded Projects. For any change in price to the Contract, general and administrative expenses shall be negotiated and must conform to the cost principles set forth under at 2 C.F.R. Part 200, subpart E, and profit shall be negotiated as a separate element of the cost. To establish a fair and reasonable profit, consideration must be given to the complexity of the Additional Work to be performed, the risk borne by the Design-Build Entity, the Design-Build Entity's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- E. Allowed Costs. Estimates for lump sum quotations and accounting for time-and-material work shall be limited to direct expenditures necessitated specifically by the change and shall be segregated as follows
  - 1. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the Additional Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the Additional Work cost will not be permitted unless the Design-Build Entity establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.
  - 2. Materials. The cost of materials reported shall be at the lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery. Materials costs shall be based upon supplier or manufacturer's invoice.
  - 3. Tool and Equipment Use. Regardless of ownership, the rates to be used in determining equipment use shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the work is performed. The Design-Build Entity shall furnish cost data supporting the establishment of the rental rate. The rental rate to be applied for use of each items of

equipment shall be the rate resulting in the least total cost to the Agency for the total period of use. The Agency shall make the final determination as to an equitable rental rate for the equipment. No payment will be made for the use of small tools, which have a replacement value of \$1,000 or less.

- a. The rental time to be paid for equipment shall be the time the equipment is in productive operation on the Additional Work being performed. Rental time will not be allowed while equipment is inoperative due to breakdowns.
  - b. All equipment shall, in the opinion of the Agency, be in good working condition and suitable for the purpose for which the equipment is to be used. Equipment with no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.
  - c. Before construction equipment is used on any Additional Work, the Design-Build Entity shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the Agency, in duplicate, a description of the equipment and its identifying number.
  - d. When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be considered to be 1/2-hour of operation, and any part of an hour greater than 30 minutes will be considered one hour of operation. When daily rates are listed, any part of a day less than 4 hours operation shall be considered to be 1/2-day of operation.
4. Allowed Mark-up. The allowed mark-up for any and all overhead (including supervision and home and field office costs) and profit on work added to the Contract shall be determined in accordance with the following provisions:
- a. "Net Cost" is defined as the actual costs of labor, materials and tools and equipment only, excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the Design-Build Entity and Subcontractors at cost only, without mark-up. Design-Build Entity shall provide the Agency with documentation of the costs, including but not limited to payroll records, invoices, and such other information as the Agency may reasonably request.
  - b. For Work performed by the Design-Build Entity's forces the allowed mark-up shall not exceed fifteen (15%) percent of labor costs, ten percent (10%) of material costs, and ten percent (10%) of the cost of tools and equipment use.
  - c. For Work performed by a Subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the Subcontractor's Net Cost of the Work to which the Design-Build Entity may add up to five percent (5%) of the Subcontractor's Net Cost.
  - d. For Work performed by a sub-subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the sub-subcontractor's Net Cost for Work to which the Subcontractor and Design-Build Entity may each add up to an additional five percent (5%) of the Net Cost of the lower tier subcontractor.

- e. No additional mark-up will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by the Agency exceed twenty-five percent (25%) of the Net Cost as defined herein, of the party that performs the Work.
  - f. Calculation of the mark-up will be subject to the limitations above and to calculation as further detailed in (b)(B)(5) above.
5. Documentation of Time-and-Material Costs.
- a. T&M Daily Sheets. Design-Build Entity must submit timesheets, materials invoices, records of equipment hours, and records of rental equipment hours to the Agency's for an approval signature each day that Work is performed on a time-and-material basis. The Engineer's signature on time sheets only serves as verification that the Work was performed and is not indicative of the Agency's agreement to Design-Build Entity's entitlement to the cost.
  - b. T&M Summary Sheet. Design-Build Entity shall submit a T&M Summary Sheet, which shall include total actual costs, within five (5) Days following completion of Additional Work on a time-and-material basis. Design-Build Entity's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and any other costs, along with documentation supporting the costs. Design-Build Entity's failure to submit the T&M Summary Sheet within five (5) Days of completion of the Additional Work will result in Design-Build Entity's waiver for any reimbursement of any costs associated with the Additional Work.
  - c. Excluded Costs. The following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by the Design-Build Entity's mark-up, shall not be allowed costs and shall not be included in any lump sum proposals or time-and-materials invoices:
    - d. Overhead Cost. Payroll costs and other compensation of Design-Build Entity's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks, and other personnel employed by Design-Build Entity whether at the Site or in Design-Build Entity's principal office or any branch office, material yard, or shop for general administration of the Work;
  - e. Office Expenses. Expenses of Design-Build Entity's principal and branch offices;
  - f. Capital Expenses. Any part of Design-Build Entity's capital expenses, including interest on Design-Build Entity's capital employed for the Additional Work and charges against Design-Build Entity for delinquent payments;
  - g. Negligence. Costs due to the negligence of Design-Build Entity or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation

the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;

- h. Small Tools. Cost of small tools valued at less than \$1,000 and that remain the property of Design-Build Entity;
- i. Administrative Costs. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;
- j. Anticipated Lost Profits. Expenses of Design-Build Entity associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings, or unpaid retention;
- k. Home Office Overhead. Costs derived from the computation of a "home office overhead" rate by application of the Eichleay, Allegheny, burden fluctuation, or other similar methods;
- l. Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of Design-Build Entity, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work.
- m. Other. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in the Contract Documents; including but not limited to: submittals, drawings, field drawings, shop drawings, including submissions of drawings; field inspection; general superintendence; computer services; reproduction services; salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; janitorial services; small tools, incidentals and consumables; temporary on-site facilities (offices, telephones, high speed internet access, plumbing, electrical power, lighting; platforms, fencing, water); surveying; estimating; protection of work; handling and disposal fees; final cleanup; other incidental work; related warranties; insurance and bond premiums.
- n. Compliance with Federal Cost Principles. If the Project is federally funded, any costs that are not allowable, reasonable and allocable to the Project, under generally accepted accounting principles and the applicable federal requirements.

#### 9.4 Design-Build Entity's Waiver of Further Relief.

- A. **DESIGN-BUILD ENTITY'S FAILURE TO PROVIDE A COMPLETE AND TIMELY NOTICE OF A CHANGE ORDER REQUEST OR TO COMPLY WITH ANY OTHER REQUIREMENT OF THIS ARTICLE, SHALL CONSTITUTE A WAIVER BY DESIGN-BUILD ENTITY OF THE RIGHT TO AN ADJUSTMENT OF THE CONTRACT PRICE AND/OR PROJECT COMPLETION DATE ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE BY MEANS OF THE CLAIMS DISPUTE RESOLUTION PROCESS OR BY ANY**

**OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.**

- B. Design-Build Entity recognizes and acknowledges that timely submission of a formal written notice of change/delay and Change Order Request, whether or not the circumstances of the change may be known to the Agency or available to the Agency through other means, is not a mere formality but is of crucial importance to the ability of the Agency to promptly identify, prioritize, evaluate and mitigate the potential effects of changes. Any form of informal notice, whether verbal or written (including, without limitation, statements in requests for information, statements in Submittals, statements at any job meeting or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of this Article, shall accordingly be insufficient.

9.5 Agency Reservation of Rights.

- A. By signing the Contract, the parties agree that Agency has the right to do any or all of the following, which are reasonable and within the contemplation of the parties:
  - 1. To order changes in the Work, including without limitation: Changes to correct errors or omissions caused by Agency, if any, in the Contract Documents; Changes resulting from Agency's decision to change the Work subsequent to execution of the Contract; and Changes due to unforeseen conditions.
  - 2. To suspend Work on the Project or any part thereof.
  - 3. To delay Work on the Project, including without limitation, delays resulting from the failure of Agency or Agency's Representative to timely perform any Contract obligation and delays for Agency's convenience.

**ARTICLE 10 -TIME FOR COMPLETION; LIQUIDATED DAMAGES**

10.1 Progress and Completion.

- A. The Design-Build Entity shall proceed expeditiously with adequate forces and shall achieve full completion of the Work by the Project Completion Date. If Agency's Representative determines and notifies the Design-Build Entity that the Design-Build Entity's progress is such that the Design-Build Entity will not achieve full completion of the Work by the Project Completion Date, the Design-Build Entity shall immediately and at no additional cost to Agency, take all measures necessary, including working such overtime, additional shifts, Sundays, or holidays as may be required to ensure that the entire Project is completed within the Project Completion Date. Upon receipt of such notice from Agency's representative, the Design-Build Entity shall immediately notify Agency's Representative of all measures to be taken to ensure full completion of the Work within the Project Completion Date. The Design-Build Entity shall reimburse Agency for any extra costs or expenses (including the reasonable value of any services provided by Agency's employees) incurred by Agency as the result of such measures.

## 10.2 Time for Completion.

- A. The time for completion set forth in Contract shall commence: (1) on the date stated in the Notice to Proceed, or (2) if the Notice to Proceed does not specify a commencement date, then on the date of the Notice to Proceed and shall be completed by Design-Build Entity in the time specified in the Contract Documents. The Agency is under no obligation to consider early completion of the Project; and the Project Completion Date shall not be amended by the Agency's receipt or acceptance of the Design-Build Entity's proposed earlier completion date. Any difference in time between the Design-Build Entity's early completion and the Project Completion Date shall be considered a part of the Project float. Design-Build Entity shall not be entitled to compensation, and the Agency will not compensate Design-Build Entity, for delays which impact early completion. Design-Build Entity shall not, under any circumstances, receive additional compensation from the Agency (including but not limited to indirect, general, administrative or other forms of overhead costs) for the period between the time of earlier completion proposed by the Design-Build Entity and the Project Completion Date.

## 10.3 Liquidated Damages.

- A. If the Work is not completed as stated in the Contract Documents, it is understood that the Agency will suffer damage. In accordance with Government Code section 53069.85, being impractical and infeasible to determine the amount of actual damage, it is agreed that Design-Build Entity shall pay to the Agency as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract for each calendar day of delay until the Work is fully completed. Design-Build Entity and its surety shall be liable for any liquidated damages. Any money due or to become due the Design-Build Entity may be retained to cover liquidated damages.

## 10.4 Inclement Weather.

- A. Design-Build Entity shall abide by the Agency's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the critical path of the Project schedule. Design-Build Entity shall not be entitled to reverse liquidated damages for time extensions resulting from inclement weather.

## 10.5 Extension of Time.

- A. Design-Build Entity's entitlement to an extension of the Contract Time is limited to a City-caused extension of the critical path, reduced by the Design-Build Entity's concurrent delays, and established by a proper time impact analysis. Design-Build Entity shall not be charged liquidated damages because of any delays in completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of Design-Build Entity (or its Subcontractors or Suppliers). The Agency shall ascertain the facts and extent of delay and grant extension of time for completing the Work when, in its judgment, the facts justify such an extension. Design-Build Entity shall not be entitled to an adjustment in the Contract Times for delays within the control of Design-Build Entity. Delays attributable to and within the

control of a Subcontractor or Supplier shall be deemed to be delays within the control of Design-Build Entity.

10.6 Reverse Liquidated Damages.

- A. Consistent with Public Contract Code Section 7102, Design-Build Entity will be compensated for damages incurred due to unreasonable delays to the critical path for which the Agency is responsible. The parties agree that determining Design-Build Entity's exact delay damages are and will continue to be impracticable and extremely difficult. As such, for each calendar day in excess of the Project Completion Date, the Agency shall pay to the Design-Build Entity the sum stipulated in the Contract per day. Such amount shall constitute the only payment allowed for any Agency-caused delays and shall necessarily include all overhead, all profits, all administrative costs, all bond costs, all labor, materials, equipment and rental costs and any other costs, expenses and fees incurred or sustained as a result of such delays. Design-Build Entity shall not be entitled to reverse liquidated damages for any change in the Work in which Design-Build Entity is compensated for overhead and profit through a Change Order resulting in a lump sum or allowed mark-up for the Additional Work. The amount of reverse liquidated damages shall be reduced by Design-Build Entity's concurrent delays.

10.7 Force Majeure.

- A. In accordance with Sections 10.5 and 10.6 above, the Design-Build Entity shall not be charged liquidated damages, and the Agency shall not be responsible, for any delays resulting from a Force Majeure Event. If a delay to the critical path results from a Force Majeure Event, the Design-Build Entity will be entitled to a time extension but will not receive an adjustment to the Contract Price or any other compensation. Such a non-compensable adjustment shall be Design-Build Entity's sole and exclusive remedy for such delays.

10.8 No Damages for Reasonable Delay.

- A. The Agency's liability to Design-Build Entity for delays for which the Agency is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall the Agency be liable for any costs which are borne by the Design-Build Entity in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable Agency delay shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.

10.9 Procedure for Time Extensions and Delay Damages.

- A. Design-Build Entity shall not be entitled to any extension of time or any reverse liquidated damages unless Design-Build Entity properly notices the delay and adjustment to compensation and requests a Change Order in accordance with the Contract Documents. Design-Build Entity's failure to timely and fully comply with the Change Order procedures in the Contract Documents shall constitute a waiver of Design-Build Entity's right to a time extension or reverse liquidated damages.

## **ARTICLE 11 -TEST AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK; NOTICE OF DEFECTS**

### **11.1 Notice of Defective Work.**

- A. Prompt notice of all Defective Work of which Agency or Agency's Representative has actual knowledge will be given to Design-Build Entity. Defective Work may be rejected, corrected, or accepted as provided in the Contract Documents.

### **11.2 Access to Work.**

- A. Agency, Agency's Representative, their consultants and other representatives and personnel, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Project site and the Work at reasonable times for their observation, inspection, and testing. Design-Build Entity shall provide them proper and safe conditions for such access and advise them of Design-Build Entity's safety procedures and programs.

### **11.3 Tests and Inspections.**

- A. Design-Build Entity shall give Agency's Representative 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. Except as provided by the Contract Documents, Agency shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents.
- C. If Applicable Laws 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, Design-Build Entity shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Agency's Representative the required certificates of inspection or approval.
- D. Design-Build Entity shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Agency and Agency's Representative'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 Design-Build Entity's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Agency.
- E. Agency will provide inspection during normal working hours from 7:00 a.m. to 3:30 p.m. Monday through Friday. Inspection before or after this time will be charged to the contractor as reimbursable inspection time. Inspections on weekends requires two days' notice for review and approval. Upon written request and approval the 8.5 hour working day may be changed to other limits subject to Agency ordinance.

#### 11.4 Uncovering Work.

- A. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Design-Build Entity without written concurrence of Agency's Representative, Design-Build Entity shall, if requested by Agency's Representative, uncover such Work for observation.
- B. Uncovering Work shall be at Design-Build Entity's expense unless Design-Build Entity has given Agency's Representative timely notice of Design-Build Entity's intention to cover the same and Agency's Representative has not acted with reasonable promptness in response to such notice.
- C. If Design-Build Entity has given Agency's Representative timely notice of Design-Build Entity's intention to cover the work and Agency's Representative has not acted with reasonable promptness in response to such notice, and Agency's Representative later considers it necessary or advisable that covered Work be observed by Agency's Representative or inspected or tested by others, Design-Build Entity, at Agency's Representative's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Agency's Representative may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
  - 1. If it is found that the uncovered Work is defective, Design-Build Entity 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 Agency shall be entitled to an appropriate decrease in the Contract Price.
  - 2. If the uncovered Work is not found to be defective, Design-Build Entity shall be allowed an increase in the Contract Price and/or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

#### 11.5 Agency May Stop The Work.

- A. If the Work is defective, Agency may in its sole discretion order Design-Build Entity to stop the Work, or any portion thereof, until the cause for such order has been eliminated. All delays associated with the stop Work order will be the responsibility of the Design-Build Entity.

#### 11.6 Correction of Defective Work.

- A. Promptly after receipt of written notice, the Design-Build Entity shall (1) correct Defective Work that becomes apparent during the progress of the Work on the Project and (2) replace, repair, or restore to Agency's satisfaction any other parts of the Work on the Project and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work. The Design-Build Entity shall promptly commence such correction, replacement, repair,

or restoration upon notice from Agency's Representative or Agency, but in no case later than fourteen (14) Days after receipt of such notice; and the Design-Build Entity shall diligently and continuously prosecute such correction to completion. The Design-Build Entity shall bear all costs of such correction, replacement, repair, or restoration, and all losses resulting from such Defective Work, including additional testing, inspection, and compensation for Agency's Representative's services and expenses. The Design-Build Entity shall perform corrective Work on the Project at such times that are acceptable to Agency and in such a manner as to avoid, to the extent practicable, disruption to Agency's activities. When correcting Defective, Design-Build Entity shall take no action that would void or otherwise impair Agency's special warranty and guarantee, if any, on said Work.

- B. If immediate correction of Defective Work is required for life safety or the protection of property and is performed by Agency or Separate Contractors, the Design-Build Entity shall pay to Agency all reasonable costs of correcting such Defective Work. The Design-Build Entity shall replace, repair, or restore to Agency's satisfaction any other parts of the Construction Work and any other real or personal property which is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.
- C. The Design-Build Entity shall remove from the Project site portions of the Construction Work and materials which are not in accordance with the Contract Documents and which are neither corrected by the Design-Build Entity nor accepted by Agency.
- D. Enforcement of the Design-Build Entity's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies Agency may have under the Contract Documents or at law or in equity for Defective Work. Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations of the Design-Build Entity under the Contract Documents.

#### 11.7 Acceptance of Defective Work.

- A. If, instead of requiring correction or removal and replacement of Defective Work, Agency prefers to accept it, Agency may do so. Design-Build Entity 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 Agency's evaluation of and determination to accept such Defective Work and for the diminished value of the Work.
- B. If any acceptance of Defective Work occurs prior to release of the Project retention, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Agency shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work and all costs incurred by Agency.

- C. If the Project retention is held in an escrow account as permitted by the Contract Documents, Design-Build Entity will promptly alert the escrow holder, in writing, of the amount of retention to be paid to Agency.
- D. If the acceptance of defective Work occurs after release of the Project retention, an appropriate amount will be paid by Design-Build Entity to Agency.

11.8 Agency May Correct Defective Work.

- A. If Design-Build Entity fails within a reasonable time after written notice from Agency's Representative to correct Defective Work, or to remove and replace rejected Work as required by Agency, or if Design-Build Entity fails to perform the Work in accordance with the Contract Documents, or if Design-Build Entity fails to comply with any other provision of the Contract Documents, Agency may, after seven (7) Days written notice to Design-Build Entity, correct, or remedy any such deficiency.
- B. In connection with such corrective or remedial action, Agency may exclude Design-Build Entity from all or part of the Site, take possession of all or part of the Work and suspend Design-Build Entity's services related thereto, take possession of Design-Build Entity'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 Agency has paid Design-Build Entity but which are stored elsewhere. Design-Build Entity shall allow Agency and Agency's Representative, and the agents, employees, other contractors, and consultants of each of them, access to the Site to enable Agency to exercise the rights and remedies to correct the defective work.
- 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 Agency correcting the defective work will be charged against Design-Build Entity, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Agency shall be entitled to an appropriate decrease in the Contract Price. 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 Defective Work.
- D. If the Change Order is executed after all payments under the Contract have been paid by Agency and the Project Retention is held in an escrow account as permitted by the Contract Documents, Design-Build Entity will promptly alert the escrow holder, in writing, of the amount of Retention to be paid to Agency.
- E. If the Change Order is executed after release of the Project Retention, an appropriate amount will be paid by Design-Build Entity to Agency.
- F. Design-Build Entity shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to Agency correcting defective work.

## ARTICLE 12 -PAYMENTS TO DESIGN-BUILD ENTITY AND COMPLETION

### 12.1 Schedule of Values.

- A. The Design-Build Entity shall submit a schedule of values to the Agency before the first Application for Payment, allocating the entire Contract Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Agency. This schedule, unless objected to by the Agency, shall be used as a basis for reviewing the Design-Build Entity's Applications for Payment. Any changes to the schedule of values shall be submitted to the Agency and supported by such data to substantiate its accuracy as the Agency may require, and unless objected to by the Agency, shall be used as a basis for reviewing the Design-Build Entity's subsequent Applications for Payment.

### 12.2 Applications for Payments.

- A. By the twenty-fifth (25th) day of each month Design-Build Entity shall submit to Agency's Representative for review an Application for Payment filled out and signed by Design-Build Entity covering the Work completed as of the date of the Application for Payment and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of 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 Agency 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 Agency's interest therein, all of which must be satisfactory to Agency.
- B. Beginning with the second Application for Payment, each Application shall include an affidavit executed by the Design-Build Entity stating that it has paid all amounts due on account of the Work paid by Agency in the prior Applications for Payment.

### 12.3 Review of Applications.

- A. Agency's Representative will either indicate in writing a recommendation of payment to Agency or return the Application for Payment to Design-Build Entity indicating in writing Agency's Representative's reasons for refusing to recommend payment. In the latter case, Design-Build Entity may make the necessary corrections and resubmit the Application for Payment.
- B. In taking action on the Design-Build Entity's Applications for Payment, the Agency shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Build Entity and shall not be deemed to represent that the Agency has made a detailed examination, audit or arithmetic verification of the documentation submitted in support of the Application for Payment or other supporting data; that the Agency has made exhaustive or continuous on-site inspections; or that the Agency has made examinations to ascertain how or for what purposes the Design-Build Entity has used amounts previously paid on account of

the Contract. Such examinations, audits and verifications, if required by the Agency, will be performed by the Agency's auditors acting in the sole interest of the Agency.

- C. By recommending any such payment Agency's Representative will not thereby be deemed to have represented that:
1. 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 Agency's Representative in the Contract Documents; or
  2. there may not be other matters or issues between the parties that might entitle Design-Build Entity to be paid additionally by Agency or entitle Agency to withhold payment to Design-Build Entity.
- D. Neither Agency's Representative's review of Design-Build Entity's Work for the purposes of recommending payments nor Agency's Representative's recommendation of any payment, including final payment, will impose responsibility on Agency's Representative:
1. to supervise, direct, or control the Work;
  2. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
  3. for Design-Build Entity's failure to comply with Applicable Laws applicable to Design-Build Entity's performance of the Work;
  4. to make any examination to ascertain how or for what purposes Design-Build Entity has used the moneys paid on account of the Contract Price; or
  5. to determine that title to any of the Work, materials, or equipment has passed to Agency free and clear of any Liens.
- E. Agency's Representative may refuse to recommend the whole or any part of any payment due to subsequently discovered evidence or the results of subsequent inspections or tests. Agency retains the right to revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Agency's opinion to protect Agency from loss.

#### 12.4 Payment Becomes Due.

- A. Thirty (30) Days after presentation of an undisputed and properly submitted Application for Payment to Agency's Representative, and subject to Agency's Representative's recommendation, subject to the modifications above, the amount recommended will become due, and when due will be paid by Agency to Design-Build Entity.

#### 12.5 Retention and Securities in Lieu of Retention.

- A. Unless Project has been deemed substantially complex as noted in the Contract Documents, Agency will retain five percent (5%) of the amount invoiced in accordance with Applicable Laws.
- B. Pursuant to Public Contract Code section 22300, Design-Build Entity may substitute securities for any moneys withheld as a retention by Agency to ensure performance under the Contract. At the request and expense of Design-Build Entity, securities equivalent to the amount withheld shall be deposited with Agency, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to Design-Build Entity. Upon satisfactory completion of the Contract, the securities shall be returned to Design-Build Entity.
  - 1. Alternatively, Design-Build Entity may request, and Agency shall make payment of retentions earned directly to the escrow agent selected by the Design-Build Entity. At the expense of Design-Build Entity, Design-Build Entity may direct the investment of the payments into securities and Design-Build Entity shall receive the interest earned on the investments upon the same terms provided for in Public Contract Code section 22300 for securities deposited by Design-Build Entity. Upon satisfactory completion of the Contract, Design-Build Entity shall receive from the escrow agent all securities, interest, and payments received by the escrow agent when Agency authorizes the escrow agent to release these funds to the Design-Build Entity, pursuant to the terms of Public Contract Code section 22300.
- C. Securities eligible for investment shall include those listed in Government Code section 16430, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Design-Build Entity and Agency.
- D. Design-Build Entity shall be the beneficial Agency of any securities substituted for moneys withheld and shall receive any interest thereon.
- E. The escrow agreement shall be in the form of the Escrow Agreement provided as part of the Contract Documents.

#### 12.6 Agency's Reduction in Recommended Payment.

- A. In addition to reductions recommended by Agency's Representative, Agency may refuse to make payment of the full amount recommended by Agency's Representative because:
  - 1. Claims have been made against Agency on account of Design-Build Entity's performance or furnishing of the Work.
  - 2. Stop Payment Notices or Liens have been filed in connection with the Work.
  - 3. Defective Work not remedied.
  - 4. Failure of Design-Build Entity to make proper payments to its subcontractors or suppliers.

5. Completion of the Contract if there exists a reasonable doubt that the Work can be completed for the unpaid Contract balance.
  6. Damage to another contractor or third party.
  7. Amounts which may be due the Agency for claims against Design-Build Entity.
  8. Failure of Design-Build Entity to keep the record ('as-built") drawings up to date.
  9. Failure to provide updates on the construction schedule.
  10. Site cleanup.
  11. Failure of the Design-Build Entity to comply with requirements of the Contract Documents.
  12. Liquidated Damages.
- B. Upon completion of the Contract, Agency will reduce the final Contract Price to reflect costs charged to the Design-Build Entity, back charges or payments withheld pursuant to the Contract Documents.

12.7 Design-Build Entity's Warranty of Title.

- A. Design-Build Entity 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 Agency no later than the time of payment free and clear of all Liens.

12.8 Partial Utilization.

- A. Agency reserves the right to occupy or utilize any portion of the Work at any time before completion, and such occupancy or use shall not constitute acceptance of any part of Work covered by this Contract. This use shall not relieve the Design-Build Entity of its responsibilities under the Contract.

12.9 Final Inspection.

- A. Upon written notice from Design-Build Entity that the entire Work is complete, Agency's Representative will promptly make a final inspection with Agency and Design-Build Entity and will notify Design-Build Entity in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Design-Build Entity shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

12.10 Final Acceptance.

- A. After Design-Build Entity has, in the opinion of Agency's Representative, 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, and other documents required by the Contract Documents, Agency shall execute and file with the County in which the Project is located a Notice of Completion, constituting final acceptance and completion of the Project, except as may be expressly noted.

12.11 Final Payment.

A. Application for Payment.

1. Upon execution of the Notice of Completion, Design-Build Entity may submit a final accounting for the cost of the Work and a final Application for Payment. Final payment, constituting the entire unpaid balance of the Contract Price.
2. Prior to Final Payment, the Agency may conduct an audit of the Work or notify the Design-Build Entity that it will not conduct an audit and issue a final Certificate for Payment. If the Agency conducts an audit of the Work, the Agency will either issue to the Design-Build Entity a final Certificate for Payment, or notify the Design-Build Entity in writing of the Agency's reasons for withholding a certificate. If the Agency's auditors report the cost of the Work as substantiated by the Design-Build Entity's final accounting to be less than claimed by the Design-Build Entity, the Design-Build Entity shall be entitled to make a claim. Pending a final resolution of the disputed amount, the Agency shall pay the Design-Build Entity the amount certified in the Agency's final Certificate for Payment.
3. 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;
  - b. consent of the surety to final payment;
  - c. a fully completed Conditional Waiver and Release on Final Payment.

B. Agency's Representative's Review of Application and Acceptance.

1. If, on the basis of Agency's Representative's observation of the Work during construction and final inspection, and Agency's Representative's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Agency's Representative is satisfied that the Work has been completed and Design-Build Entity has satisfied all other requirements for final payment, Agency's Representative will indicate in writing Agency's Representative's recommendation of payment and present the Application for Payment to Agency for payment. Otherwise, Agency's Representative will return the Application for Payment to Design-Build Entity, indicating in writing the reasons for refusing to recommend final payment, in which case Design-Build Entity shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due.

1. Within sixty (60) Days after the presentation to Agency's Representative of the proper and complete final Application for Payment and accompanying documentation, the amount recommended by Agency's Representative, less any sum Agency is entitled to set off pursuant to the Contract Documents, will become due and will be paid by Agency to Design-Build Entity.

12.12 Waiver of Claims.

- A. The making and acceptance of final payment will constitute a waiver of all Claims by Design-Build Entity against Agency other than those previously made in accordance with the requirements herein and expressly acknowledged by Agency in writing as still unsettled.

**ARTICLE 13 -SUSPENSION OF WORK AND COMPLETION**

13.1 Agency May Suspend Work.

- A. Agency may, at its sole option, decide to suspend at any time the performance of all or any portion of the Work by notice in writing to Design-Build Entity. Such notice of suspension of Work will designate the amount and type of plant, labor, and equipment to be committed to the Project during the period of suspension. Design-Build Entity shall use its best efforts to utilize its plant, labor, and equipment in such a manner as to minimize costs associated with suspension.
- B. Upon receipt of any such notice, Design-Build Entity shall, unless the notice requires otherwise:
  1. Immediately discontinue Work on the date and to the extent specified in the notice;
  2. Place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice;
  3. Promptly make every reasonable effort to obtain suspension upon terms satisfactory to Agency's Representative of all orders, subcontracts, and rental agreements to the extent they relate to performance of Work suspended; and
  4. Continue to protect and maintain the Work including those portions on which Work has been suspended.
- C. Except as provided by this article, as full and complete compensation for such suspension, Design-Build Entity shall be granted an adjustment in the Contract Price based on a negotiated daily rate that reflects the Design-Build Entity's actual costs associated with the demobilized condition of the Site (and as a result will be less than the Daily Rate contained in the Special Conditions) and an extension of the Contract Times equal to the number of days performance of Work is suspended; provided, however, that no adjustment of Contract Price or extension of Contract Times shall be granted if the suspension results from Design-Build Entity's non-compliance with the requirements of the Contract.

### 13.2 Agency May Terminate for Cause.

- A. Agency may, without prejudice to any other right or remedy, serve written notice upon Design-Build Entity of its intention to terminate this Contract in whole or in part if the Design-Build Entity: (i) refuses or fails to prosecute the Work or any part thereof with such diligence as will ensure its completion within the Project Completion Date; (ii) fails to complete the Work within the required time; (iii) files a bankruptcy petition or is adjudged a bankruptcy; (iv) makes a general assignment for the benefit of its creditors; (v) has a receiver appointed; (vi) refuses or fails to supply enough properly skilled workers or proper materials to complete the Work; (vii) fails to make prompt payment to subcontractors or for material or labor; (viii) disregards Applicable Laws, other requirements or instructions of Agency; or (ix) violates any of the provisions of the Contract Documents.
- B. The Notice of Default and Intent to Terminate shall state the reasons for termination. Unless within five (5) Days after the service of such notice, Design-Build Entity resolves the circumstances giving rise to the Notice of Default to Agency's satisfaction, or makes arrangements acceptable to Agency for the required corrective action, Agency may terminate this Contract. In such case, Design-Build Entity shall not be entitled to receive any further payment until the Work has been finished. Agency may take over and complete the Work by any method it may deem appropriate, including enforcement of the Project Performance Bond. Design-Build Entity and its surety shall be liable to Agency for any excess costs or other damages incurred by Agency to complete the Work. If Agency takes over the Work, Agency may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to the Design-Build Entity as may be on the Site.

### 13.3 Agency May Terminate for Convenience.

- A. In addition to its right to terminate this Contract for default, Agency may terminate the Contract, in whole or in part, at any time upon seven (7) Days written notice to Design-Build Entity. The Notice of Termination shall specify that the termination is for the convenience of Agency, the extent of termination, and the effective date of such termination ("Effective Date of Termination").
- B. After receipt of Notice of Termination, and except as directed by Agency, the Design-Build Entity shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:
1. Stop Work as specified in the Notice.
  2. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
  3. Leave the Site and any other property upon which the Design-Build Entity was working in a safe and sanitary manner such that it does not pose any threat to the public health or safety.

4. Terminate all subcontracts and purchase orders to the extent that they relate to the portions of the Work terminated.
  5. Place no further subcontracts or orders, except as necessary to complete the remaining portion of the Work.
  6. Submit to Agency, within fifteen (15) Days from the Notice of Termination, all of the documentation called for by the Contract Documents to substantiate all costs incurred by the Design-Build Entity for labor, materials and equipment through the Notice of Termination. Any documentation substantiating costs incurred by the Design-Build Entity solely as a result of Agency's exercise of its right to terminate this Contract pursuant to this clause, which costs the Design-Build Entity is authorized under the Contract Documents to incur, shall: (i) be submitted to and received by Agency no later than thirty (30) Days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs Occasioned by Agency's Termination for Convenience."
- C. Agency's total liability to Design-Build Entity by reason of the termination shall be limited to the total (without duplication of any items) of:
1. The reasonable cost to the Design-Build Entity for all Work performed prior to the Effective Date of Termination, including the Work done to secure the Project for termination. Reasonable cost may not exceed the applicable percentage completion values derived from the progress schedule and the schedule of values. Deductions shall be made for cost of materials to be retained by the Design-Build Entity, cost of Work defectively performed, amounts realized by sale of materials, and for other appropriate credits or offsets against cost of Work as allowed by the Contract Documents.
  2. When, in Agency's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of the Contract Documents and excessive actual cost shall be disallowed.
  3. Any Work required by the Termination for Convenience that is not included in Contract Documents will be negotiated pursuant to the Contract Change Order provisions.
  4. Reasonable costs to the Design-Build Entity of handling material returned to vendors, delivered to Agency or otherwise disposed of as directed by Agency.
  5. A reasonable allowance for the Design-Build Entity's internal administrative costs in preparing termination claim.
  6. Reasonable demobilization costs, and reasonable payments made to Subcontractors or suppliers on account of termination.

- D. In no event shall Agency be liable for unreasonable costs incurred by the Design-Build Entity or subcontractors after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, the cost of or anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, unreasonable post-termination administrative expenses, post-termination overhead or unabsorbed overhead, surety costs of any type, costs of preparing and submitting the Design-Build Entity's termination claim, attorney fees of any type, and all other costs relating to prosecution of a claim or lawsuit.
- E. Agency shall have no obligation to pay the Design-Build Entity under this Article unless and until the Design-Build Entity provides Agency with updated and acceptable as-builts and Record Documents for Work completed prior to termination as required by the Contract Documents.
- F. In arriving at the amount due the Design-Build Entity under this clause there shall be deducted in whole, or in the appropriate part(s) if the termination is partial:
  - 1. All unliquidated advances or other payments on account previously made to the Design-Build Entity, including without limitation all payments which are applicable to the terminated portion of the Contract Documents,
  - 2. Any claim Agency may have against the Design-Build Entity in connection with the Work or any amounts that may be withheld in accordance with the Contract Documents, and
  - 3. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by the Design-Build Entity and not otherwise recovered by or credited to Agency.
- G. Design-Build Entity shall not be paid on account of loss of anticipated profits or revenue or other economic loss or consequential damages arising out of or resulting from such termination.
- H. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, Agency may immediately order Design-Build Entity to cease Work until such safety or liability issues are addressed to the satisfaction of Agency or the Contract is terminated.
- I. If Agency terminates Design-Build Entity for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Design-Build Entity shall be entitled to receive only the amounts payable under this section, and Design-Build Entity specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

## **ARTICLE 14 -CLAIMS, DISPUTE AVOIDANCE AND RESOLUTION**

### **14.1 Procedure for Resolving Claims**

- A. Design-Build Entity shall timely comply with any and all requirement of the Contract Documents pertaining to notices and requests for changes to the Contract Price and/or the Project Completion Date, including but not limited to all requirements of Article 9 and Article 14.1, as a prerequisite to filing any Claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely submit a Chang Order Request, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the Claim under the Contract or at law.
- B. Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with all applicable law, including but not limited to these statutes.
- C. Claims. For purposes of this Article, "Claim" means a separate demand by the Design-Build Entity for (1) a time extension, including without limitation relief from damages or penalties for delay assessed by Agency, (2) payment of money or damages arising from Work done by or on behalf of the Design-Build Entity and payment of which is not otherwise expressly provided for or the Design-Build Entity is not otherwise entitled, or (3) payment of an amount which is disputed by Agency. A "Claim" does not include any demand for payment for which the Design-Build Entity has failed to provide notice, submit a Change Order Request, or otherwise failed to follow any procedures contained in the Contract Documents.
- D. Filing Claims. Claims governed by this Article may not be filed unless and until the Design-Build Entity completes any and all requirements of the Contract Documents pertaining to notices and requests for changes to the Contract Price and/or the Project Completion Date, and Design-Build Entity's request for a change has been denied in whole or in part. Claims governed by this Article must be filed no later than thirty (30) Days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the Agency and shall include on its first page the following words in 16 point capital font: "THIS IS A CLAIM." The Claim shall include the all information and documents necessary to substantiate the Claim, including but not limited to those identified below. Nothing in this Article is intended to extend the time limit or supersede notice requirements otherwise provided by Contract Documents. Failure to follow such contractual requirements shall bar any Claims or subsequent proceedings for compensation or payment thereon.
- E. Documentation. The Design-Build Entity will submit the claim justification in the following format:
1. Summary description of Claim including basis of entitlement, merit and amount of time or money requested, with specific reference to the Contract Document provisions pursuant to which the Claim is made

2. List of documents relating to the Claim
  - a. Specifications
  - b. Drawings
  - c. Clarifications (Requests for Information)
  - d. Schedules
  - e. Other
3. Chronology of events and correspondence
4. Narrative analysis of Claim merit
5. Analysis of Claim cost, including calculations and supporting documents
6. Time impact analysis in the form required by the Contract Documents or, if the Contract Documents do not require a particular format, CPM format, if an adjustment of the Contract Time is requested
7. Cover letter and certification of validity of the Claim

F. Agency Response to Claim. Upon receipt of a Claim pursuant to this Article, Agency shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days of receipt of the Claim, or as extended by mutual agreement, shall provide a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within 60 days after Agency issues its written response.

1. If Agency needs approval from its governing body to provide Design-Build Entity a written statement as set forth above, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim, Agency shall have up to three (3) days following the next publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide Design-Build Entity a written statement identifying the disputed portion and the undisputed portion of the Claim.
2. Agency may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the Claim or relating to defenses or Claims Agency may have. If additional information is needed thereafter, it shall be provided upon mutual agreement of the Agency and the Design-Build Entity. Agency's written response shall be submitted 30 days (15 days if the Claim is less than \$50,000) after receiving the additional documentation, or within the same period of time taken by the Design-Build Entity to produce the additional information, whichever is greater.

G. Meet and Confer Conference. If the Design-Build Entity disputes Agency's response, or if Agency fails to respond within the statutory time period(s), the

Design-Build Entity may so notify Agency, in writing, within 15 days of the receipt of the response or the failure to respond, and demand an informal conference to meet and confer for settlement of those portions of the Claim that remain in dispute. Upon such demand, Agency shall schedule a meet and confer conference within 30 Days.

- H. Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the Agency shall provide the Design-Build Entity a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 Days after the Agency issues its written statement. Any disputed portion of the Claim, as identified by the Design-Build Entity in writing, shall be submitted to nonbinding mediation, with the Agency and the Design-Build Entity sharing the associated costs equally. The public entity and Design-Build Entity shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing, unless the parties agree to select a mediator at a later time.
1. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.
  2. For purposes of this Article, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Article.
  3. Unless otherwise agreed to by the Agency and the Design-Build Entity in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.
  4. The mediation shall be held no earlier than the date the Design-Build Entity completes the Work or the date that the Design-Build Entity last performs Work, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.
- I. Procedures After Mediation. If following the mediation, the Claim or any portion remains in dispute, the Design-Build Entity must file a Claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a Claim must be filed shall be tolled from the time the Design-Build Entity submits his or her written Claim pursuant to subdivision (a) until the time the Claim is denied, including any period of time utilized by the meet and confer conference.

J. Civil Actions. The following procedures are established for all civil actions filed to resolve Claims of \$375,000 or less:

1. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.
2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

K. Government Code Claim Procedures.

1. This Article does not apply to tort claims and nothing in this Article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.5 of Title 1 of the Government Code.
2. In addition to any and all requirements of the Contract Documents pertaining to notices of and requests for adjustment to the Contract Time, Contract Price, or compensation or payment for Additional Work, disputed Work, construction claims and/or changed conditions, the Design-Build Entity must comply with the claim procedures set forth in Government Code Section 900, et seq. prior to filing any lawsuit against the Agency.
3. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to adjustment of the Contract Time or Contract Price for Additional Work, disputed Work, construction claims, and/or changed conditions have been followed by Design-Build Entity. If Design-Build Entity does not comply with the Government Code claim

procedure or the prerequisite contractual requirements, Design-Build Entity may not file any action against the Agency.

4. **A Government Code claim must be filed no earlier than the date the Work is completed or the date the Design-Build Entity last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved Claims known to Design-Build Entity or that should reasonably be known to Design-Build Entity excepting only new unrelated Claims that arise after the Government Code claim is submitted.**

- L. Non-Waiver. The Agency's failure to respond to a Claim from the Design-Build Entity within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the Claim being deemed rejected in its entirety, and shall not constitute a waiver of any rights under this Article.

#### 14.2 Litigation.

- A. Any claims, disputes, or controversies between the parties arising out of or related to the Contract, which have not been resolved in accordance with the procedures set forth herein shall be resolved in a court of competent jurisdiction.

#### 14.3 Duty to Continue Performance.

- A. Unless provided to the contrary in the Contract Documents, Design-Build Entity shall continue to perform the Work and Agency shall continue to satisfy its payment obligations to Design-Build Entity, pending the final resolution of any dispute or disagreement between Design-Build Entity and Agency.

### **ARTICLE 15 -MISCELLANEOUS PROVISIONS**

#### 15.1 Limitations On Agency's Responsibilities.

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

#### 15.2 Successors

- A. The parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract. The Design-Build Entity may not either voluntarily or by action of law, assign any obligation assumed by the Design-Build Entity hereunder without the prior written consent of the Agency.

15.3 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 Applicable Laws, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Article 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.

15.4 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 Project or termination or completion of the Contract or termination of the services of the Design-Build Entity.

15.5 Controlling Law.

A. Notwithstanding any subcontract or other contract with any Subcontractor, Supplier, or other person or organization performing any part of the Project, this Contract shall be governed by the law of the State of California excluding any choice of law provisions.

15.6 Jurisdiction; Venue.

A. The Design-Build Entity and any Subcontractor, supplier, or other person or organization performing any part of the Project agree that any action or suits at law or in equity arising out of or related to the proposal process, award, or performance of the Project shall be maintained in the Superior Court of Riverside County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

15.7 Headings.

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

15.8 Agency's Right to Audit.

A. The Design-Build Entity shall make available to Agency for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to Agency. If the Design-Build Entity submits a Change Order Request or a Claim to Agency, Agency shall have the right to audit the Design-Build Entity's books, records, documents, and other evidence to the extent they are relevant.

- B. The right to audit shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which the claim has been submitted, including but not limited to job cost reports, estimates, proposals, bids, proposal papers, documents of other work administered by the Design-Build Entity's home office, and any and all other documentation relied upon by the Design-Build Entity to obtain this Contract. Agency shall have the right to make and take copies of any records examined.
- C. The right to audit shall include the right to inspect the Design-Build Entity's plans, or such parts thereof, as may be or have been engaged in the performance of the Project. The Design-Build Entity further agrees that the right to audit encompasses all subcontracts and is binding upon Subcontractors. The right to audit provided herein shall be exercisable through such representatives as Agency deems desirable during the Design-Build Entity's normal business hours at the Design-Build Entity's office.
- D. In accordance with Government Code Section 8546.7, records of both Agency and the Design-Build Entity shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment. The Design-Build Entity shall make available to Agency any of the Design-Build Entity's other documents related to the Project immediately upon request of Agency. In addition to the State Auditor's rights described above, Agency shall have the right to examine and audit all books, estimates, records, contracts, documents, Proposals, subcontracts, and other data of the Design-Build Entity (including electronic records, computations and projections) related to negotiating, pricing, or performing the Project in order to evaluate the accuracy and completeness of the cost or pricing data, for a period of four (4) years after final payment.

#### 15.9 Assignment.

- A. Design-Build Entity shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof including any claims, without prior written consent of Agency. Any assignment without the written consent of Agency shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or Material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.
- B. As set forth in Public Contract Code section 7103.5, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be

made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

15.10 All Legal Provisions Included.

- A. Design-Build Entity shall give all notices and comply with all federal, state and local laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified by their terms. References to specific laws, rules or regulations in this Contract are for reference purposes only, and shall not limit or affect the applicability of provisions not specifically mentioned. If Design-Build Entity observes that drawings and specifications are at variance therewith, he shall promptly notify Agency in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in Work. If Design-Build Entity performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to Agency, he shall bear all costs arising therefrom.
- B. Design-Build Entity shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA laws, rules and regulations. Design-Build Entity shall comply with the Historic Building Code, including, but not limited to, as it relates to the ADA, whenever applicable..
- C. Design-Build Entity acknowledges and understands that, pursuant to Public Contract Code section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code section 2717(b) in order to supply mined material for this Contract.
- D. No Agency official or representative who is authorized in such capacity and on behalf of Agency to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Work, shall be or become directly or indirectly interested financially in the Contract.
- E. All provisions of law required to be inserted in the Contract or Contract Documents pursuant to any Applicable Laws shall be and are inserted herein. If through mistake, neglect, oversight, or otherwise, any such provision is not herein inserted or inserted in improper form, upon the application of either party, the Contract or Contract Documents shall be changed by Agency, at no increase in the Contract Price or Contract Time, so as to strictly comply with the Applicable Laws and without prejudice to the rights of either party hereunder.

15.11 State License Board Notice.

- A. Contractors are required by law to be licensed and regulated by the Design-Build Entity's State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred

to the Registrar, the Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

15.12 Noise.

- A. The Design-Build Entity shall use only such equipment on the Project and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by CAL-OSHA.
- B. The Design-Build Entity shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Design-Build Entity shall promptly remove the equipment and shall not return that equipment to the Project site until the device is repaired or replaced. Noise and vibration level requirements shall apply to all equipment on the jobsite or related to the Project, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the Design-Build Entity.

15.13 Change In Name Or Nature of Design-Build Entity's Legal Entity.

- A. Should a change be contemplated in the name or nature of the Design-Build Entity's legal entity, the Design-Build Entity shall first notify Agency in order that proper steps may be taken to have the change reflected in the Contract Documents and all related documents. No change of the Design-Build Entity's name or nature will affect Agency's rights under the Contract Documents, including but not limited to the bonds and insurance.

15.14 Complete Contract.

- A. The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as otherwise provided in the Contract Documents.

15.15 Notice of Third Party Claims.

- A. Pursuant to Public Contract Code section 9201, Agency shall provide Design-Build Entity with timely notification of the receipt of any third-party claim relating to the Contract.

15.16 Severability of Provisions.

- A. If any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

15.17 Correction of Errors and Omissions.

- A. The Design-Build Entity agrees to correct any error or omission in the Construction Documents or Contract Documents at no additional cost to Agency.

15.18 Interpretation.

- A. The Contract Documents shall not be construed in favor of or against any party, but shall be construed as if all parties prepared the Contract Documents.

**END OF GENERAL CONDITIONS**

**ATTACHMENT 3  
SPECIAL CONDITIONS**

**ARTICLE 1 -MODIFICATIONS TO THE GENERAL CONDITIONS**

**[\*\*\*ADJUSTMENTS CAN BE MADE TO THE GENERAL CONDITIONS FOR MANY PROJECT SPECIFIC REQUIREMENTS, EXAMPLES INCLUDING BRAND NAMES OR MATERIALS, PRODUCTS, THINGS, OR SERVICES REQUIRED, MODIFYING WORK AND/OR HOLIDAY HOURS, CHANGING THE RETENTION AMOUNT, DAYS FOR SUBSTITUTION OF MATERIALS, MODIFYING NOISE RESTRICTIONS, ETC.\*\*\*]**

**[\*\*\*THE FOLLOWING ARE EXAMPLES OF WAYS IN WHICH TO MAKE THE FOLLOWING ADJUSTMENTS TO THE GENERAL CONDITIONS\*\*\*]**

1.1 Section 6.8 Submittals.

Section 6.8 of the General Conditions shall be deleted in its entirety and replaced with the following:

“6.8 Submittals.

\_\_\_\_\_”

1.2 Section 6.8 Submittals.

The first sentence in Section 6.8 of the General Conditions shall be deleted in its entirety and replaced with the following:

“\_\_\_\_\_”

**ATTACHMENT 4  
PERFORMANCE BOND**

**KNOW ALL PERSONS BY THESE PRESENTS:**

**THAT WHEREAS, THE Valley Sanitary District** ("Agency") has awarded to \_\_\_\_\_, ("DBE") an agreement for \_\_\_\_\_ (hereinafter referred to as the "Project").

**WHEREAS**, the work to be performed by the DBE is more particularly set forth in the Contract Documents for the Project dated \_\_\_\_\_, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

**WHEREAS**, the DBE is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

**NOW, THEREFORE**, we, \_\_\_\_\_, the undersigned DBE and \_\_\_\_\_ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the Agency in the sum of \_\_\_\_\_ dollars, (\$\_\_\_\_\_), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION IS SUCH**, that, if the DBE, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless the Agency, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by Agency in enforcing such obligation.

The obligations of Surety hereunder shall continue so long as any obligation of DBE remains. Nothing herein shall limit the Agency's rights or the DBE or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever DBE shall be, and is declared by the Agency to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the Agency's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a Bid or Bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible Bidder, arrange for a Contract between such Bidder, the Surety and the Agency, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the Contract price, including other costs and damages for which Surety may be liable. The term "balance of the Contract price" as used in this paragraph shall mean the total amount payable to DBE by the Agency under the Contract and any modification thereto, less any amount previously paid by the Agency to the DBE and any other set offs pursuant to the Contract Documents.
- (3) Permit the Agency to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the Contract price, including other costs and damages for which Surety may be liable. The term "balance of the Contract price" as used in this paragraph shall mean the total amount payable to DBE by the Agency under the Contract and any modification thereto, less any amount previously paid by the Agency to the DBE and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the Agency may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the DBE.

Surety shall not utilize DBE in completing the Project nor shall Surety accept a Bid from DBE for completion of the Project if the Agency, when declaring the DBE in default, notifies Surety of the Agency's objection to DBE's further participation in the completion of the Project.

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

**IN WITNESS WHEREOF**, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Design-Build Entity

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

\_\_\_\_\_  
Surety

By: \_\_\_\_\_  
Attorney-in-Fact

The rate of premium on this bond is \_\_\_\_\_ per thousand. The total amount of premium charges, \$\_\_\_\_\_.

(The above must be filled in by corporate attorney.)

**THIS IS A REQUIRED FORM**

Any claims under this bond may be addressed to:

(Name and Address of Surety) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name and Address of Agent or Representative for service of process in California, if different from above) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Telephone number of Surety and Agent or Representative for service of process in California) \_\_\_\_\_

**NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.**



**ATTACHMENT 5  
PAYMENT BOND (LABOR AND MATERIALS)**

**KNOW ALL MEN BY THESE PRESENTS:**

**THAT WHEREAS**, the **Valley Sanitary District** ("Agency"), by action taken or a resolution passed \_\_\_\_\_, 20\_\_\_\_ has awarded to \_\_\_\_\_, hereinafter designated as the "Principal," a contract ("Contract") for the work described as follows: ("Project"); and

**WHEREAS**, said Principal is required to furnish a bond in connection with said Contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

**NOW THEREFORE**, we, the Principal and \_\_\_\_\_ as Surety, are held and firmly bound unto the Agency in the penal sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION IS SUCH** that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the DBE and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such Work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the Agency in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of

recovery of claimants otherwise entitled to recover under any such Contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of Contract between the owner or Agency and original DBE or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of Sections 2819 and 2845 of the California Civil Code.

**IN WITNESS WHEREOF**, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(Corporate Seal of Principal, if corporation)

\_\_\_\_\_  
Design-Build Entity

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

(Seal of Surety)

\_\_\_\_\_  
Surety

By: \_\_\_\_\_  
Attorney-in-Fact

**(Attached Attorney-In-Fact Certificate and Required Acknowledgements)**

**NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.**

**Notary Acknowledgment**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally

appeared \_\_\_\_\_, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public \_\_\_\_\_

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document*

*and could prevent fraudulent removal and reattachment of this form to another document.*

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_ Title(s)

\_\_\_\_\_ Title or Type of Document

- Partner(s)
  - Limited
  - General

\_\_\_\_\_ Number of Pages

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator

\_\_\_\_\_ Date of Document

Other:

Signer is representing:

Name Of Person(s) Or Entity(ies)

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

\_\_\_\_\_ Signer(s) Other Than Named Above

**ATTACHMENT 6  
HOURLY RATE SCHEDULE FOR EXTRA WORK**

**\*\*\*ATTACH RATE SCHEDULE\*\*\***

**ATTACHMENT 7  
WORKERS' COMPENSATION CERTIFICATION**

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

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

Date: \_\_\_\_\_

Name of Design-Build Entity: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

## **Attachment D**

### **Project Background Documents**

Influent Pump Station Rehabilitation Preliminary Evaluation Technical Memorandum (May 2019), with Attachments listed below:

- Attachment A – Selected Influent Pump Station and Sewer Record Drawings
- Attachment B – Temporary Bypass Plan (Conceptual)
- Attachment C – Temporary Bypass Pumping Calculations (Preliminary)
- Attachment D – Construction Schedule and Class 4 Cost Estimate

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To:	Ron Buchwald Valley Sanitary District	From:	Paul Wallace Stantec, Pasadena CA
File:	IPS Rehab Preliminary Evaluation	Date:	May 24, 2019

---

**Reference: Task Order 3 – IPS Rehab****1. Project Authorization**

Valley Sanitary District (VSD) requested that Stantec draft procurement documents for rehabilitation of the existing Influent Pump Station (IPS) at the Water Reclamation Facility. This work was defined under Task Order 18-03 – Procurement Document Preparation & Engineering Support for Coating of Discharge Piping. The scope was later expanded to include more elements of the IPS requiring rehabilitation, as listed under Project History below.

**2. Memorandum Scope & Purpose**

This memo presents cost and schedule information to allow VSD staff to select a path forward for execution of the IPS work.

Following selection of a procurement method, the appropriate documents required to bid the work can be prepared (if the work will proceed independently of larger overall plant upgrades) or deferred to be included in a larger plant upgrade project.

**3. Project History**

The IPS was constructed in 1999 and was modified to add more pumps to the empty pump bays and an additional parallel magnetic flow meter in 2008. The IPS is a submersible pump station, with six pump bays (and six pumps) with drop gates to isolate each bay from the central channel. An inlet slide gate in the IPS forebay was provided to allow bypassing of the pump station. Attachment A shows the plan and section views of the IPS as originally constructed as well as recent changes due to the recently completed Requa Interceptor project and the Shadow Hills inverted siphon connection.<sup>1</sup>

Portions of the IPS require rehabilitation due to normal wear and tear and in some cases outdated coating technology. In some areas where PVC liner was installed on the IPS interior concrete walls, the PVC liner may have detached from the concrete walls inside the wet well. A major failure is the inlet gate frame, which complicates bypassing of the IPS for repairs.

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<sup>1</sup> The 1998 IPS construction provided a 10-foot diameter manhole upstream of the IPS (MH 8J-M070) where collection system flows join together. In the 1998 project, the 36-inch Van Buren Trunk line was the only feed to MH 8J-M070. The Shadow Hills Service Area project installed an inverted siphon, circa 2004, and added a 36-inch input. The Requa Interceptor in 2016 added a 30-inch sewer input to the 10-ft diameter manhole. A single 54-inch outlet from MH 8J-M070 discharges to the IPS forebay. The configuration of MH 8J-M070 becomes important when considering bypassing pumping required for work inside the IPS.

Reference: Task Order 3 – IPS Rehab

VSD staff provided descriptions of equipment and structural deficiencies. A summary of the observations of deficiencies is listed below:

- a) Each of the six pump bays has a riser pipe from the pump base to the above-grade header. The coating is degraded for the portion of the ductile iron riser pipes below the top slab.
  - b) The original Pump Bay #3 was designed with a 14-inch riser pipe for a jockey pump vs. the other full-size pump bays with 18-inch risers. VSD staff no longer use the smaller jockey pump and want to upsize this pump riser and base elbow to the same (18-inch) size as the other five pump bays.
  - c) Gates that allow for isolation of pump bays are leaking, complicating work to be done within the pump bays.
  - d) The main inlet gate in the forebay has corroded and partially detached from the forebay wall. The gate has fallen in the partly closed position and cannot be moved due to failure of the gate operating shaft.
  - e) The IPS interior walls should be inspected generally for concrete corrosion due to failure of the PVC liner
  - f) Shutoff plug valves and check valves in the above-grade piping are leaking and in need of repair.
  - g) Additional valves are desired to isolate each side of the pump station.
  - h) Each of the two blind flanges on the existing 30-inch steel pipe headers should have a 3-inch tap and valve for drainage and flushing.
  - i) Two slabs on grade (SOGs) that extend north of the IPS structure and were used to support the gantry crane rails have settled several inches and no longer align with the plane of the top of the IPS. These two SOGs should be demolished and replaced after compacting the subsoil. (The gantry crane rails were cut off due to the non-planar surface that supported them.) The gantry crane rails should be repaired or replaced.
4. Temporary Bypass Operation

The structural and piping rehabilitation work in the IPS wet well requires drying out and bypass of the wet well. This can be accomplished by the following steps:

- a) Install temporary self-priming pumps and temporary piping to withdraw raw sewage from the upstream 10-ft diameter manhole / junction structure.<sup>2</sup> Overland temporary piping will be required to discharge from the temporary self-priming pumps to the Headworks upstream of the bar screens (See Attachment B). [The calculations in Attachment C include consideration of the available working volume for the temporary bypass pumps. Since there will be four bypass

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<sup>2</sup> Before the condition of the forebay inlet gate was known, the plan was to withdraw raw sewage from the forebay. Due to the condition of that gate, the forebay cannot be used for raw sewage withdrawal for bypassing the IPS until the inlet gate is replaced.

Reference: Task Order 3 – IPS Rehab

- pumps required due to the available opening sizes and three would be “duty” pumps, a critical flow condition occurs when the incoming flow is one half of the lowest capacity the pumps can generate (approximately 2,500 gpm pump capacity at low speed). The working volume required is based on 15 minutes between motor starts. Given there will be three duty pumps that can be rotated, the working volume can be based on a pump start every five minutes (15/3) and the minimum working volume would be 3,125 gallons or 418 cubic feet. This minimum can be met by using the available working volume in the existing 10-ft diameter manhole and adjacent 8-ft diameter manhole, the 36-inch pipe between the two adjacent manholes (20 ft long), a part of the 36-inch Van Buren trunk sewer (200-ft plus) and lastly the newly installed 30-inch Requa sewer (10-ft long) and 6-ft diameter manhole.]
- b) Install temporary magnetic flow meter on the temporary discharge piping. Temporary flow meter signal will be routed to the PLC in the IPS Electrical Building so that the flow signal is available for other plant control schemes reliant on this parameter.
  - c) Hook up the temporary self-priming pumps to power source. It may be feasible to connect each temporary bypass pump one at a time to the current circuit breakers in the IPS Electrical Building. Install a temporary level transmitter in the 10-ft (Headworks Replacement) or 6-ft (Requa) diameter manhole. Connect signal wiring with pumps and controller to configure controls of start/stop and speed of pumps including alternating of the lead pump with lead/lag/lag/standby configuration.
  - d) Install plugs at both ends of the 54-inch main trunk sewer that feeds the IPS.
  - e) Start up the bypass self-priming pumps. Pumps will be controlled to maintain a range of water level in the 10-ft diameter MH. Calculations for the temporary bypass pumping setup are in Attachment C.
  - f) Pump down the IPS wet well with existing pumps at the IPS (at least two pumps of six will still be connected to power).
  - g) Close the valves that are located downstream of the two magnetic flow meters (1-V-14 and -1V-16).
5. Visual Inspection
- Prior to IPS bypass, a visual inspection from deck level using the existing openings in the IPS deck will be conducted to identify as much as possible the work and materials needed to repair the IPS structure and gates. Inspection will include the above-ground plug valves and check valves and the partially detached forebay inlet gate.
6. Repair Methods
- It is possible that some areas of the PVC liner on the IPS wet well walls of the center channel may have become detached. One of several concrete rehab methods may be employed, including the following:
- a) Linabond or similar co-lining systems that adhere to cleaned and rebuilt smooth concrete surface using a mastic that also adheres to PVC. This system may offer the most robust concrete

Reference: Task Order 3 – IPS Rehab

rehab system available and offers the advantage that the existing PVC liner can be bonded to the Linabond system.

- b) Concrete coatings such as Tnemec 431 (Modified Polyamine Ceramic Epoxy, 100% solids) or Carbolite Plasite 4500S (100% Solids Epoxy Lining).
- c) Modified mortar such as Sewercrete™ Calcium Aluminate Mortar has applicability for rehab of concrete sewers that have suffered attack due to H<sub>2</sub>S; this product may offer a means of rehab of corroded concrete in the IPS.
- d) Synthetic concrete mixes employing a resin “cement” binder such as Armorock may be employed for rehabilitating degraded concrete surfaces; applicability of Armorock to the IPS requires further investigation.

#### 7. Implementation Sequence Requirements

The following steps would be required for implementation of the IPS rehab:

- Bidding documents
- Advertisement
- Inspection
- Procurement of materials
- Bypass
- Repair and startup

Several contractor procurement methods could be employed as follows:

- a) Standalone Purchase Order with backup documents for bidding
- b) Progressive Design-Build
- c) Incorporate the IPS rehab in the next phase of planned improvements (Phase 2b)

#### 8. Preliminary Project Construction Schedule

Attachment D includes a preliminary construction schedule. The duration of IPS bypass is expected to be approximately 100 calendar days.

#### 9. Preliminary Project Construction Cost – Class 4 Opinion of Probable Construction Cost (OPCC)

A Class 4 estimate for the IPS rehab work is included in Attachment D. The OPCC is based on proceeding with a progressive design-build type of procurement.

#### 10. Project Delivery Recommendations

The urgency of the IPS rehab has an impact on the method used to proceed with the rehab. The repairs needed do not generally fall into a high level of urgency requiring immediate action, with the exception of the forebay inlet gate. This gate is stuck in the partially closed position; full failure of that gate could impact the ability of the IPS to perform in high flow conditions. Stantec recommends the work should be started within the next 12 months to prevent major disruption of sewer service to the served community.

Reference: Task Order 3 – IPS Rehab

Procurement methods that may be employed and their pros and cons:

- a) Standalone Purchase Order -- has the advantage of limited documentation required, but the disadvantage of incomplete scope definition for the bidders and possible change orders to be negotiated and time loss, extended IPS bypass.
- b) Progressive Design Build – offers the flexibility to allow scope modifications as the extent of damage becomes better defined, without need for change orders. At specified steps in the process the Design-Build Contractor would provide an updated cost estimate for VSD approval prior to proceeding.
- c) Incorporate in to Phase 2b – Since the cost is substantial, the addition of this work to Phase 2b eliminates the need for a separate contract and its administration. The downside is the same as for a standalone purchase order: evolving scope of work will require change orders and possible delay that will extend the IPS bypass time and associated cost.

Based on available information and possible need to allow the scope of work to evolve as the project proceeds, the Progressive Design Build procurement methods appears to offer the best means of executing the IPS rehab.

### Stantec, Pasadena

### Paul Wallace

Phone: (626) 568-6074

#### Attachments

Attachment A	Select Influent Pump Station and Sewer Record Drawings
Attachment B	Temporary Bypass Plan
Attachment C	Temporary Bypass Pumping Calculations
Attachment D	Construction Schedule and Class 4 Cost Estimate

May 24, 2019

Ron Buchwald

Page 6 of 9

Reference: Task Order 3 – IPS Rehab

## ATTACHMENT A

### SELECTED RECORD DRAWINGS

## ATTACHMENT A

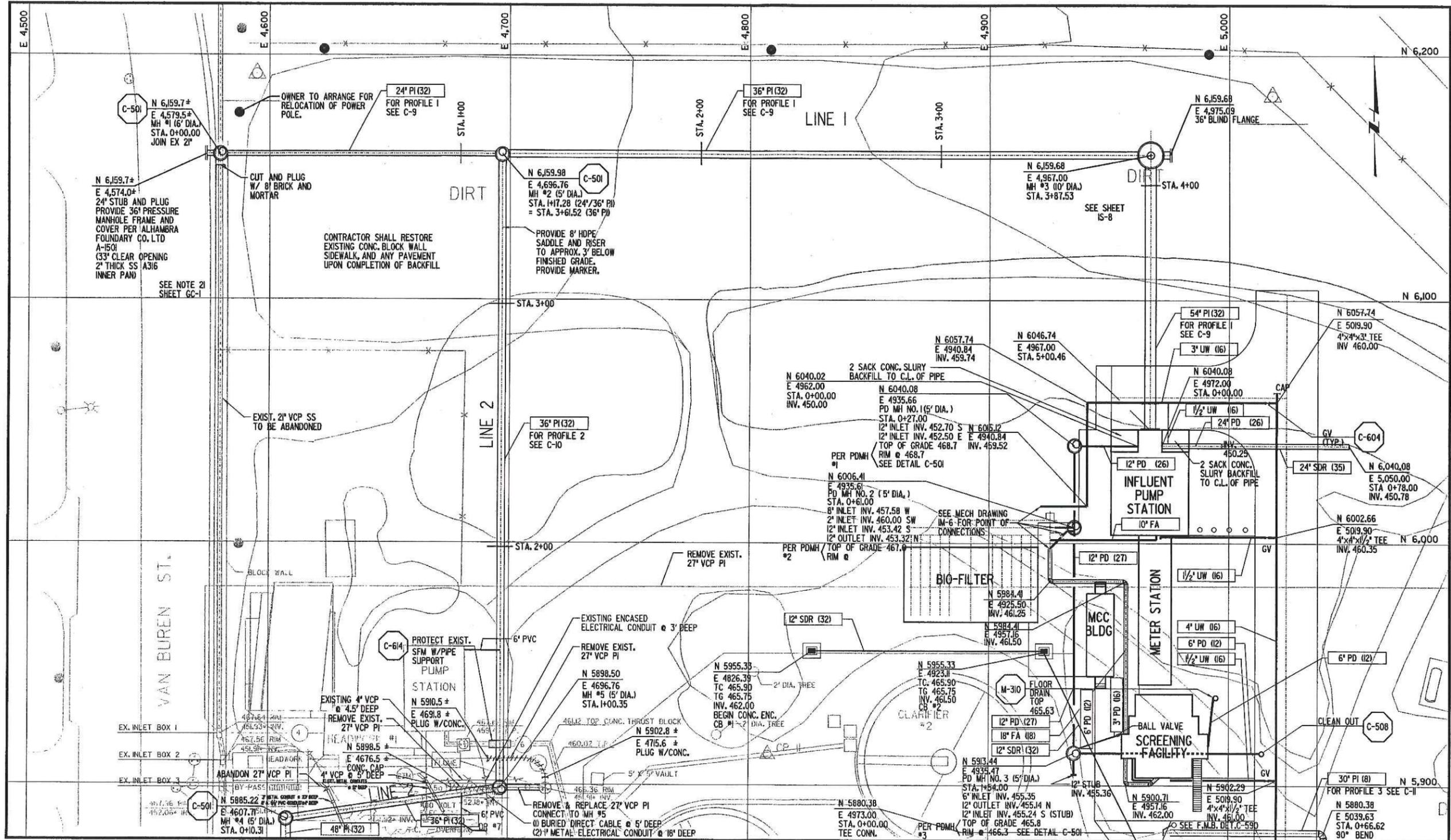
### SELECT INFLUENT PUMP STATION AND SEWER RECORD DRAWINGS

#### Drawing List

Project	Year	Drawing No.	Drawing Title
Headworks Replacement	1997	C-6	Yard Piping Plan Area A
		C-9	Yard Piping Profile I
		1M-1	Influent Pump Station Plan
		1M-2	Influent Pump Station Section - 1
		1M-3	Influent Pump Station Section - 2
		1M-4	Plant Influent Flow Meter Station
		1S-1	Influent Pump Station Floor and Fdn Plan
		1S-2	Influent Pump Station Top Plan
		1S-3	Influent Pump Station Section - 1
		PI-1	P&ID – Influent Pump Station
		2M-1	Screening Facility Plan
		2M-2	Screening Facility Section - 1
		Shadow Hills Svc Area	2004
9 of 10	Outlet Structure Plan & Section		
Requa Interceptor	2014	C-1	Line A Plan and Profile
		C-29	Interconnection 0 Details

Note: Elevation datums vary among the three project drawing sets above. Elevations in the 1997 drawings for the same point show 1.92 to 2.0 feet lower elevation than the subsequent two projects (Shadow Hills and Requa). For the calculations in Attachment C, elevations were all adjusted to the 1997 datum by subtracting 1.92 feet from the elevations shown in Shadow Hills and Requa drawings.

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FOR CONTINUATION SEE SHEET C-7

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		RFL	

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DESIGNED:	CJG
DRAWN:	NNN
CHECKED:	CJG

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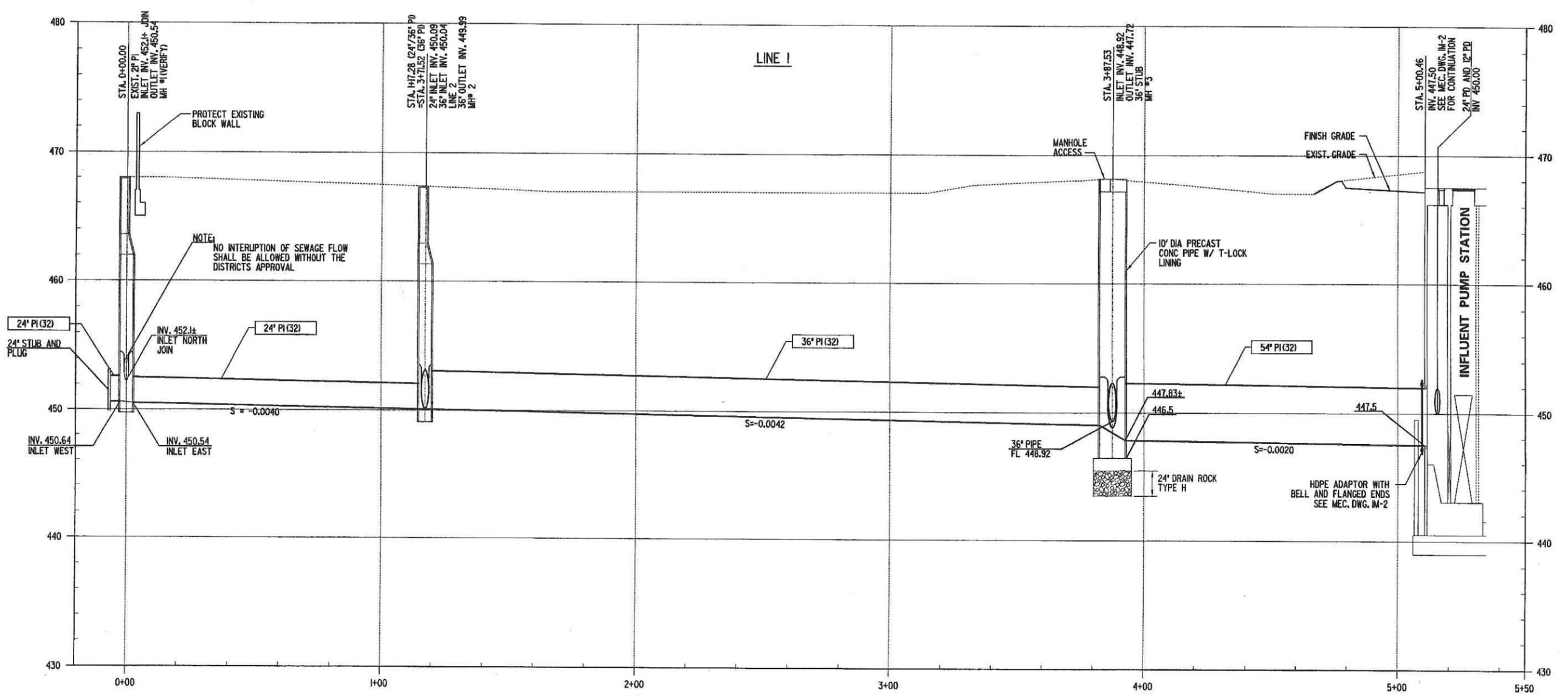


APPROVED:	DATE:
VALLEY SANITARY DISTRICT	

VALLEY SANITARY DISTRICT
HEADWORKS REPLACEMENT
YARD PIPING PLAN AREA A

SHEET	C-6
OF SHEETS	

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 JOB No. \_\_\_\_\_  
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 TIME: 08:42



PROFILE I  
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 VERT. 1"=4'  
 C-6

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			RECORD DRAWING

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DESIGNED: NNN  
 DRAWN: NNN  
 CHECKED: CUG

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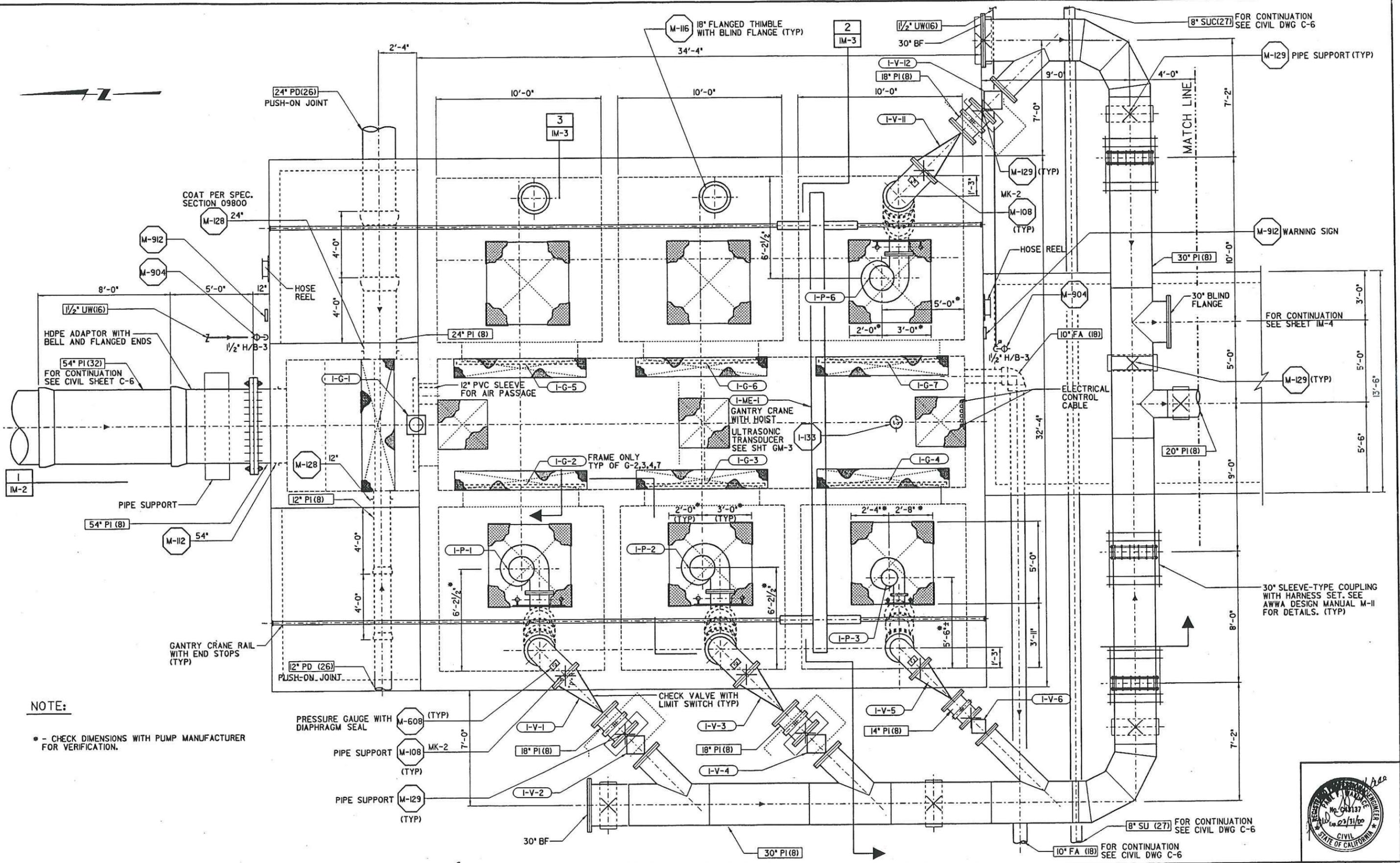
**MONTGOMERY WATSON**  
 Pasadena, California

APPROVED: \_\_\_\_\_  
 VALLEY SANITARY DISTRICT  
 DATE: \_\_\_\_\_

VALLEY SANITARY DISTRICT  
 HEADWORKS REPLACEMENT  
 YARD PIPING PROFILE I

SHEET  
**C-9**  
 OF SHEETS

FILE NAME: D:\p\001\valley\sd\mec\vsd\im01.dgn PLOT DATE: 24-OCT-1997 15:00



**NOTE:**

\* - CHECK DIMENSIONS WITH PUMP MANUFACTURER FOR VERIFICATION.

- PRESSURE GAUGE WITH DIAPHRAGM SEAL M-608 (TYP)
- PIPE SUPPORT M-108 MK-2 (TYP)
- PIPE SUPPORT M-129 (TYP)

REV	DATE	BY	DESCRIPTION

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WARNING: IF THIS BAR DOES NOT MEASURE 1" THEN DRAWING IS NOT TO SCALE.

DESIGNED: T.S. LOH  
 DRAWN: T.S. LOH  
 CHECKED: C. SENON/G. TEY

SUBMITTED: Paul J. Villan 443137 10/24/97  
 PROJECT ENGINEER R. C. E. NO. DATE  
 RECOMMENDED: A. Nigam 33699 10/27/97  
 MONTGOMERY WATSON R. C. E. NO. DATE



**MONTGOMERY WATSON**  
 Pasadena, California

APPROVED: Rex S. [Signature]  
 VALLEY SANITARY DISTRICT  
 DATE: 10/27/97

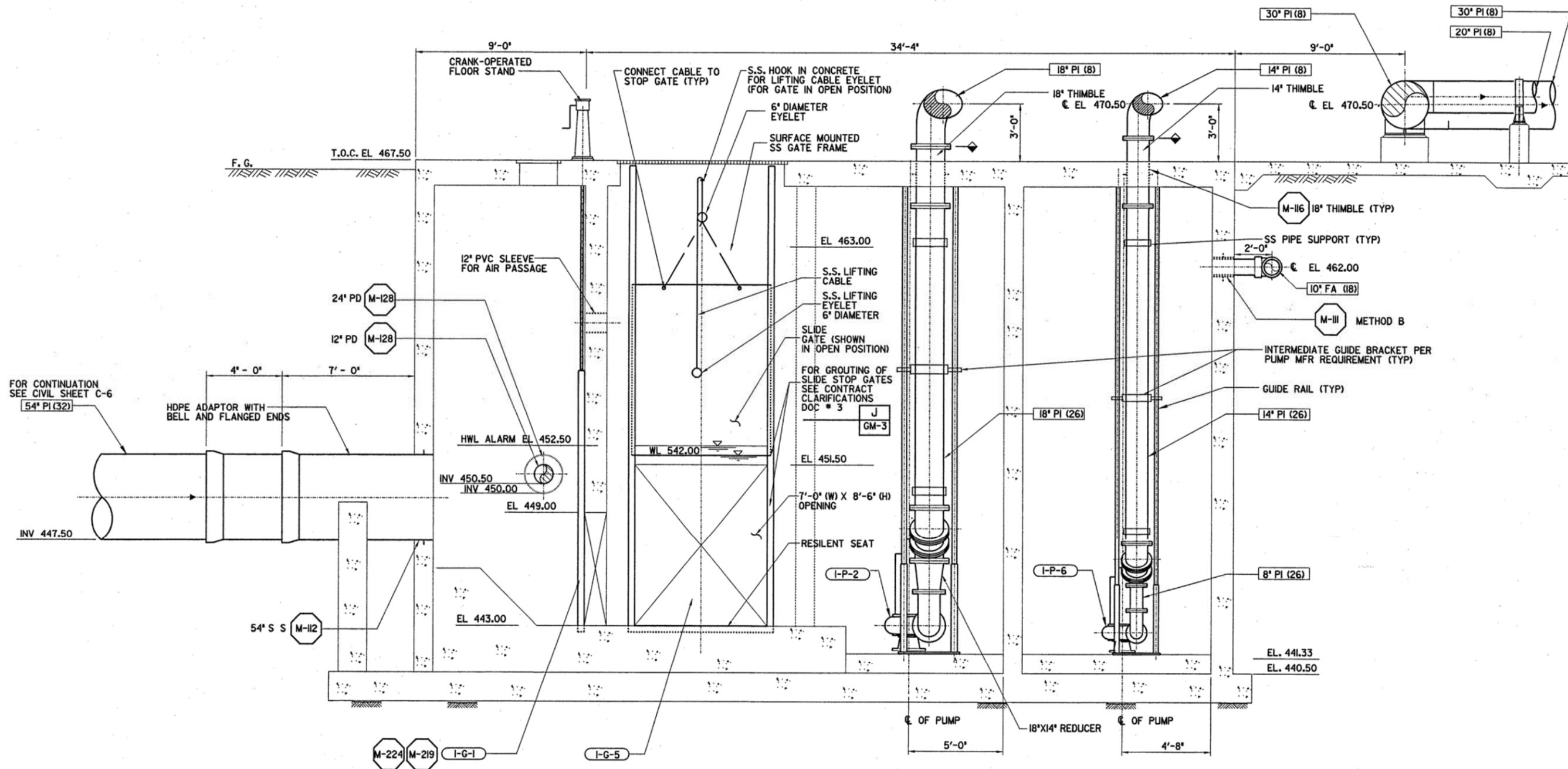
VALLEY SANITARY DISTRICT  
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 INFLUENT PUMP STATION PLAN

SHEET IM-1



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SECTION I  
IM-1

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 DRAWN T.S. LOH  
 CHECKED C. SENON/G. TEY

**RECORD DRAWING**  
 This record drawing has been prepared, in part, on the basis of information compiled and furnished by others. The engineer is not responsible for any errors or omissions which have been incorporated into this document as a result.



**MONTGOMERY WATSON**

Pasadena, California

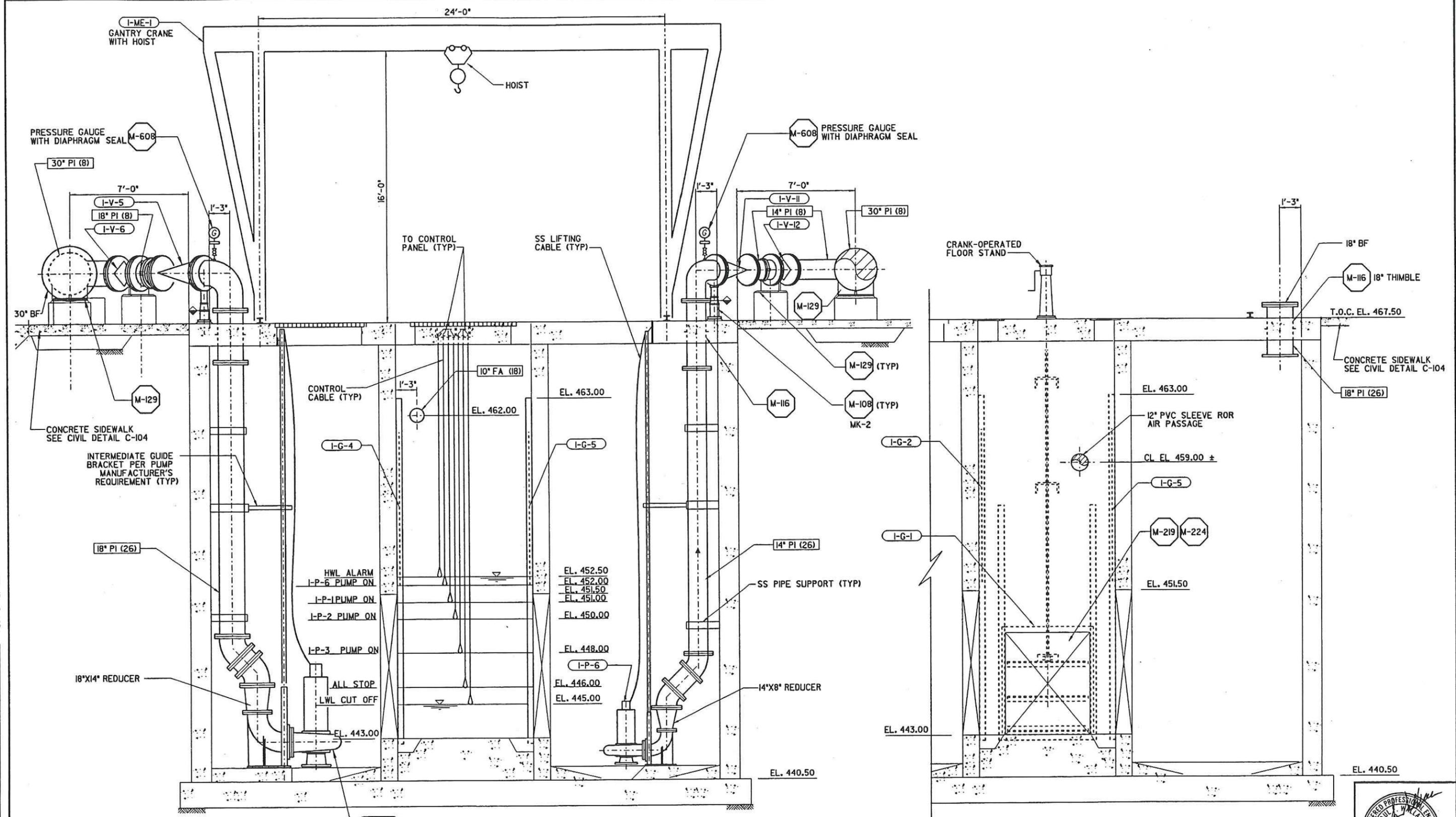
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 VALLEY SANITARY DISTRICT  
 DATE

VALLEY SANITARY DISTRICT  
 HEADWORKS REPLACEMENT  
 INFLUENT PUMP STATION  
 SECTION - I

SHEET  
**IM-2**

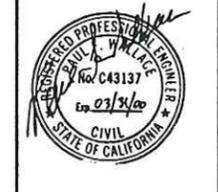
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SECTION 2 IM-1

SECTION 3 IM-1



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 DRAWN: T.S. LOH  
 CHECKED: C. SENON/G. TEY

SUBMITTED: *Paul J. Della* 43137 10/24/97  
 PROJECT ENGINEER R. C. E. NO. DATE  
 RECOMMENDED: *Paul A. Vigil* 33699 10/27/97  
 R. C. E. NO. DATE

**MONTGOMERY WATSON**  
 Pasadena, California

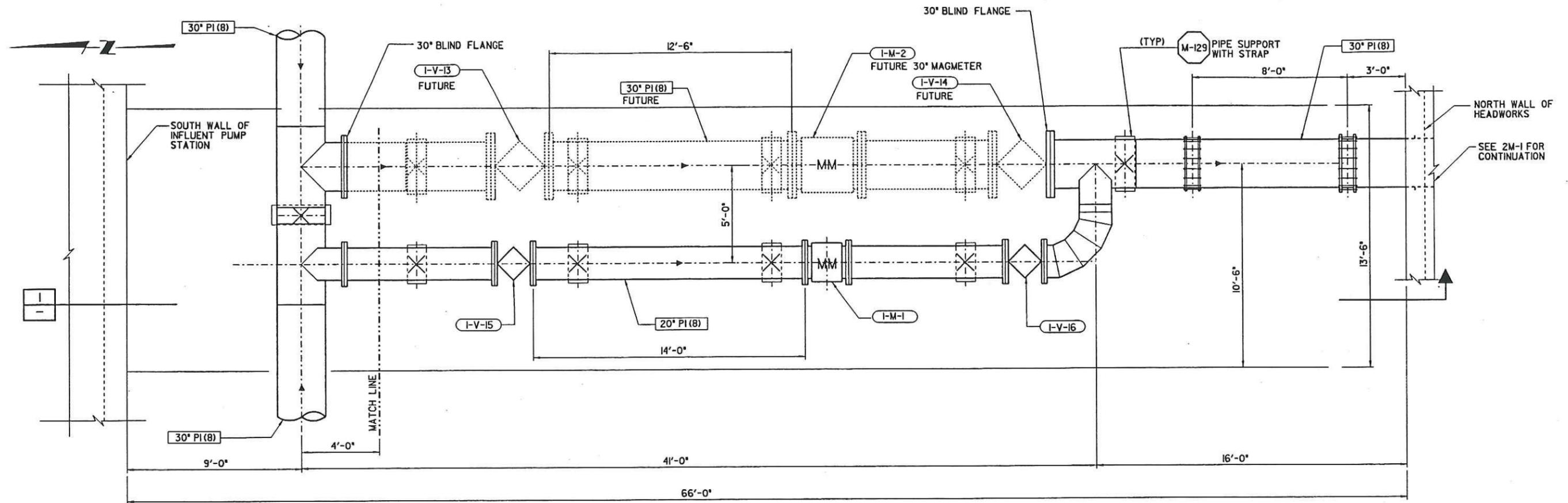
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 VALLEY SANITARY DISTRICT 10/27/97

VALLEY SANITARY DISTRICT  
 HEADWORKS REPLACEMENT  
 INFLUENT PUMP STATION  
 SECTION - 2

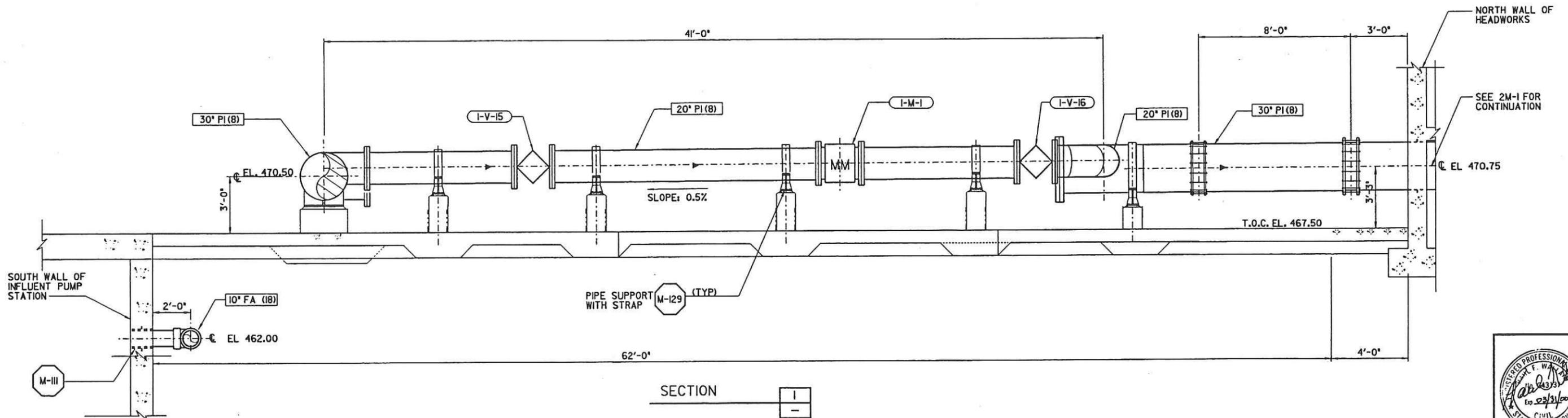
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PLAN



SECTION



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 IF THIS BAR DOES NOT MEASURE 1" THEN DRAWING IS NOT TO SCALE.

DESIGNED T.S. LOH  
 DRAWN T.S. LOH  
 CHECKED C. SENON/G.TEY

SUBMITTED: *Frank Vallejo* 10/29/97  
 PROJECT ENGINEER R. C. E. NO. DATE  
 RECOMMENDED: *C. Senon* 10/27/97  
 MONTGOMERY WATSON R. C. E. NO. DATE



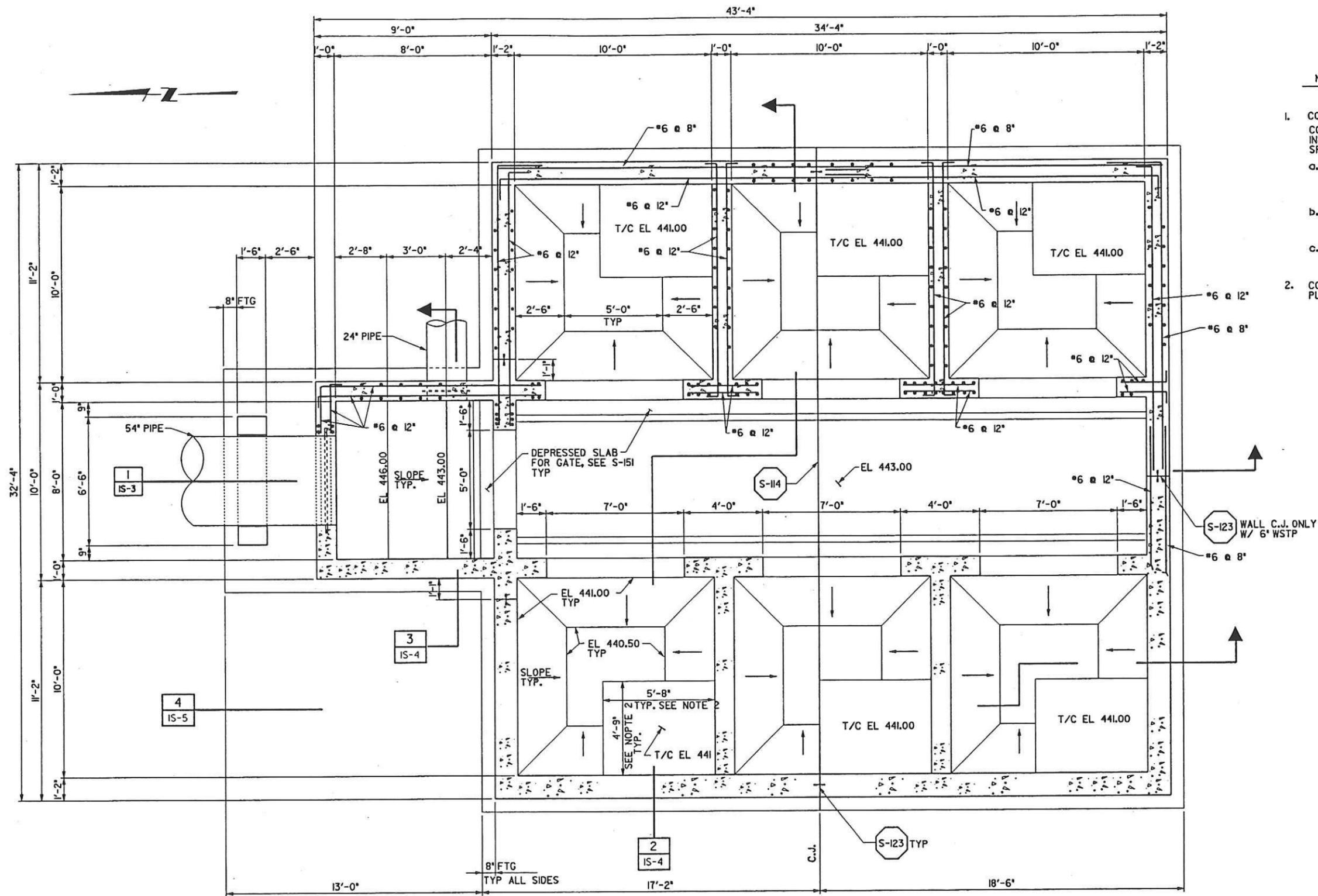
**MONTGOMERY WATSON**  
 Pasadena, California

APPROVED: *Roy [Signature]* 10/27/97  
 VALLEY SANITARY DISTRICT DATE

VALLEY SANITARY DISTRICT  
 HEADWORKS REPLACEMENT  
 PLANT INFLUENT FLOW METER STATION  
 PLAN AND SECTION

SHEET  
**IM-4**

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**NOTES:**

1. COMPACTION GROUTING:
  - a. THE EFFECTIVE TREATED AREA SHALL BE WITHIN AT 36'-8" X 52 FT (INCLUDE 1'-6" BEYOND GROUT INTAKE POINT EACH END).
  - b. THE 7 X 7 GRID OF GROUT INTAKE POINTS SPACED 7 FT APART SHALL BE USED.
  - c. THE DEPTH OF THE COMPACTION GROUTING SHALL BE 10 FT FROM THE BOTTOM OF MAT FOUNDATION.
2. CONTRACTOR SHALL VERIFY LOCATION AND SIZE OF PUMP BELOW PAD WITH PUMP MFR SHOP DRAWINGS.

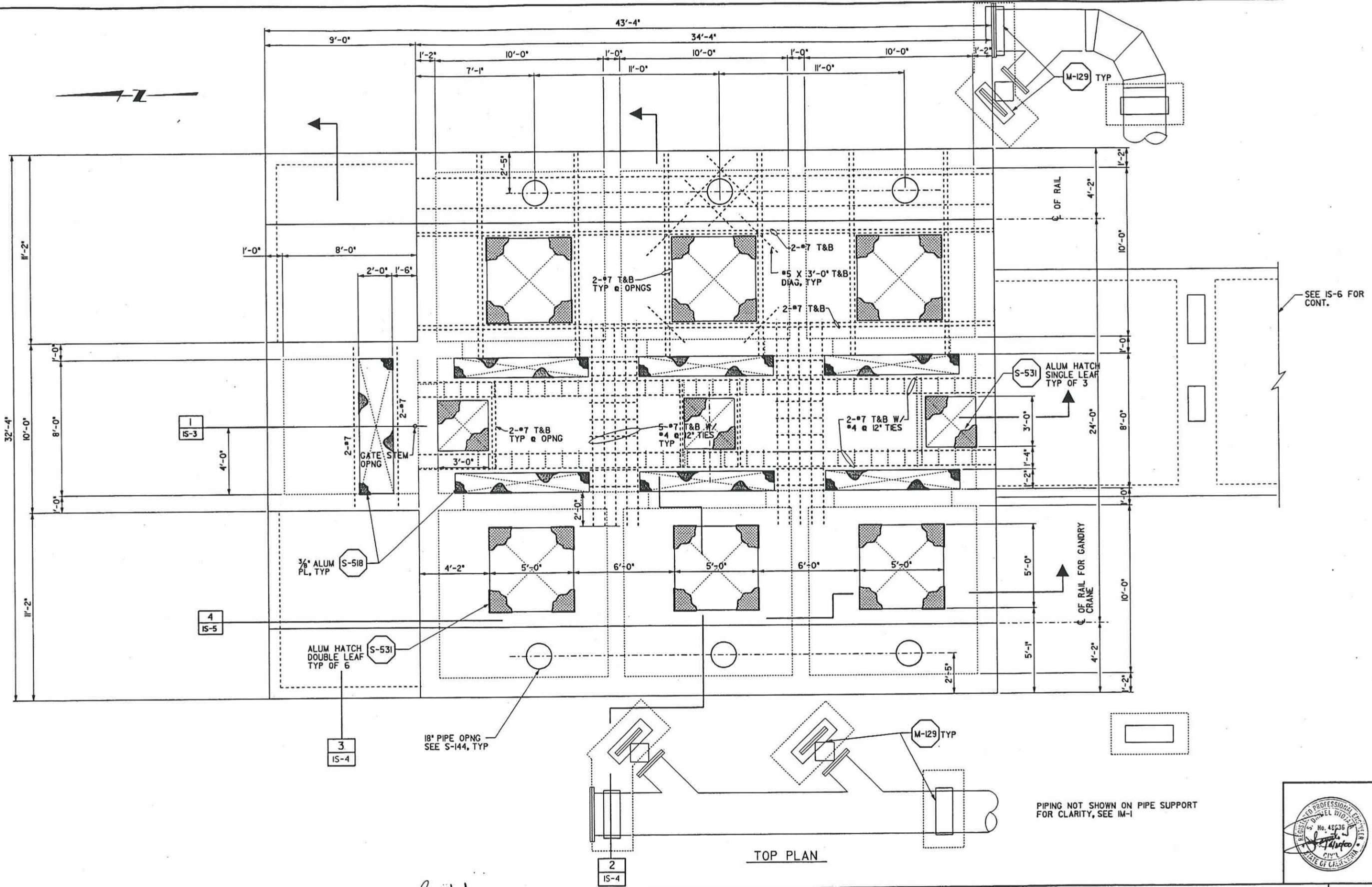
**FLOOR AND FOUNDATION PLAN**



SCALE: 3/8"=1'-0" WARNING: IF THIS BAR DOES NOT MEASURE 1" THEN DRAWING IS NOT TO SCALE.		DESIGNED: <i>[Signature]</i> DRAWN: <i>[Signature]</i> CHECKED: <i>[Signature]</i>	SUBMITTED: <i>[Signature]</i> 10/24/97 PROJECT ENGINEER: R. C. E. NO. 33699 RECOMMENDED: <i>[Signature]</i> 10/27/97 R. C. E. NO.	APPROVED: <i>[Signature]</i> VALLEY SANITARY DISTRICT	VALLEY SANITARY DISTRICT HEADWORKS REPLACEMENT INFLUENT PUMP STATION FLOOR AND FOUNDATION PLAN	SHEET IS-1 OF SHEETS
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PLOT DATE: 24-OCT-1997 13:47

FILE NAME: p:\p\ro\valley\sd\str\vsd01s02.dgn



REV	DATE	BY	DESCRIPTION

SCALE: 3/8"=1'-0"

WARNING  
 0 1/2 1  
 IF THIS BAR DOES NOT MEASURE 1" THEN DRAWING IS NOT TO SCALE.

DESIGNED: *[Signature]*  
 DRAWN: *[Signature]*  
 CHECKED: *[Signature]*

SUBMITTED: *[Signature]* 10/24/97  
 PROJECT ENGINEER R. C. E. NO. 443137  
 RECOMMENDED: *[Signature]* 10/27/97  
 MONTGOMERY WATSON R. C. E. NO. 33699

**MONTGOMERY WATSON**  
 Pasadena, California

APPROVED: *[Signature]* 10/27/97  
 VALLEY SANITARY DISTRICT

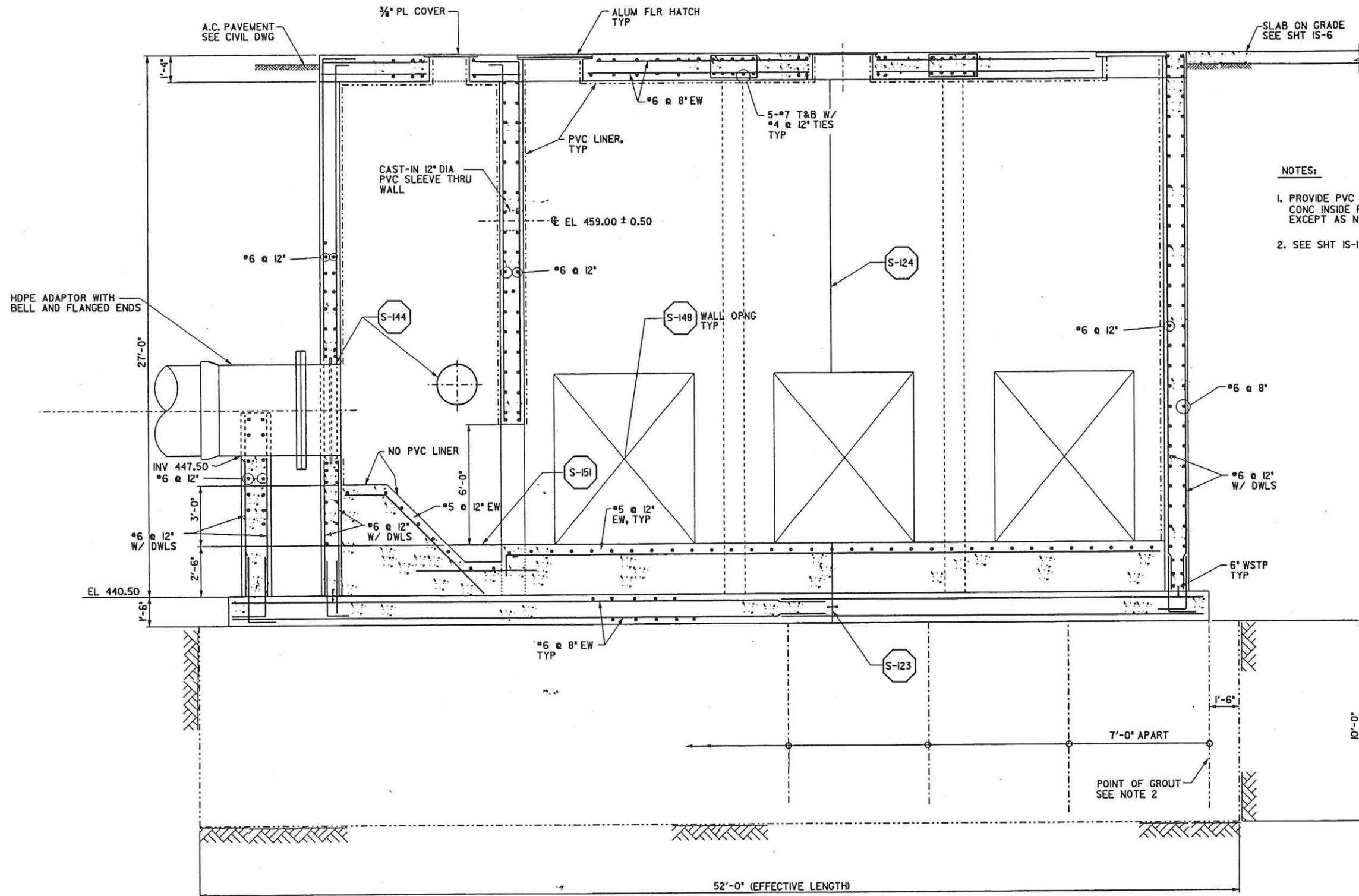
VALLEY SANITARY DISTRICT  
 HEADWORKS REPLACEMENT  
 INFLUENT PUMP STATION  
 TOP PLAN

SHEET IS-2 OF SHEETS



PLOT DATE: 24-OCT-1997 13:47

FILE NAME: p:\p\o\valley\str\vsd01s03.dgn



- NOTES:**
1. PROVIDE PVC LINER PER SPEC SECTION 03100 ON ALL CONC INSIDE PUMP STATION ABOVE ELEV. 443.50 EXCEPT AS NOTED
  2. SEE SHT IS-1 NOTE 1 FOR COMPACTION GROUTING.

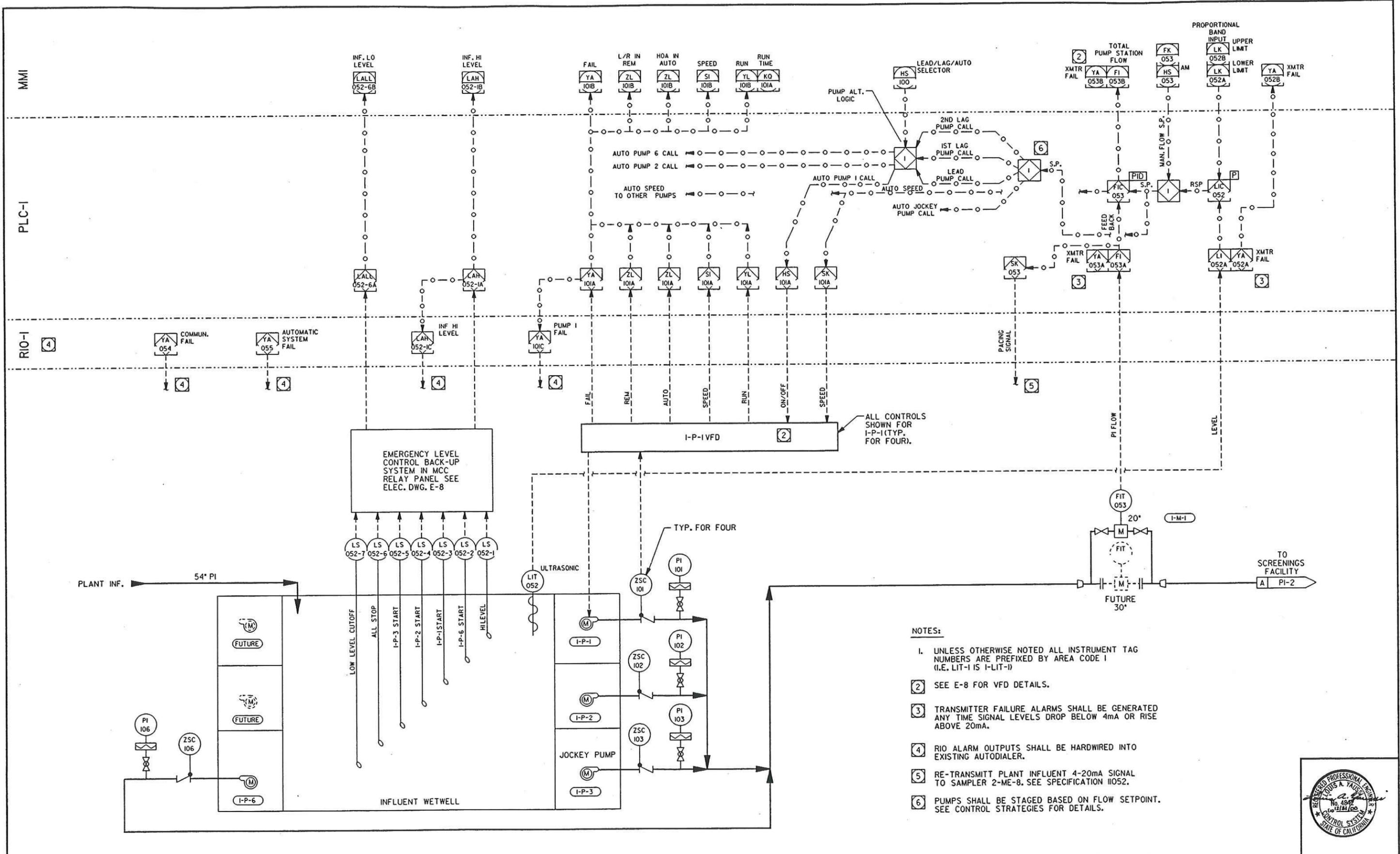
SECTION 1 IS-1 IS-2



SCALE: 3/8"=1'-0" WARNING: IF THIS BAR DOES NOT MEASURE 1" THEN DRAWING IS NOT TO SCALE.		DESIGNED: <i>D. [Signature]</i> DRAWN: <i>M. [Signature]</i> CHECKED: <i>[Signature]</i>	SUBMITTED: <i>Paul D. [Signature]</i> 10/29/97 PROJECT ENGINEER R. C. E. NO. [Number] DATE [Date] RECOMMENDED: <i>[Signature]</i> 10/27/97 R. C. E. NO. [Number] DATE [Date]	APPROVED: <i>[Signature]</i> 10/27/97 VALLEY SANITARY DISTRICT DATE [Date]	VALLEY SANITARY DISTRICT HEADWORKS REPLACEMENT INFLUENT PUMP STATION SECTION - 1	SHEET IS-3 OF SHEETS
REV	DATE	BY	DESCRIPTION			



FILE NAME: G:\omni\proj\valley\sd\flow\valley\plidgn PLOT DATE: 24-OCT-1997

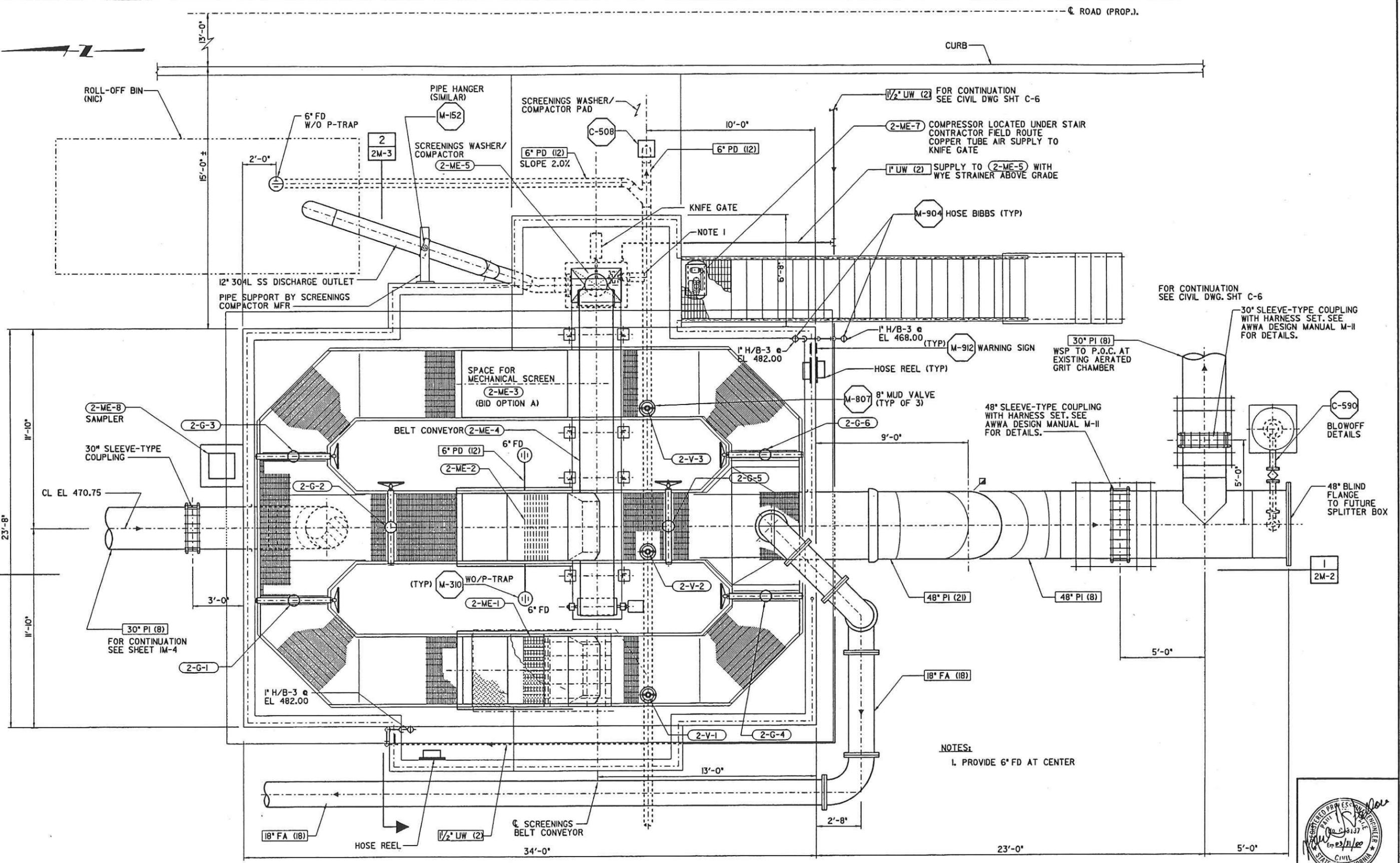


- NOTES:**
1. UNLESS OTHERWISE NOTED ALL INSTRUMENT TAG NUMBERS ARE PREFIXED BY AREA CODE 1 (I.E. LIT-1 IS I-LIT-1)
  2. SEE E-8 FOR VFD DETAILS.
  3. TRANSMITTER FAILURE ALARMS SHALL BE GENERATED ANY TIME SIGNAL LEVELS DROP BELOW 4mA OR RISE ABOVE 20mA.
  4. RIO ALARM OUTPUTS SHALL BE HARDWIRED INTO EXISTING AUTODIALER.
  5. RE-TRANSMIT PLANT INFLUENT 4-20mA SIGNAL TO SAMPLER 2-ME-8. SEE SPECIFICATION #1052.
  6. PUMPS SHALL BE STAGED BASED ON FLOW SETPOINT. SEE CONTROL STRATEGIES FOR DETAILS.



	SCALE: 1/2"	DESIGNED: B. J. ZINN	SUBMITTED: <i>Robert A. Valles</i> 10/24/97	APPROVED: <i>Robert A. Valles</i> 10/27/97	VALLEY SANITARY DISTRICT HEADWORKS REPLACEMENT	SHEET PI-1
	WARNING IF THIS BAR DOES NOT MEASURE 1" THEN DRAWING IS NOT TO SCALE.	DRAWN: B. BERG	PROJECT ENGINEER: <i>Robert A. Valles</i> 443137 10/24/97	VALLEY SANITARY DISTRICT	P&ID - INFLUENT PUMP STATION	
REV	DATE	BY	DESCRIPTION	Pasadena, California		
			CHECKED: <i>Robert A. Valles</i> 33099 10/27/97	DATE: 10/27/97		

FILE NAME: p:\p\o\valley\sd\mec\vsd02m01.dgn PLOT DATE: 24-OCT-1997 15:14



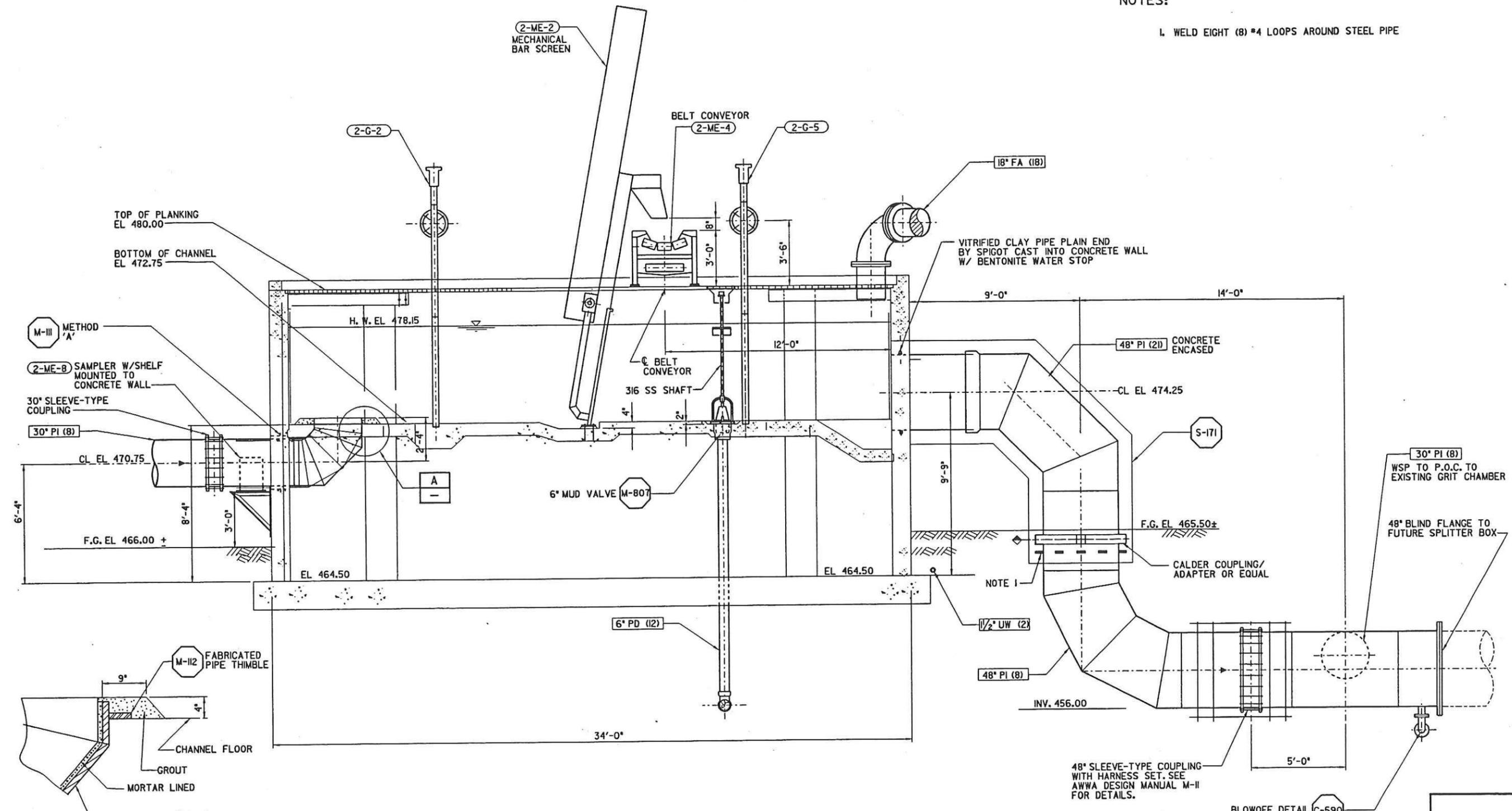
NOTES:  
1. PROVIDE 6" FD AT CENTER



SCALE: 3/8"=1'-0" WARNING: IF THIS BAR DOES NOT MEASURE 1" THEN DRAWING IS NOT TO SCALE.		DESIGNED T.S. LOH DRAWN T.S. LOH CHECKED C. SENON/G. TEY	SUBMITTED: <i>Paul J. Nolan</i> 243177 10/24/97 PROJECT ENGINEER RECOMMENDED: <i>Paul J. Nolan</i> 336999 10/27/97 MONTGOMERY WATSON	<b>MONTGOMERY WATSON</b> Pasadena, California	APPROVED: <i>Paul J. Nolan</i> 10/27/97 VALLEY SANITARY DISTRICT	VALLEY SANITARY DISTRICT HEADWORKS REPLACEMENT SCREENING FACILITY PLAN	SHEET <b>2M-1</b>
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NOTES:

I. WELD EIGHT (8) #4 LOOPS AROUND STEEL PIPE



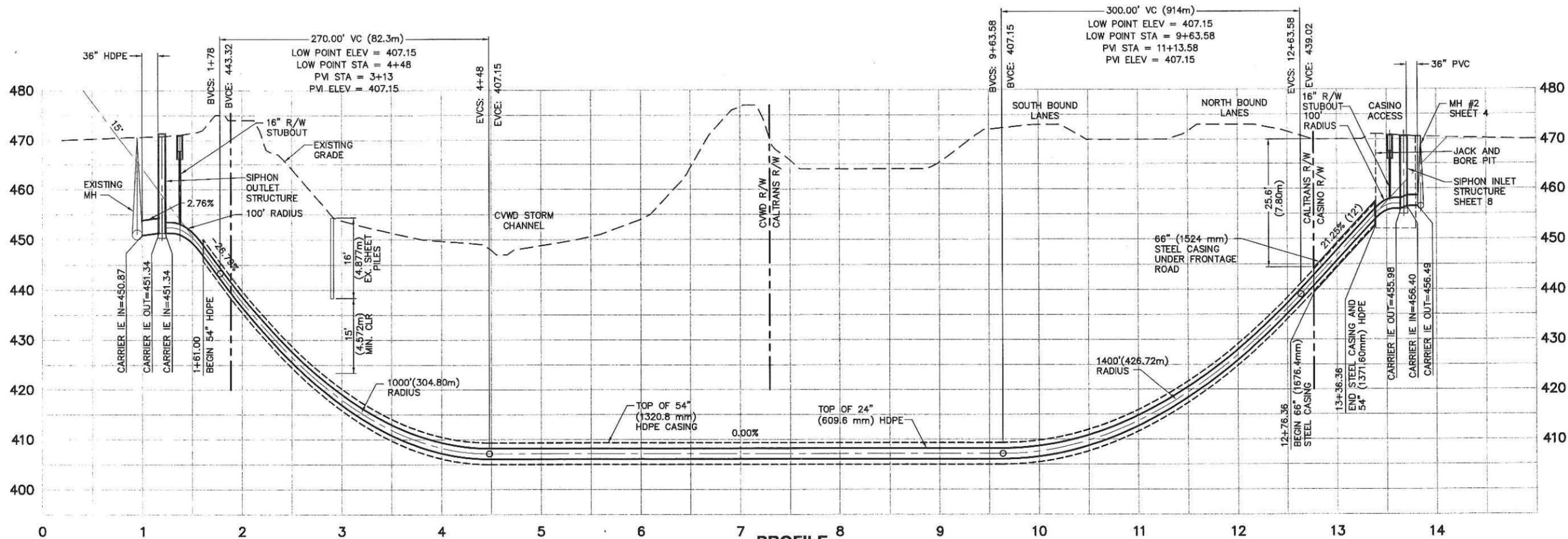
SECTION I  
2M-1

DETAIL A  
NOT TO SCALE



FILE NAME: d:\p\proj\valley\sd\mech\vsd02m02.dgn PLOT DATE: 24-OCT-1997 15:16

DESIGNED T.S. LOH	SUBMITTED <i>Paul J. Walker</i> 43137 10/24/97	APPROVED	VALLEY SANITARY DISTRICT	SHEET
DRAWN T.S. LOH	PROJECT ENGINEER R. C. E. NO. DATE	<i>R. C. E.</i>	HEADWORKS REPLACEMENT	2M-2
CHECKED C. SENON/G. TEY	RECOMMENDED <i>C. Senon</i> 33699 10/27/97		VALLEY SANITARY DISTRICT	
SCALE: 3/8"=1'-0"	WARNING: IF THIS BAR DOES NOT MEASURE 1" THEN DRAWING IS NOT TO SCALE.	Pasadena, California	DATE 10/27/97	



**PROFILE**  
 SCALE: 1"=50' HORIZ  
 1"=10' VERT



**PLAN**  
 SCALE: 1"=50'



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NO.	REVISIONS	APPROVED	DATE

**BENCH MARK**  
 LOCATION  
 BRASS DISC STAMPED "3 LL-636-MSL" LOCATED 0.70 MI. NORTH OF I-10 ALONG DILLON ROAD, IN THE SOUTHEAST ABUTMENT OF A BRIDGE OVER THE WHITEWATER RIVER, 16.4 SOUTHEAST OF CENTERLINE



DUDEK & ASSOCIATES, INC.  
 605 Third Street Encinitas, CA 92024  
 760.942.5147 Fax 760.632.0164

PREPARED UNDER THE DIRECT SUPERVISION OF  
 SIGNATURE: *Russell J. Bergholz*  
 RUSSELL J. BERGHOLZ

R.C.E. NO.  
 59395  
 DATE

DESIGN BY  
 RJB  
 DRAWN BY  
 MG  
 CHECK BY  
 RJB

APPROVED BY:  
 VALLEY SANITARY DISTRICT  
 DATE: *7/16/04*

**VALLEY SANITARY DISTRICT**  
 SHADOW HILLS SERVICE AREA  
 SEWER IMPROVEMENT PLANS  
 PHASE I CONSTRUCTION - 1+00.00 THROUGH 13+84.39 LINE "A"  
 BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 9 SOUTH, RANGE 7 EAST, SAN BERNARDINO BASE AND MERIDIAN

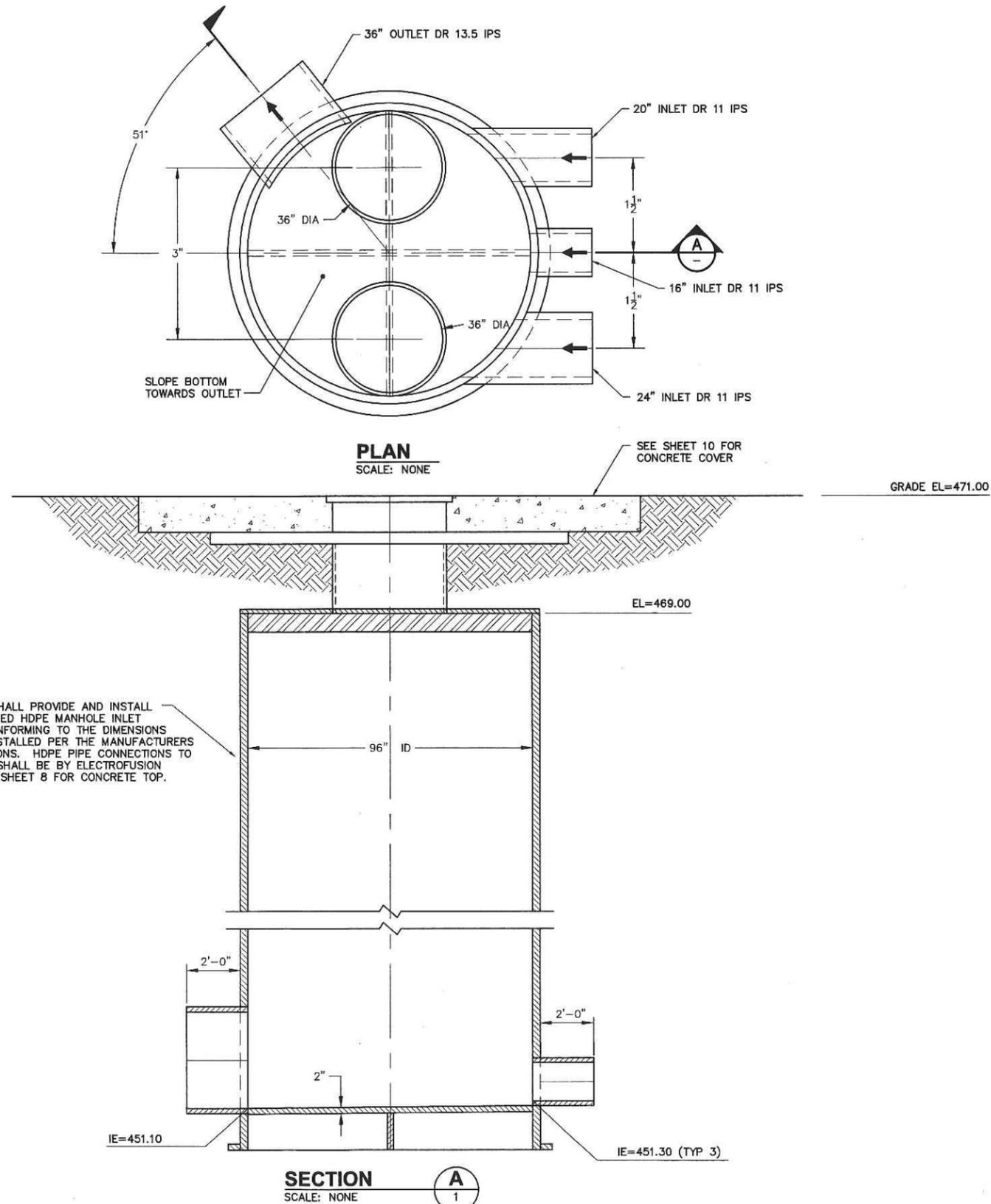
SHEET  
 5  
 OF  
 10  
 SHEETS

**NOTES:**

1. EMBEDMENT SHOULD BE PLACED AROUND THE MANHOLE RISER FOR THE FULL HEIGHT OF THE MANHOLE.
2. EMBEDMENT SHALL EXTEND A MINIMUM OF THREE AND A HALF (3.5) FEET FROM THE RISER OR TO THE TRENCH WALL; WHICHEVER IS THE GREATER DISTANCE.
3. EMBEDMENT AROUND MANHOLE RISER IS REQUIRED TO BE CLASS I OR II MATERIAL PER ASTM D2321, COMPACTED TO A MINIMUM OF 90% STANDARD PROCTOR DENSITY.
4. MANHOLES SHALL BE INSTALLED IN A DRY TRENCH WITH A STABLE FOUNDATION. THE FOUNDATION SHOULD CONSIST OF A MINIMUM OF 8" OF CLASS I MATERIAL COMPACTED TO A MINIMUM OF 95% STANDARD PROCTOR DENSITY.
5. SEE SHEET 10 FOR CONCRETE CAP DESIGN.

**SPECIAL NOTE**

A CONCRETE CAP MUST REST ON THE SOIL OVER THE MANHOLE AND DISPERSE LOADS INTO THE SOIL, NOT DIRECTLY ONTO THE MANHOLE.



CONTRACTOR SHALL PROVIDE AND INSTALL CUSTOM DESIGNED HDPE MANHOLE INLET STRUCTURE CONFORMING TO THE DIMENSIONS SHOWN AND INSTALLED PER THE MANUFACTURERS RECOMMENDATIONS. HDPE PIPE CONNECTIONS TO THE MANHOLE SHALL BE BY ELECTROFUSION WELDING. SEE SHEET 8 FOR CONCRETE TOP.

P:\Engineering\Valley-San\4009 - Mainline-Smith\dwg\CAD\dwg\4009-01\_C09.dwg Jul 16, 2004 - 11:47am



NO.	REVISIONS	APPROVED	DATE

BENCH MARK LOCATION	SLL	ELEV.
BRASS DISC STAMPED "3 LL-636-MSL" LOCATED 0.70 MI. NORTH OF I-10 ALONG DILLON ROAD, IN THE SOUTHEAST ABUTMENT OF A BRIDGE OVER THE WHITWATER RIVER, 16.4 SOUTHEAST OF CENTERLINE		-42.88 NAVD 88 -42.88 + 900 = 457.12



DUDEK & ASSOCIATES, INC.  
605 Third Street Encinitas, CA 92024  
760.942.5147 Fax 760.632.0164

PREPARED UNDER THE DIRECT SUPERVISION OF  
SIGNATURE: *Russell J. Bergholz*  
RUSSELL J. BERGHOLZ

R.C.E. NO.  
59395  
DATE

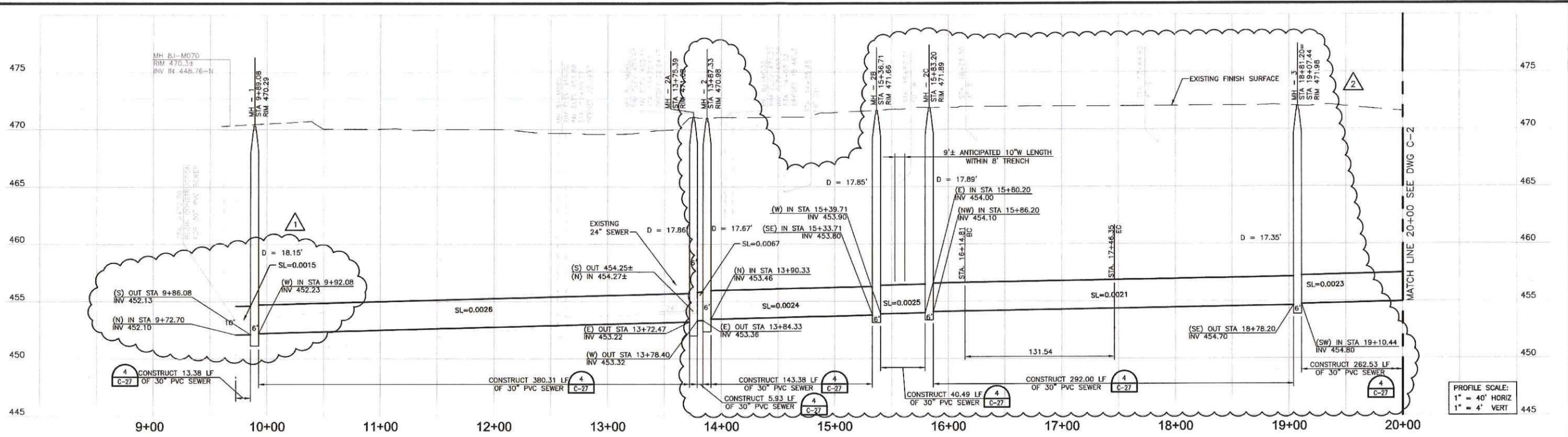
DESIGN BY  
RJB  
DRAWN BY  
MG  
CHECK BY  
RJB

APPROVED BY:  
VALLEY SANITARY DISTRICT  
*Rep. [Signature]*  
EXP. 7/20/11

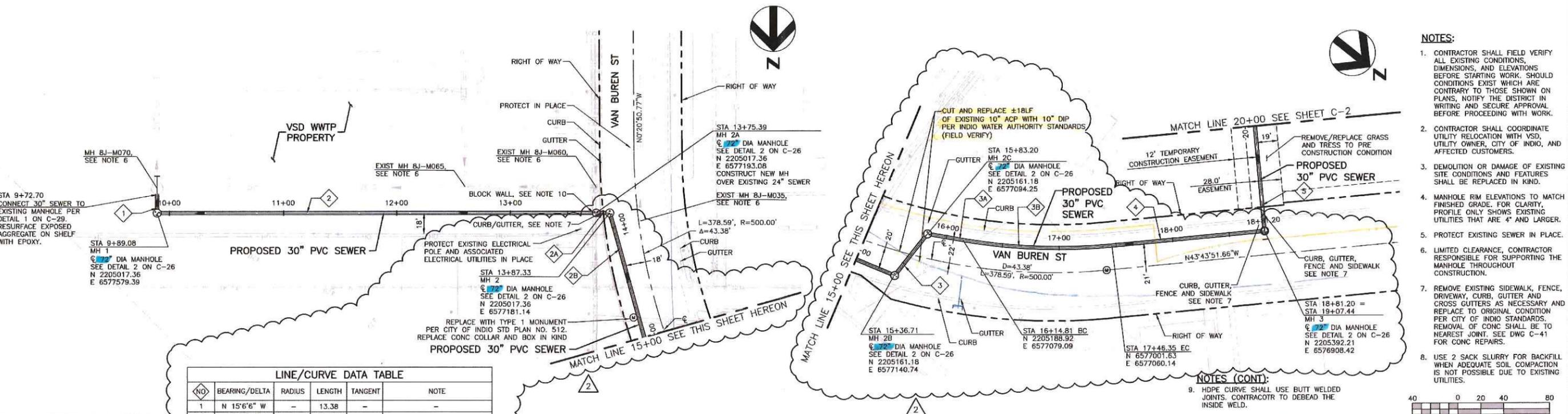
**VALLEY SANITARY DISTRICT**  
SHADOW HILLS SERVICE AREA  
SEWER IMPROVEMENT PLANS  
PHASE 1 CONSTRUCTION - OUTLET STRUCTURE  
BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 9 SOUTH, RANGE 7 EAST, SAN BERNARDINO BASE AND MERIDIAN

SHEET 9 OF 10 SHEETS

2-306.09

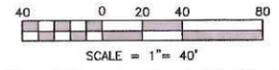


PROFILE SCALE:  
1" = 40' HORIZ  
1" = 4' VERT



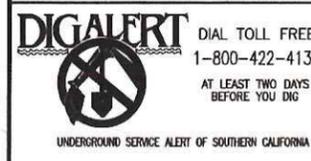
- NOTES:**
- CONTRACTOR SHALL FIELD VERIFY ALL EXISTING CONDITIONS, DIMENSIONS, AND ELEVATIONS BEFORE STARTING WORK. SHOULD CONDITIONS EXIST WHICH ARE CONTRARY TO THOSE SHOWN ON PLANS, NOTIFY THE DISTRICT IN WRITING AND SECURE APPROVAL BEFORE PROCEEDING WITH WORK.
  - CONTRACTOR SHALL COORDINATE UTILITY RELOCATION WITH VSD, UTILITY OWNER, CITY OF INDO, AND AFFECTED CUSTOMERS.
  - DEMOLITION OR DAMAGE OF EXISTING SITE CONDITIONS AND FEATURES SHALL BE REPLACED IN KIND.
  - MANHOLE RIM ELEVATIONS TO MATCH FINISHED GRADE. FOR CLARITY, PROFILE ONLY SHOWS EXISTING UTILITIES THAT ARE 4" AND LARGER.
  - PROTECT EXISTING SEWER IN PLACE.
  - LIMITED CLEARANCE, CONTRACTOR RESPONSIBLE FOR SUPPORTING THE MANHOLE THROUGHOUT CONSTRUCTION.
  - REMOVE EXISTING SIDEWALK, FENCE, DRIVEWAY, CURB, GUTTER AND CROSS GUTTERS AS NECESSARY AND REPLACE TO ORIGINAL CONDITION PER CITY OF INDO STANDARDS. REMOVAL OF CONC SHALL BE TO NEAREST JOINT. SEE DWG C-41 FOR CONC REPAIRS.
  - USE 2 SACK SLURRY FOR BACKFILL WHEN ADEQUATE SOIL COMPACTION IS NOT POSSIBLE DUE TO EXISTING UTILITIES.

- NOTES (CONT):**
- HDPE CURVE SHALL USE BUTT WELDED JOINTS. CONTRACTOR TO DEBEAD THE INSIDE WELD.
  - DEMOLISH 6' BLOCK WALL AS NECESSARY FOR SEWER CONSTRUCTION. CUT W/ CLEAN VERTICAL ENDS AND INSTALL CHAIN LINK FENCE BETWEEN GAP INSIDE OF EXISTING WALL TO MATCH EXISTING WALL HEIGHT.



LINE/CURVE DATA TABLE					
NO	BEARING/DELTA	RADIUS	LENGTH	TANGENT	NOTE
1	N 15°6'6" W	-	13.38	-	-
2	N 90°00'00" E	-	380.31	-	-
2A	N 90°00'00" E	-	5.93	-	-
2B	N 15°41'23" W	-	143.38	-	-
3	N 90°00'00" W	-	40.49	-	-
3A	N 28°39'28" W	-	28.61	-	-
3B	15.07	500'	131.54	131.16	-
4	N 43°43'52" W	-	131.85	-	-
5	N 46°16'53" E	-	268.03	-	-

**PLAN**  
SCALE: 1" = 40'



<b>CONTRACTOR:</b> INSPECTOR: 1 6/22/16 PLANT CONNECTION MODS (RFT #3) SF 6/22/16 2 8/3/16 RFT #4 WATERLINE INTERFERENCE SF 8/03/16 DATE COMPLETED: - - - AS BUILT COMP. DATE: - - - CONSTRUCTION RECORD ENGINEER: - - - BENCHMARK: - - - SEE G-2		<b>DESIGNER'S SEAL</b> ENGINEER: Steven A. Friedman R.C.E. No. 55566, EXP. 12/31/16 NAME OF FIRM: HDR Engineering, Inc. FIRM ADDRESS: 2280 Market Street, Suite 100 Riverside California, 92501 TELEPHONE # (951) 320-7300 FAX # (951) 320-7301		<b>APPROVER'S SEAL</b> APPROVED BY: JUAN RAYA, P.E. CITY ENGINEER RCE No. C 68510 DATE: - - -		CITY OF INDO VSD REQUA INTERCEPTOR DESIGN 2014 <b>LINE A</b> <b>PLAN AND PROFILE</b> STA 9+56.65 TO 20+00 TELEPHONE (760) 391-4017 FAX (760) 342-6590 100 CIVIC CENTER MALL INDO, CA 92201 www.indio.org		I.P. No. 15-042 SHEET No. <b>C-1</b> 4 OF 65 SHEETS CITY FILE No.
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May 24, 2019

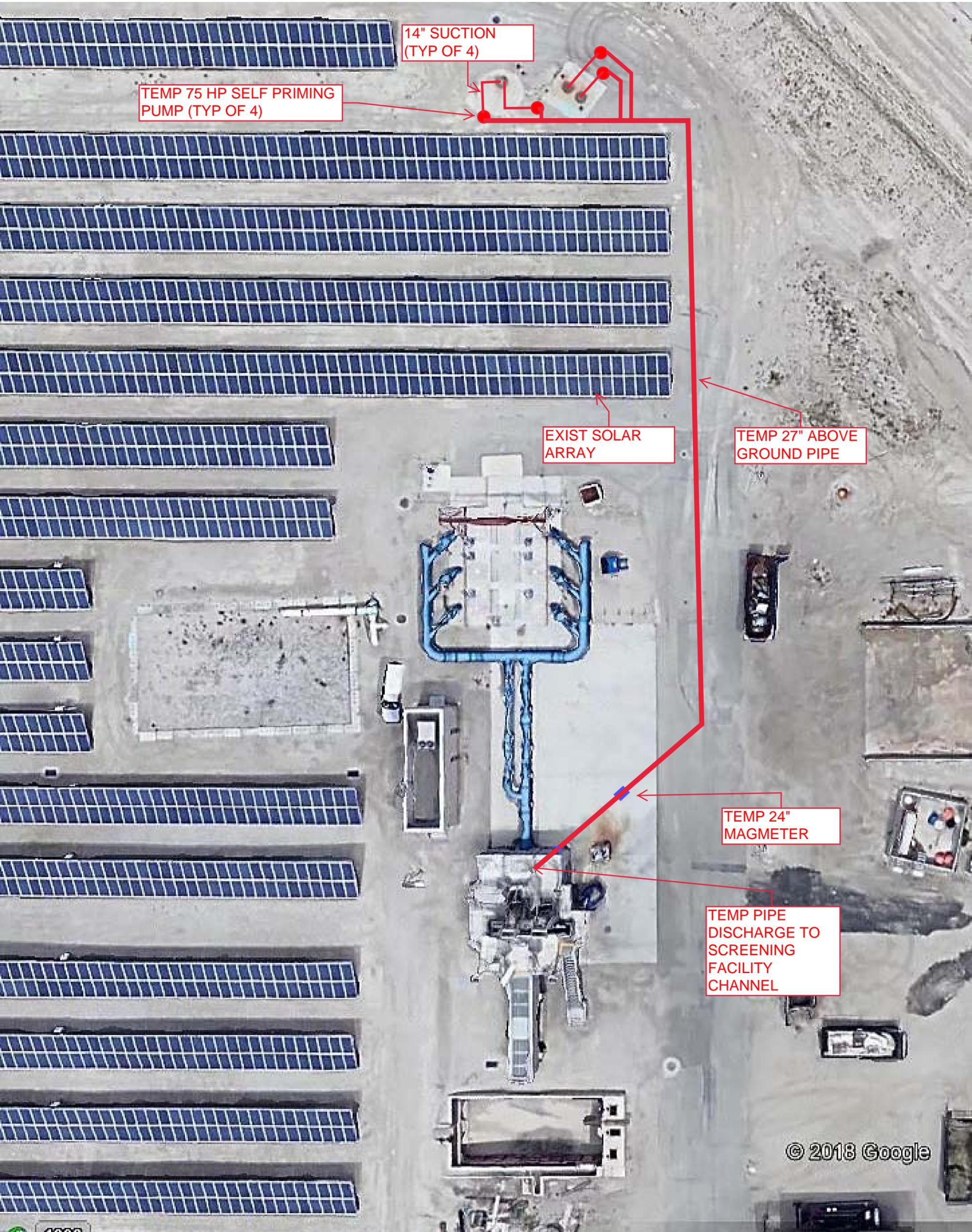
Ron Buchwald

Page 7 of 9

Reference: Task Order 3 – IPS Rehab

## ATTACHMENT B

### TEMPORARY BYPASS PLAN



TEMP 75 HP SELF PRIMING PUMP (TYP OF 4)

14" SUCTION (TYP OF 4)

EXIST SOLAR ARRAY

TEMP 27" ABOVE GROUND PIPE

TEMP 24" MAGMETER

TEMP PIPE DISCHARGE TO SCREENING FACILITY CHANNEL

May 24, 2019

Ron Buchwald

Page 8 of 9

Reference: Task Order 3 – IPS Rehab

## ATTACHMENT C

### TEMPORARY BYPASS PUMPING CALCULATIONS

**Valley Sanitary District  
Influent Pump Station Calcs**

Calc By	Paul Wallace
Date	2/27/2018
Revised	4/16/2019, 5/22/2019
Checker	Simon Calvet, Tyler Hadachek
Date	3/1/2019, 5/23/2019

**Working Volume for Bypass Pumping**

*Revised to Require Suction from upstream 10-ft MH, not Forebay*

**Elevations (see Note 1)**

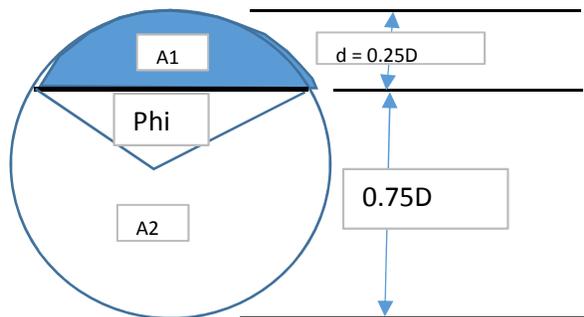
Bottom of Wet Well	443.00
Top of Shelf below Influent Sewer	446.00
Influent 54" Sewer Invert at Forebay	447.50 per 1997 Record Dwg C-9
54" Sewer Invert at 10-ft MH	447.83 per 1997 Record Dwg C-9
36" Van Buren Sewer Invert at 10-ft MH	448.92 per 1997 Record Dwg C-9

**Working Volume After IPS Inlet Gate is Repaired**

(IPS Forebay and 54" Influent Sewer will be available)

Dimensions & Areas

Forebay	
width	8 ft
length	8 ft
working depth	4.875 ft
assumes influent sewer d/D of	0.75 to define max WSE
Influent Sewer Diameter	54 inch
r =	4.5 ft
Influent Sewer Length to MH	2.25 ft
Allow Depth of Influent Sewer	107.94 ft (see Note 2)
	75% of D
	3.375 ft
Total Area of Influent Sewer Full	15.9 sf for 54
Area Not In Flow	inch sewer



$$d = 1.125 \text{ ft}$$

$$\text{Phi} = s/r = 2(\arccos(r-d)/r)$$

$$= 2.094$$

$$A1 = 1/2r^2(\text{Phi} - \sin(\text{Phi}))$$

$$= 3.109 \text{ sf}$$

$$A = \text{pi}()*r^2$$

= 15.904 sf  
 A2 = A - A1  
 = 12.795 sf  
 Volume in Influent Sewer = A2\*L = 1,381 cf  
 Volume in Forebay = w x l x d = 312 cf

**Working Volume After Inlet Gate is Repaired**

Total working volume w/ IPS gate fixed	1,693.09 cf
	12,664 gallons

**Working Volume Before IPS Inlet Gate is Repaired**

(IPS Forebay and 54" Influent Sewer will NOT be available)

Consists of the following:

- a. Volume inside 10-ft dia MH 8J-M070 10 ft
- b. Volume inside 8-ft dia Siphon Termination MH 8 ft
- c. 36-inch sewer between 8-ft and 10-ft diameter manholes at design slope.
- d. 36-inch Van Buren Sewer, maintaining sewer slope.
- e. 30-inch Requa Interceptor to next upstream MH at sewer slope
- f. Volume inside 6-ft diameter Requa MH 1.

a. Volume inside 10-ft dia MH 8J-M070  
 Bottom Elev 10-ft Dia MH 448.38 ft  
 Max WSE in 10-ft Dia (assumes inverted Shadow Hills siphon was designed to allow d/D of 0.75 in 54-inch at 10-ft dia MH) 451.21 ft  
 Max Water Depth 2.83 ft  
 Min Water Depth 1.5 ft (estimated)  
 Working depth 1.33 ft  
 Consider only percent of total depth available, due to MH bottom channels 75%  
 Working volume, maximum 78.34 cf in 10-ft MH

b. Volume inside 8-ft dia Siphon Termination MH  
 Bottom Elev 8-ft Dia MH added by Shadow Hills 449.38 ft  
 Max WSE same as 10-ft 451.21 ft  
 Working depth 1.33 ft  
 Consider only percent of total depth available, due to MH bottom channels 75%  
 Working volume, maximum 50.14 cf in 8-ft MH

c. Volume inside 36-inch pipe to upstream 8-ft MH from 10-ft dia.

Ratio of area at 75% depth to full pipe	0.804 (see above)
Invert of 36" Stub, now Shadow Hills	448.92
Therefore pipe flows at d/D =	76%
Available length of 36"	20.00 ft
Total pipe area for 36"	7.07 sf
Available Working Area for 36"	5.69 sf
Consider pipe slope and loss of cross section.	80%
Working volume in 36"	90.99 cf

d. Volume inside 36-inch Van Buren pipe to next upstream MH from 10-ft dia.

Ratio of area at 75% depth to full pipe	0.804 (see above)	
Length of 36-inch pipe to upstream - center to center distance per 1997 record dwg	270.24 ft	
- Northing of 10-ft MH	6159.68	
- Easting of 10-ft MH	4967.00	
- Northing of 5-ft MH #2	6159.98	
- Easting of 5-ft MH #2	4696.76	
Subtracting MH radii	7.50	
Actual available length of 36"	262.74 ft	
Total pipe area for 36"	7.07 sf	
Available Working Area for 36"	5.69 sf	
Working volume in 36"	1,494.12 cf	
Consider 40% actually available due to loss of cross-sectional area with sewer slope.	597.65 cf	40%

e. 30-inch Requa Interceptor to next upstream MH at sewer slope

Distance from MH 8J-M070 to 6-ft Dia. MH	10.00 ft
Invert of 30-in Requa at 8J-M070	450.10 ft
30-inch depth at 8J-M070	1.10 ft
30-inch would flow at d/D	44%
Use a/A of	44%
Full Pipe A =	4.91 sf
Flowing a =	2.17 sf
Available Working Volume	21.70 cf

f. Volume inside 6-ft diameter Requa MH 1.

Diameter	6.00 ft
----------	---------

Bottom elevation	452.17 ft
Area fraction available	40%
Available Working Volume	10.86 cf

Total Working Vol. before IPS Gate Fix	849.67 cf
	6,355.53 gal.

#### Allowable Maximum WSE in 10-ft Dia MH 8J-M070

WSE may rise until it interferes with 16-inch Invert Siphon

Assume max WSE corresponds to 75% d/D on 36-inch sewer where it enters

10-ft MH

Note: Per C-29 of Requa Dwgs, 36-inch invert is 450.92 ft

Adjusting to match 1997 datum 449.00 ft 36" Invert

75% d/D adds 2.25 ft

WSE with 36-inch flowing 75% d/D 451.25 ft

Check against WSE with 54" flowing at 75%

In 10-ft MH, 54" exiting invert elevation 447.83 ft

Adding for 75% d/D 3.375 ft

WSE with 54-inch flowing 75% d/D 451.21 ft

Use Max WSE in 10-ft MH of 451.21 ft

#### Notes:

- All elevations are adjusted to conform to 1997 Headworks Replacement Dwgs Record Drawing Set. For example existing 36-inch stub from 10-ft MH (8J-M070 on sheet 29 of Requa Interceptor Design 2014) where shown in the Headworks 1997 Record Set indicates inlet invert 448.92; whereas Requa Interceptor 2016 drawing C-29 indicates this same pipe invert 450.84. Assumption is made that the elevation datum used for Requa was 1.92 feet lower than the elevation datum used for 1997 Drawings.*

Hence, 54" Outlet Invert from 10-ft dia MH 8J-M070 to conform to 1997 datum is 450.84 minus 1.92 equals 448.92

- Distance between 10-ft MH 8J-M070 and Forebay is, using 1997 Rec Dwgs:*

MH 8J-M070 inner diameter	10 ft
MH Center Northing	6159.68
MH Center Easting	4967.00
Forebay Northing	6046.74
Forebay Easting	4967.00
Horizontal Distance C-L to Forebay	112.94 ft
Sewer Distance	107.94 ft
Sewer Slope per 1997 Rec Dwg	-0.0020
Calculated Invert at 10-ft MH	447.72
Invert in 1997 Rec Dwg C-9	447.83
USE worst case	448.92 for sewer exiting 10-ft dia MH

**Valley Sanitary District  
Influent Pump Station Calcs**

Calc By Paul Wallace  
Date 2/27/2018  
Checker Simon Calvet, Tyler Hadachek  
Date 3/1/2019, 5/22/2019

**Temporary Bypass Pumps  
Worst Case (IPS Inlet Gate Not Repaired)**

Given

Maximum Firm Flow Capacity	15.345 mgd	
based on maximum flow in Master Plan Table ES-2 value of (see Note 1)	16.50 mgd at	93%

Type of Bypass Pump	Self Priming
Pump Drive	VFD
Elevation of Surface	468.00 ft
Add to get to Pump centerline	2.50 ft
Elevation of LWL	449.38 ft
Elev top of Headworks Channel	480.00 ft (Note 5)
Peak lift elevation	483.50 ft

Maximum Static suction Lift	21.13 ft - check NPSHa
<b>Maximum Overall Static Head</b>	<b>34.13 ft</b>

Self-Priming Pump Conceptual Design

No. of Pumps	4 (Notes 2&3)
Duty Pumps	3
<b>Capacity per Pump</b>	<b>5.115 mgd</b> <b>3560 gpm</b>

Estimated Suction Friction Loss

Pipe suction size, max that fits	13.5 inch (Note 4)
Pipe suction area	0.994 sf
Suction Velocity	7.98 ft/sec - OK
Assume all suction friction loss w/	4.05 sum of k value
Suction Loss estimate	4.005 ft

Estimated Discharge Friction Loss

Set Discharge Header size	28.23 inch
based on nominal	30 inch C-905
Discharge Pipe Area	4.347 sf
For peak flow of	23.739 cfs
For peak velocity of	5.461 ft/sec
Assume all discharge minor loss w/	4.40 sum of k value
Pipe length from MH 8J-M070 to Hdwk	258 ft (1997 dwg C-6) approx
Hazen Williams C	130.00
Friction Loss =	0.82 ft
	0.82 ft
Estimated discharge minor loss	2.04 ft

Total Discharge Losses	2.86 ft
<b>Pump TDH (estimate)</b>	<b>41.0 ft</b>

Preliminary Pump Selection

Gorman Rupp  
 Model 112G60-B

Minimum Flow 2,500 gpm  
 at TDH 34 ft  
 at speed 650 rpm  
 NPSHr at full speed 6 ft  
 NPSHr at minimum speed 3 ft

**Check NPSHa**

Fluid temperature 100 deg F (worst case)  
 Fluid vapor pressure = pvp 2.19 ft  
 = 0.95 psia

$NPSHa = 144/w \times (pa - pvp) +hs$

w = specific weight = 62.40 lb/cf  
 pa = atmospheric pressure 14.70 psia  
 suction lift = 21.13 ft  
 hs = total suction head in feet =  
 velocity head - suction lift -20.14 ft

<b>NPSHa =</b>	<b>11.60 ft - OK</b>
----------------	----------------------

**Notes**

1. Limitations on bypass pump suction size constrains maximum size of bypass pump capacity that can be installed. Bypass flow capacity was maximized until suction pipe velocity maximum of 8.0 ft/sec was reached.
2. Available suction locations are limited to one 36-inch diameter MH opening at 10-ft diameter MH 8J-M070 and one 36-inch diameter MH opening at Siphon Outlet Structure next to and connected to 10-ft dia MH. 2 openings and pump suction in each opening: 2 .
3. Maximum suction size wherein two suction pipes can be installed in each 36-inch diameter openings makes a total of 4 pumps.
4. With 36-inch diameter openings, and 2 suction pipes per opening the maximum OD of suction pipe w/ 1.5 inch play left is 17.25 inch.  
 Largest C-905 pipe that can fit is 14 inch nominal size with OD of 15.3 inch. Corresponding ID of this C-905 pipe is 13.5 inch
5. Per drawing 2M-1 from 1997 Headworks Replacement

**Valley Sanitary District  
Influent Pump Station Calcs**

**Temporary Bypass Pump Curve**

Based on:

Gorman Rupp

Model 112G60-B

web address: <https://www.grpumps.com/>

Calc By Paul Wallace

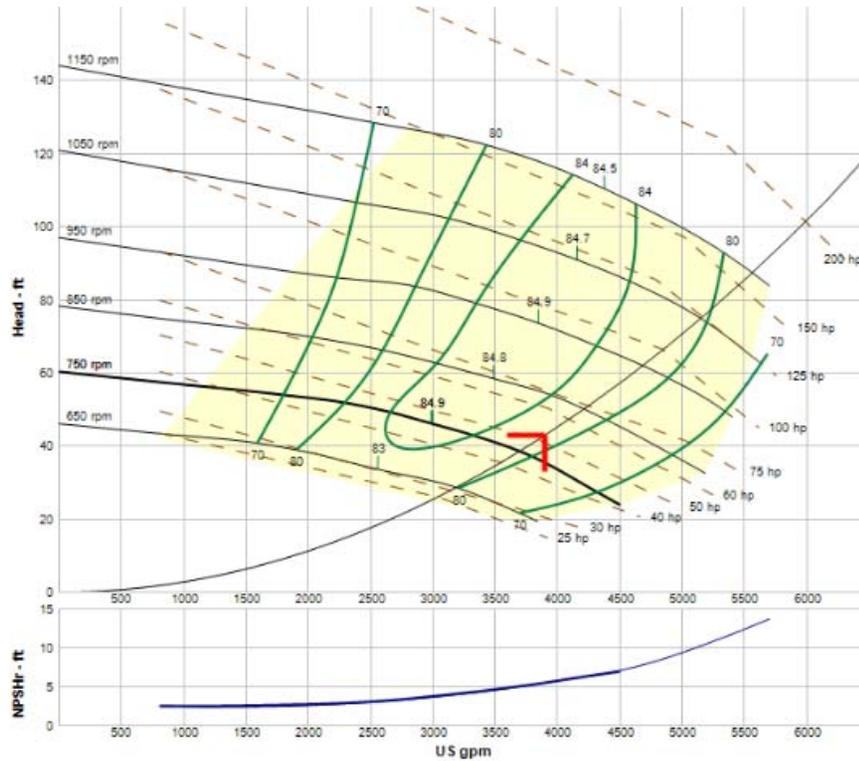
Date 2/27/2018

Checker Simon Calvet

Date 3/1/2019

**10 SERIES®**

**112G60-B Self Priming Pump**



This curve is provided for preliminary selection only. Please consult factory before making final pump or motor selections.

**Valley Sanitary District  
Influent Pump Station Calcs**

Calc By	Paul Wallace
Date	2/27/2018
Revised	4/16/2019
Checker	Simon Calvet, Tyler Hadachek
Date	3/1/2019, 5/22/2019

**Worst Case Pump Cycling Time**

Given

Maximum Firm Flow Capacity 15.345 mgd  
based on maximum flow in Master Plan Table ES-2

Type of Bypass Pump	Self Priming / Trash Pump
Maximum Static suction Lift	21.13 ft
Maximum Overall Static Head	34.13 ft

Self-Priming Pump Conceptual Design

No. of Pumps	4
Duty Pumps	3
Capacity per Pump	5.115 mgd 3560 gpm
Pump TDH (estimate)	41.0 ft

Preliminary Pump Selection

Gorman Rupp	
Model	112G60-B
Minimum Flow	2,500 gpm
at TDH	34 ft

Worst case cycling avoidance formula

Set maximum pump starts per hour	4
Time between pump starts	15 minutes
By alternating duty pumps, time is	5 minutes
Pump lowest output	2,500 gpm
Required working volume = qt/4 =	3,125 gallons
Available working volume** =	6,356 gallons - OK
Actual minimum time betw pump starts	10.17 minutes - OK

\*\* At worst case when IPS inlet gate has not been repaired

May 24, 2019

Ron Buchwald

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Reference: Task Order 3 – IPS Rehab

## ATTACHMENT D

### CONSTRUCTION SCHEDULE AND CLASS 4 COST ESTIMATE







	New Inlet SS Slide Gate, 60 x 72 inch		1 ea	\$ 35,000	\$ 35,000	
	New Isolation Plug Valves, 30"		2 ea	\$ 22,000	\$ 44,000	
	Tap & 3" Valve on Header Blind Flanges		2 ea	\$ 8,000	\$ 16,000	
	Materials for SOG Repair at Gantry Crane		1 LS	\$ 5,000	\$ 5,000	
	New Gantry Crane Rails		100 lf	\$ 35	\$ 3,500	
						\$ 141,000
	5 - Repairs & Rehab					
	Valve Repair (on site); seal replacement		15 ea	\$ 570	\$ 8,550	
	Remove Bay 3 Jockey Pump 14" Riser Thimble		1 LS	\$ 3,520	\$ 3,520	
	Confined Space Entry Crew		35 days	\$ 3,250	\$ 113,750	
	Bay Gate Repair Labor		3 ea	\$ 2,280	\$ 6,840	
	IPS Interior Structural Repair Labor		15 days	\$ 2,530	\$ 37,950	
	Remove & Replace Bay 3 Riser Thimble		10 days	\$ 1,520	\$ 15,200	
	Riser Ship, Prep, Coat, Return		1 LS	\$ 60,000	\$ 60,000	
	IPS Inlet Gate Remove & Replace, 15 working days		1 LS	\$ 26,400	\$ 26,400	
	Add Isolation Plug Valves to Discharge Header		2 ea	\$ 12,600	\$ 25,200	
	Tap Header and Install 3" Flush Valve		2 ea	\$ 8,800	\$ 17,600	
	Replace Slab On Grade for Gantry Crane		1 LS	\$ 20,160	\$ 20,160	
	Remove & Replace Gantry Crane Rails		1 LS	\$ 17,600	\$ 17,600	
						\$ 352,770
	6 - Reinstall Equipment					
	Confined Space Entry Crew		6 days	\$ 3,250	\$ 19,500	
	Reinstall Risers		6 day	\$ 1,520	\$ 9,120	
	Reinstall Guide Rails & Pumps (by VSD)					
						\$ 28,620
	7 - Startup & Demob					
	Test Pumps, Gates & Valves		8 day	\$ 2,000	\$ 16,000	
	Demob Bypass System		4 day	\$ 3,040	\$ 12,160	

								\$ 28,160
	<b>Subtotal</b>							<b>\$ 1,112,057</b>
	<b>Contingency</b>			35%				\$ 389,220
	Contractor Overhead & Profit			20%				\$ 222,411
	<b>Total</b>							<b>\$ 1,723,688</b>
	Duration of IPS Bypass Pumping in Calendar Days						90	
	Start of IPS Bypass						10/21/2020	
	End IPS Bypass						1/19/2021	

**Attachment E**  
**Skilled and Trained Workforce Certification**

## SKILLED AND TRAINED WORKFORCE CERTIFICATION

The undersigned does hereby certify to the Valley Sanitary District ("District") as follows:

I am the \_\_\_\_\_ [title] of \_\_\_\_\_ [proposer],  
the party submitting the Qualification Statement ("Proposer").

Public Contract Code section 22164 requires the Proposer to provide an enforceable commitment to the District that the Proposer and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades as a condition of being qualified.

A "skilled and trained workforce" means a workforce that meets all of the following conditions:

- All the workers performing work in an apprenticeable occupation in the building and construction trades are either skilled journeypersons<sup>1</sup> or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards.
- At least 60 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.
- Notwithstanding the foregoing, at least 30 percent of the skilled journeypersons employed to perform work on the contract or project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for work performed in the following occupations: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.
- For an apprenticeable occupation in which no apprenticeship program had been approved by the chief prior to January 1, 1995, up to one-half of the graduation percentage requirements under Public Contract Code section 2600 *et seq.* may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation prior to the chief's approval of an apprenticeship program for that occupation in the county in which the project is located.

The Proposer has reviewed the skilled and trained workforce requirements under Public Contract Code sections 22164 and 2600 *et seq.* (as they may be amended from time to time), including the foregoing requirements, and does hereby certify that it shall comply with the same pursuant to one of the following methods:

- The Proposer will provide monthly reports to the City demonstrating that the Proposer and its subcontractors performing work on the project or contract are complying with the requirements of Public Contract Code sections 22164 and 2600 *et seq.*
- The Proposer will provide evidence that the Proposer has entered into a project labor agreement that will bind the Proposer and its subcontractors performing work on the project or contract and that includes the requirements of Public Contract Code section 22164.

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

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<sup>1</sup> A skilled journeyperson is defined as a worker that either (1) graduated from an approved apprenticeship program or (2) has at least as many hours of experience in the occupation as would be required to graduate from an approved apprenticeship program. (Pub. Contract Code, § 2601(e).)

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

Name of Proposer \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**Attachment F**  
**Valley Sanitary District**  
**Conflict-Of-Interest Policy Covering Design-Build Projects**

## **VALLEY SANITARY DISTRICT CONFLICT-OF-INTEREST POLICY COVERING DESIGN-BUILD PROJECTS**

The purpose of this document is to clarify the Valley Sanitary District's ("District") position on potential conflicts-of-interest that may arise when consultants or contractors (collectively, "Proposer") perform work for the District relating to potential design-build projects.

Organizational conflicts-of-interest can occur when, because of existing or planned activities or because of relationships with other entities, a Proposer is unable or potentially unable to render impartial assistance or advise the District; a Proposer's objectivity in performing the contract work is or might be otherwise impaired; or a Proposer has an unfair competitive advantage.

The policies and guidelines concerning the organizational conflicts-of-interest found herein will be specified or referenced in the design-build Request for Qualifications ("RFQ") and Request for Proposal ("RFP") documents as well as any contract for the engineering/design services, inspection, or technical support in the administration of the design-build projects.

Resolution of conflict-of-interest issues is ultimately at the sole discretion of the District. The District reserves the right to cancel or amend the resulting contract(s) if a successful Proposer failed to disclose a potential conflict, which it knew or should have known about, or if a Proposer provided information in response to an inquiry from the District that is false or misleading.

After award, conflict-of-interest guidelines and policies shall continue to be monitored and enforced. If an organizational conflict-of-interest is discovered after award, the Proposer will make an immediate and full written disclosure to the District that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict-of-interest is determined to exist and the Proposer was aware of an organizational conflict-of-interest prior to award of the contract and did not disclose the conflict-of-interest, the District may terminate the contract with the Proposer for material breach. If the Proposer is terminated, the District assumes no obligations, responsibilities and liabilities to reimburse all or part of the costs incurred or alleged to have been incurred by the Proposer.

### **APPROACH**

The following approach to conflict-of-interest will apply to District procurements relating to District design-build projects:

- I. A potential Proposer will not be allowed to participate as a design-build entity or to join a design-build team if, without limitation, any of the following is true:
  - A. The Proposer is the District's general engineering or design consultant on the design-build project. Subconsultants and subcontractors to the Proposer that have not performed work on the contract to provide services for the design-build project may participate as a design-build entity or join a design-build team.
  - B. The Proposer has assisted the District in managing or is assisting in the management of the design-build project, including the preparation of the RFQ or RFP language or evaluation criteria.

- C. The Proposer has conducted preliminary design services for the design-build project such as geometric layouts, bridge-type selection, preliminary bridge design, etc.
  - D. The Proposer performed design work related to the design-build project for other project stakeholders.
  - E. The Proposer has performed work on a previous contract that specifically excludes them from participating as a design-build entity or joining a design-build team on the design-build project.
  - F. The Proposer is under contract with any other entity or stakeholder to perform oversight on the design-build project.
  - G. The Proposer has obtained any advice from, or discussed any aspect relating to the project or procurement of the project with any person or entity with an organizational conflict-of-interest, including, but not limited to, the consultants and contractors of any entity who has provided technical support on the design-build project.
- II. Proposers who may have potential conflicts-of-interest in relation to the design-build project and wish to participate as a Proposer or join a design-build team must:
- A. Conform to applicable federal and state conflict-of-interest rules and regulations including, without limitation, the California Political Reform Act, California Government Code Section 1090, the federal Copeland “Anti-Kickback” Act and federal conflict-of-interest rules set forth in the federal funding agency’s administrative grant and cooperative agreement regulations. Federal conflict-of-interest rules and regulations shall only apply where the design-build project receives federal funding.
  - B. Disclose all relevant facts relating to past, present or planned interest(s) of the Proposer’s team (including the Proposer, Proposer’s proposed consultants, contractors, subconsultants and/or subcontractors and their respective chief executives, directors and key personnel) which may result, or could be viewed as an organizational conflict-of-interest in connection with any design-build procurement, including present or planned contractual or employment relationships with any current employee of the District.
  - C. Disclose in the response documents to a design-build RFQ and RFP, all of the work performed in relation to the design-build project being procured under the RFQ and RFP.
  - D. Provide all records of the work performed in relation to the design-build project to the District so that all information can be evaluated and made available to all potential design-build teams, if necessary.
  - E. Ensure that the Proposer’s contract with any entity to perform services related to

the design build project has expired or has been terminated.

Upon review of the information provided above, the District's General Manager will determine, in his or her sole discretion, if the Proposer has an organizational conflict-of-interest. Decisions of the District's General Manager regarding organizational conflicts-of-interest may be appealed to the District Board. The decision of the District Board shall be final with respect to the disposition of the organizational conflict-of-interest and non-appealable.

- III. For other potential conflicts-of-interest not mentioned above (e.g. employee changing companies, merger/acquisitions of firms, property ownership, business arrangements, financial interest), Proposers shall disclose and address any conflicts-of-interest or potential conflicts-of-interest when participating as a design-build entity or joining a design-build team. The District will then determine if an organizational conflict-of-interest exists.
- IV. The successful Proposer or firms affiliated with the successful Proposer are prohibited from competing on any agreement to provide construction inspection services for the design-build project. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise. No subconsultants who provided design services in connection with the design-build project shall be eligible to compete for any agreement to provide construction inspection services for the design-build project.

**Attachment G**  
**Proposal Holder Contact Form**

## PROPOSAL HOLDER CONTACT FORM

This form must be completed by any firm who plans on submitting a bid for this project. This form should also be completed by any subcontractor, vendor or manufacturer who wants to be notified of any response to questions, addendums or other project notifications prior to bid opening.

This form will be submitted to Valley Sanitary District by the due date listed in the **Request for Qualifications** or their bid will be deemed not responsive and remain unopened. This form can be mailed (see Request for Qualifications), faxed (800 750-2280 attention Ron Buchwald) or emailed to [rbuchwald@valley-sanitary.org](mailto:rbuchwald@valley-sanitary.org). Note: The Proposal Holder's company name below must match the name of the company listed on the outside of the Proposal Holder's envelope.

Proposal Holder's or Entity's Name: \_\_\_\_\_

Proposal Holder's or Entity's Interest in Project (list Bidder, Subcontractor, Vendor, etc.): \_\_\_\_\_

\_\_\_\_\_

Proposal Holder's or Entity's Address: \_\_\_\_\_

Proposal Holder's or Entity's Contact Person: \_\_\_\_\_

Proposal Holder's or Entity's Phone No.: \_\_\_\_\_

Proposal Holder's or Entity's Email Address: \_\_\_\_\_