



Board of Directors Regular Meeting
Tuesday, June 23, 2020 at 1:00 PM
Valley Sanitary District Board Room
45-500 Van Buren Street, Indio, CA 92201

*******SPECIAL NOTICE – Telephonic Accessibility*******

Pursuant to Paragraph 11 of Executive Order N-25-20, executed by the Governor of California on March 12, 2020, as a response to mitigating the spread of coronavirus known as COVID-19, during the June 23, 2020, regular meeting of Valley Sanitary District Board of Directors members of the public will be allowed to attend and address the Board of Directors during the open session of the meeting telephonically.

Members of the public wanting to listen to the open session of the meeting may do so by calling (425) 436-6376 and when prompted, enter access code 166514. Members of the public wanting to address the Board, either during public comment or for a specific agenda item, or both, are requested to send an email notification no later than 12:30 p.m. on the day of the meeting to the Valley Sanitary District's Clerk of the Board at hgould@valley-sanitary.org.

Page

1. CALL TO ORDER

1.1. Roll Call

1.2. Pledge of Allegiance

2. PUBLIC COMMENT





This is the time set aside for public comment on any item not appearing on the agenda. Please notify the Secretary in advance of the meeting if you wish to speak on a non-hearing item.

3. CONSENT CALENDAR

Consent calendar items are expected to be routine and noncontroversial, to be acted upon by the Board of Directors at one time, without discussion. If any Board member requests that an item be removed from the consent calendar, it will be removed so that it may be acted upon separately.

- | | | |
|------|---|---------|
| 3.1. | Approve June 9, 2020 Regular Meeting Minutes | 5 - 10 |
| | 3.1 June 9, 2020 Meeting Minutes.pdf  | |
| 3.2. | Approve Warrants for June 4, to June 17, 2020 | 11 |
| | 3.2 Warrants June 4 to June 17, 2020.pdf  | |
| 3.3. | Accept Summary of Cash and Investments for May 2020 | 12 |
| | 3.3 May 2020 Summary of Cash and Investments.pdf  | |
| 3.4. | Accept Combined Monthly Account Summary for May 2020 | 13 - 14 |
| | 3.4 May 2020 Combined Monthly Account Summary.pdf  | |
| 3.5. | Accept Monthly Income Summary for May 2020 | 15 |
| | 3.5 May 2020 Income Summary.pdf  | |

4. NON-HEARING ITEMS

- | | | |
|------|---|-----------|
| 4.1. | Authorize Board President and General Manager to Execute a Design-Build Contract with Schneider Electric & Stantec, Inc. for the Energy Services - Treatment Plant Project in an Amount Not to Exceed \$2,200,000 for Phases 1-3 | 16 - 153 |
| | 4.1 Staff Report Award of Contract - Schneider Electric Stantec Treatment Plant.pdf  | |
| | 4.1 Attachment A Schneider Design-Build Energy Contract - Final 6.16.20.pdf  | |
| 4.2. | Amend Resolution 2020-1130 to Make Minor Administrative Corrections for the VSD Wage Schedule and Grant Additional Holiday Hours for Employees Assigned to the "Operator of the Day" Shift Consistent with Long-Standing Practice | 154 - 160 |
| | 4.2 Staff Report Employee Wages and Benefits.pdf  | |
| | 4.2 Attachment A Resolution No. 2020-1130.pdf  | |

[4.2 Attachment B Amended Wage Schedule.pdf](#) 

- 4.3. Adopt Resolution 2020-1134 Specifying Responsible Party for Payment of Candidates' Election Statements for the Upcoming November 2020 General Election 161 - 174

[4.3 Staff Report Specifying Payment of Candidate Statement.pdf](#) 

[4.3 Attachment A Special District Information Form.pdf](#) 

[4.3 Attachment B General District Election Calendar 2020.pdf](#) 

[4.3 Attachment C Resolution No. 2020-1134 Candidates Statements.pdf](#) 

- 4.4. Discuss the Capital Improvement Program for Fiscal Year 2020/21 175 - 179

[4.4 Staff Report - CIP Update.pdf](#) 

[4.4 Attachment A FY 20-21 Capital Spreadsheets.pdf](#) 

5. GENERAL MANAGER'S ITEMS

General Manager's items not listed are for discussion only; no action will be taken without an urgency vote pursuant to State law.

6. DIRECTOR'S ITEMS

Director's items not listed are for discussion only; no action will be taken without an urgency vote pursuant to State law.

7. INFORMATIONAL ITEMS

8. PUBLIC COMMENT

This is the time set aside for public comment on any item to be discussed in Closed Session. Please notify the Secretary in advance of the meeting if you wish to speak on an item.

9. CONVENE IN CLOSED SESSION

Items discussed in Closed Session comply with the Ralph M. Brown Act.

- 9.1. Pursuant to Government Code Section 54954.5
Public Employee Recruitment
Title: Business Services Manager

- 9.2. Pursuant to Government Code Section 54954.5
Public Employee Performance Evaluation
Title: General Manager

10. CONVENE IN OPEN SESSION

Report out on Closed Session items

11. ADJOURNMENT

Pursuant to the Brown Act, items may not be added to this agenda unless the Secretary to the Board has at least 72 hours advance notice prior to the time and date posted on this notice.

UNNOFFICAL UNTIL APPROVED

VALLEY SANITARY DISTRICT MINUTES OF REGULAR BOARD MEETING

June 9, 2020

*****SPECIAL NOTICE – Telephonic Accessibility*****

Pursuant to Paragraph 11 of Executive Order N-25-20, executed by the Governor of California on March 12, 2020, as a response to mitigating the spread of coronavirus known as COVID-19, during the June 9, 2020 regular meeting of Valley Sanitary District Board of Directors, members of the public will be allowed to attend and address the Board of Directors during the open session of the meeting telephonically.

Members of the public wanting to listen to the open session of the meeting were able to do so by calling (425) 436-6376 and when prompted, enter access code 166514. Members of the public wanting to address the Board, either during public comment or for a specific agenda item, or both, were requested to send an email notification no later than 12:30 p.m. on the day of the meeting to the Valley Sanitary District's Clerk of the Board at hgould@valley-sanitary.org.

A regular Board Meeting of the Governing Board of Valley Sanitary District (VSD) was held at the District offices, 45-500 Van Buren Street, Indio, California, on Tuesday, June 9, 2020.

1. **CALL TO ORDER**

Vice President Scott Sear called the meeting to order at 1:01 p.m.

1.1 Roll Call

Directors Present:

Debra Canero, Dennis Coleman, Mike Duran, Scott Sear, William Teague

Staff Present:

Beverli A. Marshall, General Manager, Holly Gould, Cesar Mascoto,

Via Telephone: Ron Buchwald, Joanne Padgham, Robert Hargreaves, Best Best & Krieger

Guests:

Haki Dervishi, One Stop Shoppe

1.2 Pledge of Allegiance

1.3 May Employee Anniversaries

- Ian Wilson, Chief Plant Operator -17 years
- Andy Boyd, Operator III – 11 years
- Nick Castaneda, Collections Technician II – 6 years
- Beverli Marshall, General Manager – 1 year

1.4 New Employee Introduction

- Cesar Mascoto, Operator III

The Board congratulated Ian Wilson, Andy Boyd, Nick Castaneda, and Beverli Marshall on their years of service and thanked them for their continued hard work and dedication.

The Board also welcomed the District's newest staff member, Cesar Mascoto, Operator III.

2. PUBLIC COMMENT

This is the time set aside for public comment on any item not appearing on the agenda. Please notify the Secretary in advance of the meeting if you wish to speak on a non-hearing item.

Haki Dervishi, business owner, Indio, CA, stated that he felt bullied by the District over issues with his wife's business. He feels staff is targeting One Stop Shoppe and pleaded with the Board to look further into the situation.

3. CONSENT CALENDAR

3.1 Approve May 26, 2020, Regular Meeting Minutes

3.2 Approve Warrants for May 21 to June 3, 2020

ACTION TAKEN:

MOTION: Secretary Canero made a motion to approve the consent calendar as presented. Director Coleman seconded the motion. Motion carried unanimously.

MINUTE ORDER NO. 2020-3018

4. PUBLIC HEARING

4.1 Public Hearing to Discuss the Comprehensive Budget for Fiscal Year 2020/21 and Adopt Resolution No. 2020-1131 Approving the Comprehensive Budget for Fiscal Year 2020/21

- ✓ General Notice and Call
- ✓ President Announces Public Hearing Procedures
- ✓ General Manager's Report
- ✓ President Declares Public Hearing Open
- ✓ Public Comments
- ✓ President Declares Public Hearing Closed
- ✓ Board Discussion
- ✓ Consideration of Resolution

Vice President Sear asked Ms. Marshall to give a brief summary of the actions leading up to the Public Hearing. Ms. Marshall stated that in accordance with California law, a Notice of Public Hearing was duly noticed in The Desert Sun, a newspaper of general publication on April 26, 2020 and May 10, 2020. Vice President Sear read the procedures to be followed during the hearing and asked Ms. Marshall to summarize any written communications regarding the public hearing. Ms. Marshall informed the Board that there were none. Ms. Marshall presented a budget overview. Vice President Sear declared the Public Hearing open at 1:39 p.m. and asked Ms. Marshall to give a brief staff report which would be followed by any public testimony. Being no comments from

the public, Vice President Sear declared the Public Hearing closed at 1:41 p.m. Director Coleman stated that he likes the new budget format and thanked staff for their hard work, but he stated that he is strategically opposed to this budget and will be voting no. Ms. Marshall thanked Joanne Padgham for doing an excellent job preparing the budget.

“A RESOLUTION OF THE BOARD OF DIRECTORS OF VALLEY SANITARY DISTRICT ESTABLISHING AND ADOPTING THE OPERATIONS & MAINTENANCE BUDGET AND CAPITAL IMPROVEMENT PROGRAM FOR FISCAL YEAR 2020/21”

ACTION TAKEN:

MOTION: Secretary Canero made a motion to approve Resolution No. 2020-1131, Operations & Maintenance Budget and Capital Improvement Program for Fiscal year 2020/21. Director Teague seconded the motion. Motion carried by the following roll call vote:

AYES: Canero, Duran, Sear, Teague

NOES: Coleman

ABSENT: None

ABSTAIN: None

RESOLUTION NO. 2020-1131

4.2 Adopt Resolution 2020-1132 Establishing the Annual Appropriations Limits for Fiscal Year 2020/21

“A RESOLUTION OF THE BOARD OF DIRECTORS OF VALLEY SANITARY DISTRICT ESTABLISHING THE ANNUAL APPROPRIATIONS LIMIT FOR FISCAL YEAR 2020/21”

ACTION TAKEN:

MOTION: Director Teague made a motion to approve Resolution No. 2020-1132, Establishing the Appropriations Limit for Fiscal year 2020/21. Director Coleman seconded the motion. Motion carried by the following roll call vote:

AYES: Canero, Coleman, Duran, Sear, Teague

NOES: None

ABSENT: None

ABSTAIN: None

RESOLUTION NO. 2020-1132

5. NON-HEARING ITEMS

5.1 Adopt Resolution 2020-1133 Amending Fees and Charges for District Services for Fiscal Year 2020/21

Staff recommended increasing the Connection Capacity Fee from \$4,400 to \$4,473 per the applicable economic indicator published by the Engineering News Record’s 21-City Construction Cost Index.

“A RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY SANITARY DISTRICT AMENDING FEES AND CHARGES FOR DISTRICT SERVICES”

ACTION TAKEN:

MOTION: Secretary Canero made a motion to approve Resolution No. 2020-1133, Amending Fees and Charges for District Services. Director Teague seconded the motion. Motion carried by the following roll call vote:

AYES: Canero, Coleman, Duran, Sear, Teague

NOES: None

ABSENT: None

ABSTAIN: None

RESOLUTION NO. 2020-1133

- 5.2 Set a Public Hearing Date for July 28, 2020 – Determining Certain Accounts to be Delinquent and Directing the Placement of these Accounts on the Property Tax Rolls for Collection

Annually, District staff review the outstanding invoices of all properties that have not paid their invoices for various fees. In order to collect the unpaid charges and to ensure adequate procedural due process is provided, a Public Hearing date is required, and notice is sent to each specific property and posted on the District website. At the Public Hearing, the Board of Directors will adopt a resolution allowing the delinquent invoices to be placed on the property tax roll for collection. Staff recommends that the Board set a public hearing date for July 28, 2020, to consider placing delinquent service charges on the county tax rolls.

ACTION TAKEN:

MOTION: Director Teague made a motion to set a public hearing date for July 28, 2020, to consider placing delinquent service charges on the county tax rolls. Secretary Canero seconded the motion. Motion carried by the following roll call vote:

AYES: Canero, Coleman, Duran, Sear, Teague

NOES: None

ABSENT: None

ABSTAIN: None

MINUTE ORDER NO. 2020-3019

- 5.3 Authorize Carryover of Funds from Fiscal Year 2019/20 to Fiscal Year 2020/21 in an Amount of \$1,307,900 for Items Not Completed by Fiscal Year End

The District has many projects that were started in fiscal year 2019/20 that will be completed in fiscal year 2020/21. The estimated amount to be carried over to fiscal year 2020/21 is \$1,307,900.

ACTION TAKEN:

MOTION: Secretary Canero made a motion to approve the carryover items from fiscal year 2019/20 to fiscal year 2020/21 in the amount of

\$1,307,900. Director Teague seconded the motion. Motion carried by the following roll call vote:

AYES: Canero, Coleman, Duran, Sear, Teague

NOES: None

ABSENT: None

ABSTAIN: None

MINUTE ORDER NO. 2020-3020

- 5.4 Approve Blanket Purchase Orders for the Listed Vendors and Amounts for Fiscal Year 2020/21 in a Total Amount Not to Exceed \$722,160

District staff has reviewed the purchases for the past fiscal year and the expenditures outlined within the Comprehensive Budget for 2020/21. Staff was able to identify \$722,160 of purchases that are needed for the normal course of business.

ACTION TAKEN:

MOTION:

Director Coleman made a motion to approve the list of Proposed Blanket Purchase Orders for Fiscal Year 2020/21 in the amount of \$722,160. President Duran seconded the motion. Motion carried by the following roll call vote:

AYES: Canero, Coleman, Duran, Sear, Teague

NOES: None

ABSENT: None

ABSTAIN: None

MINUTE ORDER NO. 2020-3021

6. GENERAL MANAGER'S ITEMS

General Manager's items not listed are for discussion only; no action will be taken without an urgency vote pursuant to State law.

- 6.1 Monthly Staff Activities for May 2020

A discussion took place regarding the implementation of the new accounting and permitting software, and the asset management training.

7. DIRECTOR'S ITEMS

Director's items not listed are for discussion only; no action will be taken without an urgency vote pursuant to State law

Director Coleman gave an update on the EVRA meeting. The EVRA Board adopted the budget for fiscal year 2020/21 of \$321,000, a slight increase to last year's budget. The next EVRA meeting is tentatively scheduled for July 21, 2020.

8. INFORMATIONAL ITEMS

- 8.1 June 23, 2020, is recognized as World Public Service Day. Created by the United Nations in 2003, this day celebrates the value and virtue of public service to the community; highlights the contribution of public service in the development

process; recognizes the work of public servants, and encourages young people to pursue careers in the public sector.



9. PUBLIC COMMENT

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None.

10. CONVENE IN CLOSED SESSION

Items discussed in Closed Session comply with the Ralph M. Brown Act.

- 10.1 Pursuant to Government Code Section 54954.5
Public Employee Performance Evaluation
Title: General Manager

The Board adjourned to closed session at 2:29 p.m.

11. CONVENE IN OPEN SESSION

Report out on Closed Session items

The board reconvened to open session at 3:57 p.m. Vice President Sear stated there was nothing to report.

12. ADJOURNMENT

There being no further business to discuss, the meeting was adjourned at 3:59 p.m. The next regular board meeting will be held June 23, 2020.

Respectfully submitted,

Holly Gould, Clerk of the Board
Valley Sanitary District

DISBURSEMENTS
Approved at the Board Meeting of
June 23, 2020

38316	Riverside County Clerk	*Notice of Exemption Recording Fees	\$100.00
38317	Associated Time Instruments	Attendance on Demand for May 2020	\$291.84
38318	Bank of New York Mellon Corporate Trust Dept.	*VSD Wastewater Revenue Refunding Bonds 2015	\$1,800.00
38319	Best, Best & Krieger	Legal Services for May 2020	\$5,699.23
38320	CALPELRA	Membership Renewal & Conference Registration	\$890.00
38321	Carollo Engineering, Inc	*Sewer Siphon Replacement Project	\$3,815.75
38322	Cintas Corp	Uniforms, Mats, Towels, Etc for Week of 06/11/2020	\$765.48
38323	Desert Cornerstone Insurance Service, Inc	*Commercial, Auto, Umbrella & Earthquake Insurance	\$291,148.00
38324	Desert Hose & Supply	Hose for Pond Contact Chamber	\$1,246.07
38325	Desert Sun Publishing Company	Notice of Public Hearing	\$244.20
38326	E.S. Babcock & Sons, Inc.	Salmonella Testing	\$1,470.00
38327	Enthalpy Analytical, LLC	Quarterly NPDES WET Testing Qtr 2	\$4,050.00
38328	Environmental Resource Associates	Lab Testing	\$158.86
38329	EOA, Inc.	NPDES Permit Renewal Assistance	\$5,866.95
38330	Equipment Direct	Lens Cleaner & N95 Masks	\$331.07
38331	FedEx	Shipping Fees for May 2020	\$581.09
38332	Grainger	Label Tape Cartridge	\$43.18
38332	Grainger	Air Filters	\$368.99
38333	Hach Company	Reagents	\$507.80
38333	Hach Company	Glass Filters	\$313.71
38334	Harris & Associates	*PADM for Collections Systems Infr Phase 2	\$6,012.00
38335	Healthy Futures, Inc.	Wellness Program for May 2020	\$1,500.00
38336	IDEXX Distribution, Inc.	Restock Lab Supplies	\$353.06
38336	IDEXX Distribution, Inc.	Coliform	\$246.89
38337	Innovative Document Solutions	Copy Machine Maintenance	\$125.15
38338	Innovative Federal Strategies LLC	Federal Advocacy for May 2020	\$6,000.00
38339	Interstate All Battery Center	Batteries	\$65.08
38340	Jon's Flags & Poles	Restock Flags	\$712.31
38341	McMaster-Carr Supply Co.	Handrails for Pond 3	\$378.11
38341	McMaster-Carr Supply Co.	Sanding Belt and Steel Brush	\$60.13
38341	McMaster-Carr Supply Co.	Handrail for Pond 3	\$3,395.45
38341	McMaster-Carr Supply Co.	Rope	\$116.02
38341	McMaster-Carr Supply Co.	Wall Mount Fan	\$530.83
38342	National Demographic Corporation	Districting of VSD Director Divisions	\$17,500.00
38343	Nicholas Castaneda	Exam Reimbursement Grade 2 Coll. System Maint.	\$190.00
38344	Paul's Total Fleet Maintenance	BIT Inspection & Lube for Kenworth Vactor	\$581.11
38344	Paul's Total Fleet Maintenance	BIT Inspection for Vactor	\$115.00
38345	Plumbers Depot Inc.	Shaft Extender	\$70.02
38346	Royal Wholesale Electric	Plug	\$342.76
38346	Royal Wholesale Electric	Plug	\$341.31
38347	Safety-Kleen Systems, Inc.	Parts Washer	\$407.81
38348	Southwest Networks, Inc.	Guardian Agreement Home Computers	\$144.00
38348	Southwest Networks, Inc.	Technical Support ofr May 2020	\$831.25
38348	Southwest Networks, Inc.	*Patch Cable	\$15.17
38349	Stantec Consulting Services, Inc.	*Influent Pump Station Rehab	\$18,784.00
38349	Stantec Consulting Services, Inc.	*Influent Pump Station Rehab	\$8,105.00
38350	Superior Protection Consultants	Plant Security for May 2020	\$6,552.00
38351	Tops 'N Barricades Inc.	Restock Safety Supplies	\$481.27
38352	Tritech Software Systems	*Asset Management	\$1,880.90
38353	United Way of the Desert	PR 05/29/2020 - 06/11/2020 PD 06/19/2020	\$25.00
38354	Univar Solutions	Ferric Chloride	\$7,188.59
38355	YSI Inc	Rebuild RAS Pump #5	\$11,923.43
38356	Yellow Mart	Work Boots	\$141.36
202006101	Frontier Communications	Telephone Service for June 2020	\$298.83
202006102	Burrtec Waste & Recycling Svcs	Grit Removal for May 2020	\$2,038.84
202006103	Burrtec Waste & Recycling Svcs	Trash Service for June 2020	\$234.97
202006131	Time Warner Cable	Telephone Service for June 2020	\$1,141.17
202006151	Umpqua Bank	New Charges for May 2020	\$10,480.52
202006161	SoCal Gas	Natural Gas for May 2020	\$129.40
202006191	Vantage Point Transfer Agents - ICMA	PR 05/29/2020 - 06/11/2020 PD 06/19/2020	\$1,395.00
202006192	MassMutual	PR 05/29/2020 - 06/11/2020 PD 06/19/2020	\$10.00
202006193	Nationwide Retirement Solution	PR 05/29/2020 - 06/11/2020 PD 06/19/2020	\$2,385.00
202006194	TASC	PR 05/29/2020 - 06/11/2020 PD 06/19/2020	\$296.14
202006195	Paychex - Garnishment	PR 05/29/2020 - 06/11/2020 PD 06/19/2020	\$210.46
202006196	Paychex - Direct Deposit	PR 05/29/2020 - 06/11/2020 PD 06/19/2020	\$69,889.25
202006197	Paychex - Tax	PR 05/29/2020 - 06/11/2020 PD 06/19/2020	\$31,949.00
202006198	Paychex - Fee	PR 05/29/2020 - 06/11/2020 PD 06/19/2020	\$161.32
202006199	CalPERS 457	PR 05/29/2020 - 06/11/2020 PD 06/19/2020	\$1,000.00
202061910	CalPERS Retirement	PR 05/29/2020 - 06/11/2020 PD 06/19/2020	\$17,590.69

*Capital Expenditures

\$554,017.82

VALLEY SANITARY DISTRICT
SUMMARY OF CASH AND INVESTMENTS

FOR THE PERIOD: 05/01/2020 TO 05/31/2020 (UNAUDITED)

Agenda Item No. _____

INVESTMENTS

LAIF Fund 4 - Agency Fund			
Beginning Balance (Fund 4)		393,641	
Net Transfer from (to) Fund 11		0	
Fair Value Factor for quarter ending 06/30/2019		0	
Interest (Pd quarterly - Int. Rate 2.03%)		0	
Fund 04 Ending Balance		393,641	
LAIF Fund 6 - Wastewater Revenue Refunding Bonds			
Beginning Balance (Fund 6)		4,746	
Net Transfer from (to) Fund 11		0	
Fair Value Factor for quarter ending 06/30/2019		0	
Interest (Pd quarterly - Int. Rate 2.03%)		0	
Fund 06 Ending Balance		4,746	
LAIF Fund 11 - Operating Fund			
Beginning Balance (Fund 11)		14,935,718	
Net Transfer from (to) Fund 04		0	
Net Transfer from (to) Fund 06		0	
Net Transfer from (to) Fund 12		441,146	
Net Transfer from (to) Fund 13		(2,200)	
Fund Transfer from (to) LAIF - WF		(1,000,000)	
Fair Value Factor for quarter ending 06/30/2019		0	
Interest (Pd quarterly - Int. Rate 2.03%)		0	
Fund 11 Ending Balance		14,374,664	
LAIF Fund 12 - Reserve Fund			
Beginning Balance (Fund 12)		26,625,237	
Net Transfer from (to) Fund 11		(441,146)	
Fair Value Factor for quarter ending 06/30/2019		0	
Interest (Pd quarterly - Int. Rate 2.03%)		0	
Fund 12 Ending Balance		26,184,091	
LAIF Fund 13 - Capital Improvement Fund			
Beginning Balance		6,317,013	
Connection Fees	2,200		
(Disbursements) or Reimbursements	0		
Net Transfer from (to) Fund 11		2,200	
Fair Value Factor for quarter ending 06/30/2019		0	
Interest (Pd quarterly - Int. Rate 2.03%)		0	
Fund 13 Ending Balance		6,319,213	
TOTAL LAIF INVESTMENTS: FUNDS 04, 06, 11, 12 AND 13			47,276,355

CASH IN CHECKING ACCOUNT

WELLS FARGO - FUND 11

Beginning Balance		2,553,044	
Deposits		72,570	
Fund Transfer from (to) LAIF (net)		1,000,000	
Disbursements and Payroll		(1,927,426)	
Wells Fargo Ending Balance		1,698,188	

CALTRUST - FUND 11

Beginning Balance		1,083,483	
Unrealized Gain / <Loss>		4,228	
Interest Income		1,323	
CalTRUST Ending Balance		1,089,034	

TOTAL WELLS FARGO AND CALTRUST CHECKING

2,787,222

50,063,577

The Board certifies the ability of the District to meet its expenditure requirements for the next six (6) months, as per Government Code 53646(b)(3).

This report is in compliance with the District's Investment Policy under Government Code 53646(b)(2).

Valley Sanitary District
Combined Monthly Account Summary
 May 2020 (UNAUDITED)

Account Description	Current Month	Fiscal YTD	Annual Budget	% Expended	Balance
Operating Expenses					
Salaries	234,760	2,395,444	2,615,000	92 %	219,556
Callout	522	12,034	9,000	134 %	(3,034)
Group dental/vision	1,849	30,188	30,500	99 %	312
Group disability	729	9,966	13,750	72 %	3,784
Group health	34,490	376,189	440,700	85 %	64,511
Group life	531	5,474	6,650	82 %	1,176
Longevity	2,677	31,385	37,000	85 %	5,615
Overtime	1,353	19,774	19,500	101 %	(274)
Payroll taxes	15,375	183,190	205,200	89 %	22,010
Retirement	19,029	221,564	269,500	82 %	47,936
Standby	2,672	31,538	38,000	83 %	6,462
Unemployment	0	202	0	0 %	(202)
Workers comp	3,655	42,669	47,400	90 %	4,731
Certifications	588	4,516	8,794	51 %	4,278
Chemicals	40,419	346,688	383,770	90 %	37,082
Clothing/Safety	2,182	20,565	39,625	52 %	19,060
Comprehensive insurance	27,471	276,828	296,500	93 %	19,672
Contract services	37,841	334,535	417,110	80 %	82,575
County charges	221	15,977	22,000	73 %	6,023
Directors' fees	3,500	46,000	36,500	126 %	(9,500)
Electricity	48,642	510,721	519,000	98 %	8,279
Gas/Oil	2,954	27,162	52,000	52 %	24,838
Memberships/Subscriptions	2,690	53,780	32,860	164 %	(20,920)
Natural gas	(1,432)	2,780	5,000	56 %	2,220
Office expense	833	10,607	16,000	66 %	5,393
Operating supplies	14,374	123,403	160,500	77 %	37,097
Other expenses	1,645	24,911	35,000	71 %	10,089
Permits & fees	510	80,476	88,450	91 %	7,974
Pretreatment	0	1,268	1,000	127 %	(268)
Professional/Legal	15,046	314,040	269,230	117 %	(44,810)
Publications	403	2,634	4,500	59 %	1,866
Repairs/Maintenance	13,211	444,568	592,200	75 %	147,632
Research & monitoring	3,225	44,323	92,800	48 %	48,477
Small tools	192	20,974	31,500	67 %	10,526
Telephone	1,738	17,559	19,500	90 %	1,941
Trash collection	2,274	27,705	35,000	79 %	7,295
Travel/Mtgs/Ed	2,265	90,164	81,250	111 %	(8,914)
Water	1,620	17,284	28,500	61 %	11,216
Total Expenses	540,056	6,219,084	7,000,789	89 %	781,705

Valley Sanitary District
Combined Monthly Account Summary
 May 2020 (UNAUDITED)

Account Description	Current Month	Fiscal YTD	Annual Budget	% Expended	Balance
Capital Expenses					
Capital O & M Fund 11	3,933	130,211	235,000	55 %	104,789
Capital Replacement Fund 12	73,081	629,621	2,469,410	25 %	1,839,789
Capital Improvement Fund 13	0	0	40,000	0 %	40,000
Total Capital Expenses	77,014	759,832	2,744,410	28 %	1,984,578

Valley Sanitary District
Monthly Income Summary
 May 2020 (UNAUDITED)

	<u>Current Month</u>	<u>Fiscal YTD</u>	<u>Annual Projection</u>	<u>% Received</u>	<u>Balance</u>
Revenues					
Sewer Service Chgs-Current	\$52,271	\$10,853,523	\$11,144,678	97 %	\$291,155
Sewer Service Chgs-Penalties	\$0	\$0	\$1,000	0 %	\$1,000
Permit & Inspection Fees	\$840	\$18,170	\$20,000	91 %	\$1,830
Plan Check Fees	\$600	\$9,450	\$10,000	95 %	\$550
Other Services	\$0	\$0	\$1,800	0 %	\$1,800
Sale of Surplus Property	\$0	\$6,996	\$0	0 %	(\$6,996)
Taxes - Current Secured	\$10,341	\$491,190	\$700,000	70 %	\$208,810
Taxes - Current Unsecured	\$0	\$25,778	\$25,000	103 %	(\$778)
Taxes - Prior Secured	\$0	\$7,748	\$6,000	129 %	(\$1,748)
Taxes - Penalties	\$0	\$0	\$1,500	0 %	\$1,500
Supple Prop. Taxes - Current	\$3,243	\$3,357	\$7,000	48 %	\$3,643
Supple Prop. Taxes - Prior	\$0	\$2,209	\$3,200	69 %	\$991
Homeowners Tax Relief	\$2,171	\$5,272	\$6,000	88 %	\$729
Interest Income	\$1,323	\$261,698	\$300,000	87 %	\$38,302
Unrealized gains (losses)	\$4,228	\$22,116	\$0	0 %	(\$22,116)
Rebate Income	\$0	\$350	\$0	0 %	(\$350)
Non-Operating Revenues - Fnd 11	\$0	\$231,457	\$500	46,291 %	(\$230,957)
Interest Income	\$0	\$361,278	\$0	0 %	(\$361,278)
Connection Fees	\$2,200	\$757,548	\$1,100,000	69 %	\$342,452
Interest Income	\$0	\$91,058	\$120,000	76 %	\$28,942
Total Revenues	\$77,216	\$13,149,198	\$13,446,678	98 %	\$297,480



**Valley Sanitary District
Board of Directors Meeting
June 23, 2020**

TO: Board of Directors

THROUGH: Beverli A. Marshall, General Manager

FROM: Ronald Buchwald, Engineering Services Manager

SUBJECT: Authorize the President of the Board and General Manager to Execute a Design-Build Contract with Schneider Electric & Stantec, Inc. for the Energy Services - Treatment Plant Project in an Amount Not to Exceed \$2.2 Million for Phases 1 - 3

<input type="checkbox"/> Board Action	<input type="checkbox"/> New Budget Approval	<input type="checkbox"/> Contract Award
<input checked="" type="checkbox"/> Board Information	<input type="checkbox"/> Existing FY Approved Budget	<input type="checkbox"/> Closed Session

Executive Summary

The purpose of this report is for the Board of Directors to discuss the design-build contract and proposal for treatment plant upgrades and take appropriate action.

Strategic Plan Compliance

This item complies with VSD Strategic Plan Objective 3: Excellent Facilities.

Fiscal Impact

The fiscal impact of the recommendation is \$2,200,000 and is included in the FY 2020/1 budget. Included in the scope of work for the design phase portion is an effort to find funding sources to help pay for the construction portion of this project.

Background

Schneider Electric and Stantec, Inc. (formerly MWH) have been working with staff on developing an energy service, design build contract agreement to perform the next phase of treatment plant improvements for several years. Staff is ready to move forward with this project using a progressive design build process that will provide flexibility, collaboration, shorten the overall design and construction process and reduce costs.

The design-build contract is split up into two parts: a design portion consisting of three phases and a construction portion consisting of Phase 4. The first three phases will provide a 60% design of the plant improvements at a cost of \$2,200,000. Once the design-build team reaches this milestone, the design-build team will determine a Guaranteed Maximum Price (GMP) for the construction of the plant improvements.

Staff will bring this to the Board and will then decide to move forward with the construction portion or Phase 4 of the contract. Phase 1 through 3 is estimated to take 460 days from the time of the signing of the contract.

Recommendation

Staff recommends that the Board of Directors authorize the Board President and the General Manager to execute a design-build contract with Schneider Electric & Stantec for the Energy Services – Treatment Plant Project.

Attachments

Attachment A: Design-Build Contract between VSD and Schneider Electric / Stantec (includes Proposal as Attachment 1-1) dated June 16, 2020

Valley Sanitary District



Design/Build Contract for

ENERGY SERVICES - TREATMENT PLANT PROJECT

Contract No. 2020-0106

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

**DESIGN-BUILD CONTRACT BETWEEN VALLEY SANITARY DISTRICT AND
SCHNEIDER ELECTRIC BUILDINGS AMERICA, INC. FOR THE

ENERGY SERVICES PROJECT**

This Design-Build Contract (“Contract”) is made and entered into this ___ day of _____, 2020 by and between the **Valley Sanitary District**, a public district organized under the laws of the State of California under the Sanitary District Act of 1923, with its principal place of business at 45500 Van Buren Street, Indio, California 92201 (hereinafter referred to as “District” or “VSD”) and **Schneider Electric Buildings Americas, Inc.**, with its principal place of business at 1660 Scenic Avenue, Costa Mesa, CA 92626 (hereinafter referred to as “Design-Build Entity” or “DBE”) for the purpose of designing and constructing the Energy Services Project (“Project”). District and Design-Build Entity are sometimes individually referred to as “Party” and collectively as “Parties.”

RECITALS

- A. The District’s mission is to collect, treat, and reuse wastewater in a safe and cost-effective manner as prescribed by state and federal law.
- B. In order to serve its customers, the District is dedicated to forward thinking in planning for facility and operational needs, and achieving maximum cost efficiency and effectiveness.
- C. The District therefore desires to strategically invest and reinvest operational cost reductions into sustainable facility and technology enhancements that will lead to maximized financial opportunities and streamlined operations. To achieve these goals, the District intends to engage Design-Build Entity to perform a comprehensive audit of existing facilities for potential energy cost and operational cost savings, develop conceptual and final designs for s improvements, and implement physical changes to effectuate energy cost and operational savings.
- D. Because of the unique nature of the Project, District desires to engage a single design-build entity to engineer and implement the Project as authorized by California Government Code section 4217.10 *et seq.*
- E. Design-Build Entity desires to perform and assume responsibility for the provision of design and construction services, and such other services as required by the District on the terms and conditions set forth in this Contract. Design-Build Entity 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 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 – Performance Bond
- (f) Attachment 4 to this Contract – Payment Bond
- (g) Attachment 5 to this Contract – Hourly Rate Schedule
- (h) Attachment 6 to this Contract - Workers Compensation Certification
- (i) Attachment 7 to this Contract – Asbestos & Other Hazardous Materials Certification
- (j) Attachment 8 to this Contract - Escrow Agreement for Security Deposits in Lieu of Retention
- (k) District approved Amendments and Change Orders
- (l) Completed and approved Construction Documents in accordance with the General Conditions

2. The Design-Build Entity’s Basic Obligations and Compensation.

The Design-Build Entity promises and agrees, at its own cost and expense, to furnish to District 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” or “Work”). The Scope of Work shall consist of four phases: Conceptual Development (Project Scoping), Investment Grade Development (Mid-Term Meeting), Design Development (Final Planning), and Construction. The Scope of Work, including all four phases, is more particularly described in Attachment 1. The District shall issue a Notice to Proceed for each Phase.

(a) Phase 1 – Conceptual Development (Project Scoping)

The Design-Build Entity shall commence Phase 1 after receipt of District’s Notice to Proceed and complete Phase 1 work within Seventy (70) Days of the Notice to Proceed date, unless mutually agreed by both parties to extend. After the Scoping Meeting and if Design-Build Entity fulfills all of its Conceptual Development responsibilities as noted in Attachment 1, District must determine within thirty (30) days of receiving all Conceptual Development deliverables whether to terminate the Contract for convenience or move to Phase 2. District shall notify Design-Build Entity in writing of its decision. At the Scoping Meeting, Design-Build Entity shall confirm for District whether recommended improvement measures are viable and financial benefits that can be derived by their implementation can be guaranteed in an amount sufficient to cover all costs associated with the Project. This includes the Design-Build Entity providing a rough order of magnitude of the Price Proposal.

If Design-Build Entity complies with all obligations under the Contract and District terminates the Contract for convenience, District shall pay Design-Build Entity only for design

fees and expenses incurred in this Phase 1 at the rates set forth in Attachment 5. The District will not compensate Design-Build Entity for any work required for future phases. All deliverables including but not limited to documents, engineering, and data shall become the exclusive property of District.

(b) Phase 2 – Investment Grade Development (Mid-Term Meeting)

The Design-Build Entity shall commence Phase 2 after receipt of District’s Notice to Proceed and complete Phase 2 work within Two-Hundred-Twenty (220) Days of the Notice to Proceed date unless mutually agreed by both parties to extend. After the Mid-Term Meeting and if Design-Build Entity fulfills all of its Investment Grade Development phase responsibilities as noted in Attachment 1, including providing a reasonable estimate of the Price Proposal based on the most current developed Construction Documents, , District must determine within thirty (30) days of receiving all Investment Grade Development deliverables whether to terminate the Contract for convenience or move to Phase 3. District shall notify Design-Build Entity in writing of its decision.

If Design-Build Entity complies with all obligations under the Contract and District terminates the Contract for convenience, in addition to fees District paid for Phase 1, District shall pay Design-Build Entity only for design fees and expenses incurred in this Phase 2 at the rates set forth in Attachment 5. The District will not compensate Design-Build Entity for any work required for future phases. All deliverables including but not limited to documents, engineering, budget costs, preliminary design, schedule and data shall become the exclusive property of District.

(c) Phase 3 – Design Development (Final Planning)

The Design-Build Entity shall commence Phase 3 after receipt of District’s Notice to Proceed and complete Phase 3 work within One-Hundred Seventy (170) Days of the Notice to Proceed date unless mutually agreed by both parties to extend. After a Final Planning Meeting and if Design-Build Entity fulfills all of its Design Development responsibilities as noted in Attachment 1, District must determine within sixty (60) days of receiving all Design Development deliverables whether to terminate the Contract for convenience or move to Phase 4.

If Design-Build Entity complies with all obligations under the Contract and District terminates the Contract for convenience, in addition to fees District paid for Phases 1 and 2, District shall pay Design-Build Entity only for design fees and expenses incurred in this Phase 3 at the rates set forth in Attachment 5. The District will not compensate Design-Build Entity for any work required for future phases. All deliverables including but not limited to documents, engineering, budget costs, design, schedule and data shall become the exclusive property of District upon receipt of payment. The deliverables shall include the Construction Documents. The total cost for Phases 1, 2 and 3 shall not exceed \$2,200,000 without written approval of the District.

At or before the Final Planning Meeting, Design-Build Entity shall present a final scope and price (“Price Proposal”) to District in accordance with this Agreement. The price proposal shall include all design fees and expenses from phases 1, 2 and 3 and shall be a firm offer valid for ninety (90) days from submission. The Price Proposal shall include a schedule of values for the Work including without limitation a complete breakdown of costs, overhead, and profit. Upon

receipt of Design-Build Entity's Price Proposal, the District may enter into negotiations with Design-Build Entity to achieve a mutually acceptable basis on which to proceed.

(d) Phase 4 – Construction Phase

If the District elects to proceed to Phase 4 and is satisfied with Design-Build Entity's Price Proposal, then District shall issue a formal Contract Amendment ("Contract Amendment" or "Amendment") establishing the Scope of Work for the Construction Phase, the Contract Price and the Project Completion Date. Approval of the Contract Amendment shall be contingent upon District's Board holding a public hearing and finding that all of the requirements of Government Code section 4217.10 *et seq.* are met.

If a Contract Amendment is approved and executed, the District will issue a Notice to Proceed with Construction and Design-Build Entity shall begin construction work. Design-Build Entity shall perform all construction services, labor, materials, tools, equipment, services, engineering and incidental and customary work necessary to fully and adequately complete Phase 4.

3. Guaranteed Maximum Contract Price for Construction; Project Completion Date

(a) Contract Price.

If a Contract Amendment is approved and executed, the District shall pay the Design-Build Entity a contract price (hereinafter the "Contract Price", Guaranteed Maximum Price" or "GMP") equal to the Design-Build Entity's Price Proposal as full and complete compensation for Contractor's obligations under the Contract Documents. Payment shall be made in installments in accordance with the progress payment milestones and as set forth in the Attachment 2.

Except as otherwise provided in this Contract, the Design-Build Entity shall assume the risk of all costs in excess of the Contract Price 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. Should the Design-Build Entity believe that it is entitled to additional compensation, whether money or time, it must request such compensation pursuant to Attachment 2.

(b) Material Storage.

As the Design-Build Entity is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from District, to assure that there will be no delays, payment by the District for stored material shall be made only in unusual circumstances where the District specifically approves the payment in writing. If payments are to be made for materials and equipment that are not incorporated in the Work on the Project but delivered and suitably stored at a Project Site or at some other location agreed upon in writing by District, the payments shall be conditioned upon submission by Design-Build Entity, Subcontractor, or Supplier of bills of sale and such other documents reasonably satisfactory to District to establish District's title to such materials or equipment free of all liens and encumbrances, and otherwise protect District's interest, including, without limitation, provision of

applicable insurance and transportation to the Project Site. All stored items shall be inventoried, specified by identification numbers (if applicable), released to District by the sureties and Subcontractors, and, if stored off the Project Site, stored only in a bonded warehouse.

(c) Project Completion Date.

Time is of the essence. The Design-Build Entity guarantees that it shall perform and complete all work necessary for Completion which shall be set forth by Contract Amendment prior to the Notice to Proceed with Construction (the "Project Completion Date"). The Design-Build Entity agrees that it shall be liable to the District for liquidated damages in an amount of One-Thousand Dollars (\$1,000) per calendar 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 and said damages shall be the District's sole remedy for Design-Build Entity's delay. If not completed by the Project Completion Date, it is understood that the District will suffer damage, and that it is and will be difficult and/or impossible to ascertain and determine the actual damage which the District will sustain in the event of and by reason of the Design-Build Entity's failure to complete the work, and therefore the Design-Build Entity shall pay to the District the stipulated sum as fixed and liquidated damages and not as a penalty. Any money due or to become due the Design-Build Entity may be retained to cover liquidated damages.

The District is under no obligation to consider early completion of the Project and the Project Completion Date shall not be amended by the District'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 District will not compensate Design-Build Entity, for delays which impact early completion.

(d) Reverse Liquidated Damages Due to Unreasonable District Delay

In compliance with the provisions of California Public Contract Code section 7102, the Design-Build Entity 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 District, 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 Design-Build Entity and District agree that determining actual damages is impracticable and extremely difficult. As such, the Design-Build Entity shall be entitled to the appropriate time extension and to payment of liquidated damages per Day of delay in excess of the Project Completion Date ("Daily Rate"). If the District elects to proceed to Phase 4, the Daily Rate shall be established as part of the Price Proposal and subsequent Contract Amendment. 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 Design-Build Entity's concurrent delays. The Design-Build Entity expressly agrees to be limited solely to the liquidated damages for all such delays as defined in this subsection.

4. Performance and Payment Bonds and Insurance

Design-Build Entity shall execute and provide to District both a Performance Bond and Payment Bond in the amount of the GMP on the forms provided in Attachments 3 and 4. Design-Build Entity shall timely submits bonds to the District in accordance with the General Conditions. Design-Build Entity shall furnish all insurance as required by the General Conditions. Notwithstanding any provision to the contrary herein, any Payment and Performance Bonds associated with this Contract guarantee only the performance of the construction/installation portion of the Contract, and shall not be construed to guarantee the performance of: (1) any efficiency or energy savings performance guarantees, or (2) any support or maintenance service agreements or work or (3) any other warranties with terms beyond one (1) year in duration from the completion of the installation portion of the Contract. . The obligations of the Performance Bond Surety shall continue so long as any construction/installation obligation of Design-Build Entity remains. Nothing herein shall limit the District'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.

5. Standard of Performance.

The Design-Build Entity's performance shall be consistent with the standards set forth in the Contract and the General Conditions. Design-Build Entity shall perform all Work under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Design-Build Entity represents and maintains that it is skilled in each professional calling necessary to perform the Work. Design-Build Entity warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Design-Build Entity represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Design-Build Entity shall perform, at its own cost and expense and without reimbursement from the District, any services necessary to correct errors or omissions which are caused by the Design-Build Entity's failure to comply with the standard of care provided for herein. Any employee of the Design-Build Entity or its sub-consultants or subcontractors who is determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the services in a manner acceptable to the District, shall be promptly removed from the Project by the Design-Build Entity and shall not be re-employed to perform any of the Work on the Project.

6. District's Representative.

The District hereby designates **Ron Buchwald, P.E. – District Engineer** or his or her designee, as the person to act as its representative for the performance of this Contract ("District's Representative"). The District's Representative shall be authorized to act as liaison between District and the Design-Build Entity in the administration of this Contract and all work on the Project. The District's Representative shall have the power to act on behalf of the District for all purposes under this Contract, including for the purpose of approving the design. District may designate new and/or different individuals to act as District's Representative from time to time

upon written notice to the Design-Build Entity.

7. Design-Build Entity's Representative.

The Design-Build Entity hereby designates **Valerie Houchin, Project Lead**, or his or her designee, to act as its representative for the performance of this Contract (“Design-Build Entity’s Representative”). Design-Build Entity’s Representative shall have full authority to represent and act on behalf of the Design-Build Entity for all purposes under this Contract. Design-Build Entity’s Representative shall supervise and direct all work on the Project, using his or her 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.

8. Design-Build Entity's Contractor License and Registration.

The Design-Build Entity shall have only appropriately licensed contractors performing work on the Project as required by the Business and Professions Code. The Design-Build Entity (**[License No. CA# 708952]**) shall act as the licensed contractor for the Project. Design-Build Entity 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 Design-Build Entity shall be fully responsible to the District 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. 1000000670**).

9. Design-Build Entity's Design Professional.

The Design-Build Entity shall name a specific person to act as the Design Professional as described in the General Conditions, subject to the approval of the District. The Design-Build Entity hereby designates **Stantec Consulting Services Inc. ([License No.: CA# C3259819])** to act as the Design Professional and Architect of Record for the Project. Design-Build Entity’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 Design-Build Entity shall be fully responsible to the District 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 District’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 District and Design-Build Entity cannot agree as to the substitution of a new Design Professional, the District shall be entitled to terminate this Contract as described in the General Conditions.

10. Design-Build Entity's Indemnification.

The Design-Build Entity shall provide indemnification and defense as set forth in the General Conditions.

11. Substitution of Key Personnel.

Design-Build Entity has represented to District that certain key personnel will perform and coordinate the Work under this Contract. Should one or more of such personnel become unavailable, Design-Build Entity may substitute other personnel of at least equal competence upon written approval of District. In the event that District and Design-Build Entity cannot agree as to the substitution of key personnel, District shall be entitled to terminate this Contract for cause. Any personnel who fail or refuse to perform the Work in a manner acceptable to the District, or who are determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Design-Build Entity at the request of the District. The key personnel for performance of this Contract are as follows: Valerie Houchin and Jordan Lerner.

12. Notices.

All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

DISTRICT

Attn: Beverli A. Marshall – General Manager
Valley Sanitary District
45500 Van Buren Street
Indio, CA 92201

DESIGN BUILD ENTITY

Attn: Tammy Fulop, Vice President of Sales
Schneider Electric Buildings Americas, Inc.
1650 W. Crosby Road
Carrollton, TX 75006

Any notice so given shall be considered received by the other party three (3) days after deposit in the U.S. Mail, first class postage prepaid, addressed to the party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

13. 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:

ON BEHALF OF THE DESIGN-BUILD ENTITY: **ON BEHALF OF THE DISTRICT:**

Schneider Electric Buildings Americas, Inc.

Valley Sanitary District

By: _____

By: _____

Name: _____

Name: Mike Duran

Title: Board President

Title: _____

Attest:

Federal Tax ID No.:
75-2066352

Beverli A. Marshall
General Manager

Approved as to Form:

Best Best & Krieger LLP
Legal Counsel

ATTACHMENT 1 SCOPE OF SERVICES

THE SCOPE OF SERVICES AND PHASING SCHEDULES ARE PRELIMINARY AND WILL NEED TO BE UPDATED VIA A CONTRACT AMENDMENT TO INCLUDE THE FINAL SCOPE OF WORK TO BE INCLUDED FOR CONSTRUCTION AND THE CONTRACT PRICE.

The Scope of Services is based upon six (6) work items including:

- A. Mechanical Bar Screen replacing manual rake
- B. Vortex type grit chamber replacing aerated grit chamber
- C. Waste Activated Sludge Thickening – adds mechanical device in place of gravity thickening in Pond 2
- D. Digested Sludge Holding Tank and Dewatering Feed Pumps
- E. Digester and related systems
- F. Biofilter for foul air treatment at new WAS thickening facility

1. **Phase 1 – Conceptual Development (Project Scoping)**

The Conceptual Development includes the following activities:

- **Kick off Meeting**
- Data Gathering
- On-site visits, as needed
- **Scoping Meeting**

Kick-off Meeting

Before formal development of the project begins, a kick-off meeting will be conducted so all key stakeholders within VSD and Schneider Electric/Stantec to understand the goals and priority projects of the District. Valerie will prepare a meeting agenda, summarizing past discussions and questions to be discussed with VSD. With the information communicated in this meeting, Schneider Electric/Stantec and the District will jointly confirm expectations and timelines for the upcoming planning phases.

Scoping Meeting

From the kick-off meeting and following activities, Schneider/Stantec will conduct a follow-up meeting referred to as the Scoping Meeting. The intent of the Scoping Meeting is to lay out all possible scopes of work, coordination considerations and feasibility-level costs. The desired outcome of the meeting is for VSD to provide direction as to whether all or some of the scope of work should be considered for immediate project development and engineering. Schneider has found it works well to only develop and spend time on the top priority scope items.

The topics discussed and deliverables presented at the Scoping Meeting are listed below:

- Phasing considerations and logical grouping of scope of work
- Feasibility-level costs
- Scope of work description including high level design criteria
- Funding opportunities and considerations

Scoping Meeting Deliverables	Preliminary list and description of ECMs, and Operational Improvements
	Technology Overview (grit removal, CO-Gen, WAS thickening)
	Feasibility- level costs
	Recommended Phasing
	Feasibility-level financial analysis and sources of potential funding, including applicable grants

District Will:

- A. Provide Design-Build Entity a minimum of twenty-six (26) months of utility invoices for each meter serving each facility. Utilities include natural gas and electric used on the premises.
- B. Provide Design-Build Entity complete access to facilities for the purpose of performing the energy efficiency analysis, measuring actual energy use, taking equipment inventory, determining operating schedules, identifying known operational deficiencies, etc.
- C. Provide Design-Build Entity access to key personnel to discuss operating requirements.
- D. Provide Design-Build Entity equipment lists and copies, or the loan of facility plans, as well as existing operation condition data for the purpose of facilitating understanding of the characteristics and the current sequences of operation.
- E. Meet with Design-Build Entity to establish project criteria and make project decisions necessary for Design-Build Entity to complete in a timely manner.
- F. Inform Design-Build Entity at the point in which District becomes aware of any portions of scope that will not be included or funding that will not be available for project implementation.
- G. Meet with Design-Build Entity for a Scoping Meeting and decide the next steps moving forward in the process, including scope to be developed in the Investment Grade Development phase. District to validate Key Operating Strategies and Engineering Assumptions presented at Scoping Meeting.

Design-Build Entity Will:

- A. Conduct a project kick-off programming meeting, facility walk-through(s) and personnel interview(s) to gain an understanding of facility operations, concerns, needs, and desired performance criteria.
- B. Work with District to refine performance requirements, financial criteria, and project scope of work.
- C. Provide District a preliminary list of Energy Conservation Measures (“ECMs”) with feasibility-level costs from the existing Facility Master Plan and Business Case.
- D. Provide Key Operating Strategies and Engineering Assumptions for each ECM.
- E. Provide District a projected energy, operational, revenue, and cost savings analysis demonstrating the effect of the ECMs.
- F. Provide District a feasibility-level financial analysis cash flow and sources of potential funding, including grants.

2. **Phase 2 - Investment Grade Development (Mid-Term Meeting)**

This phase of the process includes more development and engineering to bring to light more decisions and considerations for VSD. The deliverables and discussion in this phase culminate in a meeting referred to as a **Mid-Term Meeting**. VSD can think of this meeting as a formal time and place to check in on all of the scope of work being developed to make sure that it meets expectations. The topics discussed and deliverables presenting at the **Mid-Term Meeting** include:

- Scope of work description and budgetary costs based on preliminary design.
- Budgetary energy, operational and cost savings analysis demonstrating the effect of the Energy Conservation Measures (ECMs)
- Key operating strategies and engineering assumptions
- Preliminary financial analysis cash flow and sources of potential funding, including grants.
- Preliminary construction and phasing schedule based on the scope of work included.

Mid-Term Meeting Deliverables	Scope of work description including Key Operating Strategies and Engineering Assumptions for each ECM.
	Budgetary costs based on preliminary design.
	Budgetary energy, operational, revenue, and cost savings analysis demonstrating the effect of the ECMs
	Key Operating Strategies and Engineering Assumptions for each ECM
	Preliminary construction and phasing schedule based on the scope of work included.
	A preliminary financial analysis cash flow and sources of potential funding, including grants.
	Process Engineering
	<ul style="list-style-type: none"> • Hydraulic Profile Equipment List • 60% P&ID • Final Design Criteria / Basis of Design • Equipment Layout
	Civil Engineering
	<ul style="list-style-type: none"> • Site Layout • Civil Design Criteria / Basis of Design
	Structural Engineering
	<ul style="list-style-type: none"> • Structural Design Criteria / Basis of Design
	Electrical Engineering
	<ul style="list-style-type: none"> • Single Line Diagrams • Load List • Electrical Design Criteria / Basis of Design
	Architectural/HVAC Engineering
	<ul style="list-style-type: none"> • Building Layout/Floor Plan • Architectural / HVAC Design Criteria / Basis of Design
	Permitting
	<ul style="list-style-type: none"> • Permits List • SCAQMD Permitting Schedule

District Will:

- A. Provide Design-Build Entity complete access to the facilities for the purpose of performing the energy efficiency analysis, measuring actual energy use, taking equipment inventory, determining operating schedules, identifying known operational deficiencies, etc.
- B. Provide Design-Build Entity access to key personnel to discuss operating requirements.

- C. Meet with Design-Build Entity during the Investment Grade Development, including the Mid-Term Meeting to establish project criteria and make project decisions necessary for Design-Build Entity to complete development in a timely manner.
- D. Inform Design-Build Entity at the point in which District becomes aware of any portions of scope that will not be included or funding that will not be available for final project implementation.
- E. Inform Design-Build Entity at the point in which District becomes aware that any of the ECM Key Operating Strategies and/or Engineering Assumptions become invalid, thereby potentially impacting project scope and financials.

Design-Build Entity Will:

- A. Work with District to establish design, equipment, and operation standards with final approval by District.
- B. Provide District a scope of work description and budgetary costs based on preliminary design.
- C. Provide District a budgetary energy, operational, revenue, and cost savings analysis demonstrating the effect of the ECMs.
- D. Provide District a preliminary financial analysis cash flow and sources of potential funding, including grants.
- E. Provide District a preliminary construction and phasing schedule based on the scope of work included.
- F. Provide Key Operating Strategies and Engineering Assumptions for each ECM.

3. **Phase 3 - Design Development (Final Planning)**

At this point, the VSD stakeholder team has been at the table in various planning meetings and has a very good idea of the scope of work being developed, as well as the financial and energy/operational savings impact. The Design Development phase is a critical stage of development where Schneider qualifies subcontractors with VSD's input and conducts job walks for all trades for the projects under consideration. The final Planning Meeting is where all final project information is presented to VSD. This includes:

- Final scope of work with final firm, fixed pricing
- Final savings
- Draft construction schedule
- Financing options, including grants
- Marketing/PR plan

Final Meeting Deliverables	A guaranteed maximum price (“GMP”) including pricing that shall be firm for ninety (90) days.
	IGA Report including:
	<ul style="list-style-type: none"> Detailed scope of work including Design Criteria, Key Operating Strategies and Engineering Assumptions for each ECM based on a firm, fixed price
	<ul style="list-style-type: none"> Projected energy savings amount
	<ul style="list-style-type: none"> Financial analysis of the effect on annual cash flow by the ECMs. All financing and grants will be finalized for District consideration.
	<ul style="list-style-type: none"> Provide District a preliminary construction and phasing schedule based on the scope of work included.
	<ul style="list-style-type: none"> A draft Marketing Vision and Branding plan for implementation during project construction phase.
	Process/Mechanical Engineering
	<ul style="list-style-type: none"> Hydraulic Profile Update
	<ul style="list-style-type: none"> Equipment List Update
	<ul style="list-style-type: none"> 90% P&ID
	<ul style="list-style-type: none"> Final Design Criteria Update
	<ul style="list-style-type: none"> Budgetary Quotes for Equipment Update
	<ul style="list-style-type: none"> Equipment Layout Update
	<ul style="list-style-type: none"> Major Equipment Schedules
	<ul style="list-style-type: none"> Flow/Piping Diagrams and Floor Plan
	Civil Engineering
	<ul style="list-style-type: none"> Site Layout Update
	<ul style="list-style-type: none"> Civil Design Criteria / Basis of Design Update
	<ul style="list-style-type: none"> Flow/piping Diagrams and Yard Equipment Locations
	Structural Engineering
	<ul style="list-style-type: none"> Structural Design Criteria / Basis of Design Update
	<ul style="list-style-type: none"> Foundation Design
Electrical Engineering	
<ul style="list-style-type: none"> Single Line Diagrams Update 	
<ul style="list-style-type: none"> Load List Update 	
<ul style="list-style-type: none"> Yard Electrical Equipment Locations 	
<ul style="list-style-type: none"> Gear Sizing / Schedules and Quotes 	
Architectural/HVAC Engineering	
<ul style="list-style-type: none"> Building Layout/Floor Plan Update 	
<ul style="list-style-type: none"> Architectural / HVAC Design Criteria / Basis of Design Updates 	
General Sheets	
Permitting	
<ul style="list-style-type: none"> SCAQMD Permits to Construct Applications 	

District Will:

- A. Provide Design-Build Entity access to key personnel to discuss operating requirements.
- B. Provide Design-Build Entity equipment lists and copies, or the loan of facility plans, for the purpose of facilitating understanding of the characteristics and the current sequences of operation.
- C. Meet with Design-Build Entity during the Design Development, including final planning meeting, to establish project criteria and make project decisions necessary for Design-Build Entity to complete development in a timely manner.
- D. Inform Design-Build Entity at the point in which District becomes aware of any portions of scope that will not be included or funding that will not be available for final project implementation.
- E. Inform Design-Build Entity at the point in which District becomes aware that any of the ECM Key Operating Strategies and/or Engineering Assumptions become invalid, thereby potentially impacting project scope and financials.

Design-Build Entity Will:

- A. Work with District to establish design, equipment, and operation standards with final approval by District.
- B. Provide District a guaranteed maximum contract price (Contract Price), including pricing for a turnkey installation of the proposed project scope that shall be firm for sixty (60) days, detailed scope of work based on a firm, fixed price and a projected energy savings amount.
- C. Provide District a financial analysis of the effect on annual cash flow by the ECMs. All financing and grants will be finalized for District consideration.
- D. Provide District a preliminary construction and phasing schedule based on the scope of work included.
- E. Provide District a draft Marketing Vision and Branding plan for implementation during project construction phase.

4. **Phase 4 – Construction**

Design-Build Entity bears the sole responsibility for the following, including but not limited to:

- A. Design
- B. Construction and record drawings

- C. Equipment procurement
- D. Start-up
- E. Plans and Specifications
- F. Project Scheduling
- G. Construction Management
- H. Acceptance Inspections
- I. Punch-list development
- J. Final acceptance inspection
- K. Training

**ATTACHMENT 1-1
PROPOSAL**

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VALLEY SANITARY DISTRICT

Fee Proposal for Design Phases 1-3; Design/Build Energy Services Contract

MISSION STATEMENT

The mission of the Valley Sanitary District is to collect, treat, and reuse wastewater in a safe and cost effective manner as prescribed by state and federal law. The District is dedicated to: maintaining a high standard of operations and maintenance; forward thinking in planning for facility and operational needs, and achieving maximum cost efficiency and effectiveness. The District board and staff are dedicated to having the District be a positive asset to the community.

Prepared by:



Executive Summary

We are pleased to offer Valley Sanitary District the following fee proposal for Design Phases 1-3 which is part of the design-build energy services contract. Our partnership with any client begins a mindset of supporting and understanding the mission of their organization. We feel there is a strong synergy with Valley Sanitary District's organizational mission as the core components of our program align strongly by *maintaining a high standard of operations and maintenance; forward thinking in planning for facility and operational needs, and achieving maximum cost efficiency and effectiveness*. Our understanding of your current operations and master plan presents several items for consideration in achieving the organization's mission:

- **Highlighting energy and operational opportunities in Phase 2B of the Master Plan**
- **Addressing underperforming assets**
- **Including high priority scope items that are creating inefficiencies in the wastewater process**
- **Reducing IID utility expenditures**
- **Maximizing the assets for current flows, while considering future growth**

The goal of this partnership is to enable Valley Sanitary District to strategically reinvest operational cost reductions into sustainable facility and technology enhancements that will lead to maximized financial opportunities, streamlined operations and, most importantly, to make improvements to VSD's existing assets. Our program utilizes a unique design-build delivery method. In this proposal, Schneider has laid out a formal partnership approach with Stantec, a trusted advisor to the District for several years. We feel together, our teams will best serve VSD. The combined experiences and viewpoints bring a best in class approach to meet the needs of VSD as it continues down the path of completing projects in the master plan. Having the flexibility of choosing a design partner, such as Stantec, is one of the many benefits of choosing the Energy Services Company model and approach.

VSD will realize the following benefits by implementing some of the unique opportunities that we will be investigating in Design Phases 1-3:

Fully consider the operational performance of the plant

- Valley Sanitary District adopted a Master Plan in November 2015 which prioritizes upgrades and expansion beyond the year 2050. This study is very thorough in nature and with our combined teams, we can focus on the operational and energy usage aspects of the existing assets and how these savings could be leveraged to offset capital costs.



Maximize performance of existing assets and improve process efficiencies

- A goal is to maximize VSD's existing assets and align these with long-term master planning efforts. We will look at ways to best optimize the plant in the here and now and reduce costs for plant expansion in the future.

Lay the foundation for recycled/reclaimed water at VSD

- VSD has been exploring the possibility to reuse tertiary treated water as a new water source for sustainable and beneficial use. The City of Indio and VSD have created a Joint Powers Authority for this purpose, the East Valley Reclamation Authority. It is necessary to complete the projects in the master plan prior to implementing the recycled/reclaimed water projects under consideration with the JPA.

Maximize funding streams to fund capital projects

- Valley Sanitary District is in a strong financial position and can increase their flexibility to fund projects with the options that are available for the proposed improvements. With interest rates as low as they are, it creates the opportunity to keep some of VSD's reserves in place for more capital intensive projects and stay in alignment with the rate structure at VSD.

Create a marketing/PR plan to share VSD's story

- With all of the positive wins associated with this project, Schneider Electric's robust marketing team will co-create a Marketing Vision Plan with VSD which will be executed during various phases of development and construction. This will position Valley Sanitary District as a thought leader in the Coachella Valley as it pursues its vision for recycled water.

Together as a team, we bring to VSD innovative ideas and philosophies that have ensured successful projects with all of our clients. We look forward to partnering to achieve your organization's mission.

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1. Overview of Design Phases 1-3

VSD has the benefit of working with a partner that has streamlined the design process over the course of 25 years and 800 energy services projects. Schneider Electric’s attention to detail and standardization of practices maximizes value in every aspect of your project. In fact, it is this **standardization and commitment to quality to our process that has earned Schneider Electric an ISO 9001 certification**. Schneider is the only energy services company to achieve this certification.

Valerie Houchin will be VSD’s primary contact throughout the entire development and design and development process. A single team with sole responsibility to VSD is established and works on this project throughout the duration of not only development, but also through construction, commissioning and start-up. We look at a project holistically, which means we take potential construction and performance issues into account during our design phase. Our clients have appreciated this integrated, hands on and collaborative approach.

The Design Phases 1-3 are a collaborative process between VSD and the Schneider Electric/ Stantec team and **will result in a shovel-ready construction agreement**. The design phases are highlighted in this section.

Phase 1 – Conceptual Development (Project Scoping)

The Conceptual Development includes the following activities:

- **Kick off Meeting**
- Data Gathering
- On-site visits, as needed
- **Scoping Meeting**

Kick-off Meeting

Before formal development of the project begins, a kick-off meeting will be conducted so all key stakeholders within VSD and Schneider Electric/Stantec to understand the goals and priority projects of the District. Valerie will prepare a meeting agenda, summarizing past discussions and questions to be discussed with VSD. With the information communicated in this meeting, Schneider Electric/Stantec and the District will jointly confirm expectations and timelines for the upcoming planning phases.

Scoping Meeting

From the kick-off meeting and following activities, Schneider/Stantec will conduct a follow-up meeting referred to as the Scoping Meeting. The intent of the Scoping Meeting is to lay out all possible scopes of work, coordination

considerations and feasibility-level costs. The desired outcome of the meeting is for VSD to provide direction as to whether all or some of the scope of work should be considered for immediate project development and engineering. Schneider has found it works well to only develop and spend time on the top priority scope items.

The topics discussed and deliverables presented at the Scoping Meeting are listed below:

- Phasing considerations and logical grouping of scope of work
- Feasibility-level costs
- Scope of work description including high level design criteria
- Funding opportunities and considerations

Scoping Meeting Deliverables	Preliminary list and description of ECMs, and Operational Improvements
	Technology Overview (grit removal, CO-Gen, WAS thickening)
	Feasibility- level costs
	Recommended Phasing
	Feasibility-level financial analysis and sources of potential funding, including applicable grants

District Will:

- H. Provide Design-Build Entity a minimum of twenty-six (26) months of utility invoices for each meter serving each facility. Utilities include natural gas and electric used on the premises.
- I. Provide Design-Build Entity complete access to facilities for the purpose of performing the energy efficiency analysis, measuring actual energy use, taking equipment inventory, determining operating schedules, identifying known operational deficiencies, etc.
- J. Provide Design-Build Entity access to key personnel to discuss operating requirements.
- K. Provide Design-Build Entity equipment lists and copies, or the loan of facility plans, as well as existing operation condition data for the purpose of facilitating understanding of the characteristics and the current sequences of operation.
- L. Meet with Design-Build Entity to establish project criteria and make project decisions necessary for Design-Build Entity to complete in a timely manner.
- M. Inform Design-Build Entity at the point in which District becomes aware of any portions of scope that will not be included or funding that will not be available for project implementation.
- N. Meet with Design-Build Entity for a Scoping Meeting and decide the next steps moving forward in the process, including scope to be developed in the Investment Grade Development phase. District to validate Key Operating Strategies and Engineering Assumptions presented at Scoping Meeting.

Design-Build Entity Will:

- G. Conduct a project kick-off programming meeting, facility walk-through(s) and personnel interview(s) to gain an understanding of facility operations, concerns, needs, and desired performance criteria.
- H. Work with District to refine performance requirements, financial criteria, and project scope of work.
- I. Provide District a preliminary list of Energy Conservation Measures (“ECMs”) with feasibility-level costs from the existing Facility Master Plan and Business Case.
- J. Provide Key Operating Strategies and Engineering Assumptions for each ECM.
- K. Provide District a projected energy, operational, revenue, and cost savings analysis demonstrating the effect of the ECMs.
- L. Provide District a feasibility-level financial analysis cash flow and sources of potential funding, including grants.

Phase 2 - Investment Grade Development (Mid-Term Meeting) (30% Design)

This phase of the process includes more development and engineering to bring to light more decisions and considerations for VSD. The deliverables and discussion in this phase culminate in a meeting referred to as a **Mid-Term Meeting**. VSD can think of this meeting as a formal time and place to check in on all of the scope of work being developed to make sure that it meets expectations. The topics discussed and deliverables presenting at the **Mid-Term Meeting** include:

- Scope of work description and budgetary costs based on preliminary design.
- Budgetary energy, operational and cost savings analysis demonstrating the effect of the Energy Conservation Measures (ECMs)
- Key operating strategies and engineering assumptions
- Preliminary financial analysis cash flow and sources of potential funding, including grants.
- Preliminary construction and phasing schedule based on the scope of work included.

Mid-Term Meeting Deliverables	Scope of work description including Key Operating Strategies and Engineering Assumptions for each ECM.
	Budgetary costs based on preliminary design.
	Budgetary energy, operational, revenue, and cost savings analysis demonstrating the effect of the ECMs
	Key Operating Strategies and Engineering Assumptions for each ECM

Preliminary construction and phasing schedule based on the scope of work included.
A preliminary financial analysis cash flow and sources of potential funding, including grants.
Process Engineering
<ul style="list-style-type: none"> Hydraulic Profile Equipment List
<ul style="list-style-type: none"> 60% P&ID
<ul style="list-style-type: none"> Final Design Criteria / Basis of Design
<ul style="list-style-type: none"> Equipment Layout
Civil Engineering
<ul style="list-style-type: none"> Site Layout
<ul style="list-style-type: none"> Civil Design Criteria / Basis of Design
Structural Engineering
<ul style="list-style-type: none"> Structural Design Criteria / Basis of Design
Electrical Engineering
<ul style="list-style-type: none"> Single Line Diagrams
<ul style="list-style-type: none"> Load List
<ul style="list-style-type: none"> Electrical Design Criteria / Basis of Design
Architectural/HVAC Engineering
<ul style="list-style-type: none"> Building Layout/Floor Plan
<ul style="list-style-type: none"> Architectural / HVAC Design Criteria / Basis of Design
Permitting
<ul style="list-style-type: none"> Permits List
<ul style="list-style-type: none"> SCAQMD Permitting Schedule

District Will:

- F. Provide Design-Build Entity complete access to the facilities for the purpose of performing the energy efficiency analysis, measuring actual energy use, taking equipment inventory, determining operating schedules, identifying known operational deficiencies, etc.
- G. Provide Design-Build Entity access to key personnel to discuss operating requirements.
- H. Meet with Design-Build Entity during the Investment Grade Development, including the Mid-Term Meeting to establish project criteria and make project decisions necessary for Design-Build Entity to complete development in a timely manner.
- I. Inform Design-Build Entity at the point in which District becomes aware of any portions of scope that will not be included or funding that will not be available for final project implementation.
- J. Inform Design-Build Entity at the point in which District becomes aware that any of the ECM Key Operating Strategies and/or Engineering Assumptions become invalid, thereby potentially impacting project scope and financials.

Design-Build Entity Will:

- G. Work with District to establish design, equipment, and operation standards with final approval by District.
- H. Provide District a scope of work description and budgetary costs based on preliminary design.
- I. Provide District a budgetary energy, operational, revenue, and cost savings analysis demonstrating the effect of the ECMs.
- J. Provide District a preliminary financial analysis cash flow and sources of potential funding, including grants.
- K. Provide District a preliminary construction and phasing schedule based on the scope of work included.
- L. Provide Key Operating Strategies and Engineering Assumptions for each ECM.

Phase 3 - Design Development (Final Planning)

At this point, the VSD stakeholder team has been at the table in various planning meetings and has a very good idea of the scope of work being developed, as well as the financial and energy/operational savings impact. The Design Development phase is a critical stage of development where Schneider qualifies subcontractors with VSD’s input and conducts job walks for all trades for the projects under consideration. The final Planning Meeting is where all final project information is presented to VSD. This includes:

- Final scope of work with final firm, fixed pricing
- Final savings
- Draft construction schedule
- Financing options, including grants
- Marketing/PR plan

Final Meeting Deliverables	A guaranteed maximum price (“GMP”) including pricing that shall be firm for ninety (90) days.
	IGA Report including:
	<ul style="list-style-type: none"> • Detailed scope of work including Design Criteria, Key Operating Strategies and Engineering Assumptions for each ECM based on a firm, fixed price
	<ul style="list-style-type: none"> • Projected energy savings amount
	<ul style="list-style-type: none"> • Financial analysis of the effect on annual cash flow by the ECMs. All financing and grants will be finalized for District consideration.
	<ul style="list-style-type: none"> • Provide District a preliminary construction and phasing schedule based on the scope of work included.
	<ul style="list-style-type: none"> • A draft Marketing Vision and Branding plan for implementation during project construction phase.
	Process/Mechanical Engineering
	<ul style="list-style-type: none"> • Hydraulic Profile Update • Equipment List Update

• 90% P&ID
• Final Design Criteria Update
• Budgetary Quotes for Equipment Update
• Equipment Layout Update
• Major Equipment Schedules
• Flow/Piping Diagrams and Floor Plan
Civil Engineering
• Site Layout Update
• Civil Design Criteria / Basis of Design Update
• Flow/piping Diagrams and Yard Equipment Locations
Structural Engineering
• Structural Design Criteria / Basis of Design Update
• Foundation Design
Electrical Engineering
• Single Line Diagrams Update
• Load List Update
• Yard Electrical Equipment Locations
• Gear Sizing / Schedules and Quotes
Architectural/HVAC Engineering
• Building Layout/Floor Plan Update
• Architectural / HVAC Design Criteria / Basis of Design Updates
General Sheets
Permitting
• SCAQMD Permits to Construct Applications

District Will:

- F. Provide Design-Build Entity access to key personnel to discuss operating requirements.
- G. Provide Design-Build Entity equipment lists and copies, or the loan of facility plans, for the purpose of facilitating understanding of the characteristics and the current sequences of operation.
- H. Meet with Design-Build Entity during the Design Development, including final planning meeting, to establish project criteria and make project decisions necessary for Design-Build Entity to complete development in a timely manner.
- I. Inform Design-Build Entity at the point in which District becomes aware of any portions of scope that will not be included or funding that will not be available for final project implementation.
- J. Inform Design-Build Entity at the point in which District becomes aware that any of the ECM Key Operating Strategies and/or Engineering Assumptions become invalid, thereby potentially impacting project scope and financials.

Design-Build Entity Will:

- F. Work with District to establish design, equipment, and operation standards with final approval by District.
- G. Provide District a guaranteed maximum contract price (Contract Price), including pricing for a turnkey installation of the proposed project scope that shall be firm for sixty (60) days, detailed scope of work based on a firm, fixed price and a projected energy savings amount.
- H. Provide District a financial analysis of the effect on annual cash flow by the ECMs. All financing and grants will be finalized for District consideration.
- I. Provide District a preliminary construction and phasing schedule based on the scope of work included.
- J. Provide District a draft Marketing Vision and Branding plan for implementation during project construction phase.

2. Project Scope of Work

In working with VSD and Stantec in recent planning sessions, our teams have come up with a potential scope of work for VSD to consider through our partnership. This scope is based on items identified in Phase 2B which are the highest priority to address.

G. Mechanical Bar Screen replacing manual rake

The primary benefit of this scope item is improved reliability of screening process.

H. Vortex type grit chamber replacing aerated grit chamber

This scope item will result lower motor horsepower and improved reliability.

I. Waste Activated Sludge Thickening – adds mechanical device in place of gravity thickening in Pond 2

Will result in the improved process efficiency and elimination of dredging / pumping of thickened sludge from Pond 2 to belt press.

J. Digested Sludge Holding Tank and Dewatering Feed Pumps

This scope item will result in operational flexibility to operate digesters at relatively constant level and base-load the belt press dewatering system; greater efficiency in belt press usage.

K. Digester and related systems

VSD will realize the benefit of improved reliability of sludge stabilization; likely longer solids retention time will result in greater % of volatile solids removal and less dry solids to haul after drying.

L. Biofilter for foul air treatment at new WAS thickening facility

The biofilter is much more energy efficient than packed tower foul air scrubber and requires no chemical deliveries.

3. Project Tasks and Fee

When VSD chooses the Schneider/ Stantec team they are choosing more than our expertise in wastewater and as an ESCO, but VSD is also benefiting from the built-in collaboration of a process most similar to Progressive Design Build, as prescribed from the Design Build Institute of America (DBIA). A few points to distinguish Schneider's ESCO approach as it aligns with Progressive Design-Build:

- The goal is to have the design-builder collaborate early on with the owner (VSD) and its team of in-house staff.
- This early collaboration leads to optimum life-cycle costing, equipment selection and selection of key trade subcontractors.
- The overall project price is negotiated once the design is developed to a point where the project and scope of work are well-defined, typically at 50-60% of overall design completion.
- Price proposals are typically based on a guaranteed maximum price (GMP).

The total fee estimated for Phases 1-3 is \$2,200,000. This is based on the following hours and tasks that will be completed by the Schneider/Stantec design-build team as highlighted below.

Phase 1: 613 estimated hours

Phase 2: 4,954 estimated hours

Phase 3: 4,924 estimated hours

Phases 1-3 TOTAL 10,491 estimated hours

Phase 1 Conceptual Development (Kick-off & Scoping Meetings) 70 Days

1.1 VSD Kick-Off Meeting (and site visits)

- 1.2 Prep for Scoping Meeting-PowerPoint
- 1.3 OPCC (Cost estimation) Update from Master Plan for Phase 2b
- 1.4 Scoping Meetings & VSD Review
- 1.5 Subcontractor solicitation and qualification process;
- 1.6 Selection of subcontractors
- 1.7 Develop Preliminary Phasing Plan
- 1.8 Energy Engineering – develop energy and operational baseline
- 1.9 Prepare Scoping Meeting Report
- 2.0 Feasibility-level financial analysis and funding sources
- 2.1 Schneider/Stantec QC Review
- 2.2 Finalize all Client-Facing Deliverables

2.3 VSD Scoping Meeting

VSD Review of Phase 1

Phase 2 Investment Grade Development (Mid-Term Meeting- 30% Design) 220 days

1.0 Receive NTP from VSD to proceed to Phase 2.

1.1. Internal Kick-off w/ design disciplines

- 1.11 Prepare Process Flow Diagram
- 1.12 Prepare Hydraulic Profile
- 1.13 Prepare Process Unit Sizing (digester, etc.)

1.2 Prepare P&IDs

- 1.21 Draft P&IDs
- 1.22 Process & Mechanical Coordination
- 1.23 Refine P&IDs

1.3 Civil

- 1.31 Receive Survey Files
- 1.32 Set up Project Areas on AutoCAD
- 1.33 Civil Key Plans
- 1.34 Civil Horizontal Control & Paving
- 1.35 Civil Drainage Plans
- 1.36 Incorporate Subsurface info from subconsultants to Survey CAD file
- 1.37 Civil Yard Piping Plans

1.4 Architectural

- 1.41 Thickener Bldg/ Digester Ctrl Bldg Floor Plans & Sections Draft
- 1.42 GA sheets (excl. details)

1.5 Structural

- 1.51 Prepare Structural Design Criteria
- 1.52 Review by Design Lead

1.6 Mechanical

- 1.61 Prepare Mechanical Plan Sheets
- 1.62 Equipment List
- 1.63 Major Equip Data Sheets Draft
- 1.64 Mech Sheets
- 1.65 Obtain Budgetary Major Equipment Quotes

1.7 Electrical

- 1.71 Review Exist. Elec Distribution Systems @ VSD
- 1.72 Draft Single Line Diagrams
- 1.73 Draft Load List

1.8 QC

- 1.81 Discipline Check
- 1.82 Pickups
- 1.83 Backcheck
- 1.84 Stantec Ship Review Set to Schneider
- 1.85 Interdisciplinary Check & Schneider Check
- 1.86 Pickups
- 1.87 Backcheck
- 1.88 Compile & Finalize

1.9 Subconsultant Engagement

- 1.91 Survey AutoCAD Files Prepared

- 1.92 Subsurface Investigation
- 1.93 Geotech Draft Report Prepared

2.0 Permitting

- 2.01 Draft Permits List
- 2.02 SCAQMD Permitting Requirements
 - Identify SCAQMD Permit Application Requirements & Viability
 - Permit Application Requirements Review
 - Submit to VSD for Review

2.1 Construction Phasing & Cost Estimate

- 2.11 Draft Phasing Plan
- 2.12 Prepare OPCC Class 4
- 2.13 Review Phasing Plan & OPCC
- 2.15 Schneider Final Review & Submit to VSD

2.2 Schneider Managing Subcontractor and Equipment Vendor Procurement Process

- 2.21 Develop Mid-Term Subcontractor & Vendor Solicitation for Proposals (SFPs)
- 2.22 Distribute Mid-Term SFPs/ Walk Site with Subs/ Subs Respond
- 2.23 Review Mid-Term Sub & Equipment Vendor Proposals
- 2.24 Develop Draft Phasing Plan & Construction Schedule
- 2.25 Develop Mid-Term Project Cost Estimate
- 2.26 Schneider- Savings and Cost Review

2.3 Schneider Energy Engineering

- 2.31 Develop Mid-Term Energy & O&M Baseline
- 2.32 Develop Mid-Term Energy & O&M Savings

2.4 Project Management, Marketing and Financing

- 2.41 Develop Funding Options
- 2.42 Develop Draft Construction Agreement
- 2.43 Develop Draft Marketing Vision Plan

2.5 Prepare VSD Client Deliverables

- 2.51 Prepare Mid-Term Report Deliverable and QC

2.6 VSD Mid-term Meeting

VSD Review of Phase 2

Phase 3 Design Development (Final Planning- 60% Design) 170 days

1.0 Receive NTP from VSD to proceed to Phase 3.

1.1. Internal Kick-off w/ design disciplines

- 1.1 Incorporate VSD & SE Comment in 60% Drawings

1.2 General

- 1.21 Update and Complete G-sheets, excl. design criteria
- 1.22 Design Criteria Sheet
- 1.23 Update G-sheets

1.3 P&IDs

- 1.31 Complete Instruments
- 1.32 Show SCADA Elements

1.4 Civil

- 1.41 Update Horizontal Ctrl & Paving
- 1.42 Update Yard Piping 10 days
- 1.43 Update Grading & Drainage Plans
- 1.44 Update Civil Details

1.5 Architectural

- 1.51 Thickener Bldg / Digester Ctrl Bldg Floor Plans & Sections
- 1.52 GA sheets update
- 1.53 Architectural Specs

1.6 Structural

- 1.61 Structural Plans
- 1.62 Structural Sections & Details
- 1.63 Structural Standard Details

1.7 Mechanical

- 1.71 Plans & Sections
- 1.72 Detail Sheets
- 1.73 Standard Detail Sheets
- 1.74 Major Equip Specs

1.8 HVAC

- 1.81 Title 24 Calculations & Drawing
- 1.82 Thickener Bldg HVAC Plan
- 1.83 Thickener Bldg HVAC Details
- 1.84 HVAC Specs

1.9 Electrical

- 1.91 Load List Update
- 1.92 Single Line Update
- 1.93 Conduit Development
- 1.94 Yard Electrical Site Plans
- 1.95 Schematic Diagrams

2.0 Instrumentation

- 2.01 Coordinate with Electrical for Wiring
- 2.02 Draft Instrumentation Specs
- 2.03 I/O List
- 2.04 Instrument List

2.1 QC for 60% Drawings

- 2.11 Stantec Discipline Check
- 2.12 Pickups
- 2.13 Backcheck
- 2.14 Interdisciplinary Check
- 2.15 Pickups
- 2.16 Backcheck & Final Pickups
- 2.17 Deliver to Schneider for Review
- 2.18 Pickups
- 2.19 Printing
- 2.20 Schneider to prepare for VSD

2.2 SCAQMD Permitting

- 2.21 Draft Application Permit to Construct

- 2.22 Review by Process Engineer
- 2.23 Stantec to send to Schneider for Review
- 2.24 Send to VSD for Review

2.3 Construction Cost Estimate

- 2.31 Class 3 OPCC
- 2.32 OPCC Check
- 2.33 Class 3 OPCC
- 2.34 Stantec sends OPCC to Schneider for Review
- 2.35 Revise & Ship OPCC to Schneider

2.4 Schneider Manages Subcontractor and Equipment Procurement

- 2.41 Develop Final Subcontractor & Equipment Vendor SFPs
- 2.42 Distribute Final SFPs/ Walk Site/ Subs and Vendors Respond
- 2.43 Review Final Sub & Vendor Pricing
- 2.44 Develop Final Phasing Plan & Construction Schedule
- 2.45 Develop Final Project Costs
- 2.46 Schneider Review of Final Costs & Savings

2.5 Schneider Energy Engineering

- 2.51 Develop Final Energy & O&M Baseline
- 2.52 Develop Final Energy & O&M Savings

2.6 Project Management, Marketing and Financing

- 2.61 Prepare and send out Financing RFP
- 2.62 Review financing bid results
- 2.63 Finalize Funding Options with VSD (determine if any grants will be pursued)
- 2.64 Develop Amendment to D-B Contract
- 2.65 Develop Final Marketing Vision Plan
- 2.66 Prepare Board Presentation
- 2.67 Prepare information for Gov't Code 4217 Public Hearing

2.7 Prepare VSD Client Deliverables

- 2.71 Prepare Final Design Report Deliverable and QC
- 2.72 Internal Reviews by Schneider team

2.8 Final Design and Planning Meeting (60% design) with VSD

VSD Review of Phase 3

Prepare for Phase 4- Construction

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 District’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 -- Standard AIA form 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 District.
 6. Certificate for Payment -- The form signed by District’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.
 7. Change Order (“CO”) -- A document that authorizes Additional Work or deletion, or revision in the Work or an adjustment in the Guaranteed Maximum 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.
 8. Change Order Request (“COR”) -- A request made by the Design-Build Entity for an adjustment in the Guaranteed Maximum Price and/or Project Completion Date as the result of a Design-Build Entity-claimed change to the Work.
 9. Claim -- A demand or assertion by District or Design-Build Entity seeking an adjustment of the Guaranteed Maximum 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.

10. Construction Documents -- The plans and Technical Specifications prepared by the Design-Build Entity for the Project and approved by District. 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 District. All amendments and modifications to the Construction Documents must be approved by District in writing.
11. Construction Documents Phase -- The third of four phases of the Work and will commence with the issuance of the approval of the Schematic Design Phase.
12. Construction Phase -- The fourth phase of the Work and will commence upon final approval of the Construction Documents by District.
13. 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.
14. Contract -- The entire integrated written agreement between District 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.
15. Contract Documents -- The documents listed in Section 1 of the Contract. Some documents provided by District, including but not limited to reports and drawings of subsurface and physical conditions are not Contract Documents.
16. 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.
17. Daily Rate -- The Reverse Liquidated Damages amount stipulated in the Contract Documents.
18. Day -- A calendar day of 24 hours measured from midnight to the next midnight.
19. Defective Work -- Work that is 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.
20. 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.
21. Design-Build Entity -- The individual or entity with which District has contracted for performance of the Work.
22. 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 District.

23. 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 District 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.
24. 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.
25. 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.
26. District's Representative -- The individual or entity as identified in the Contract to act as District's Representative.
27. 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.
28. 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.
29. Equipment Manufacturer -- Any Separate Contractor that fabricates and/or supplies any of District's provided equipment which is installed in the Project by the Design-Build Entity.
30. Excusable Delay -- A delay as described in Article 10 of these General Conditions.
31. Governmental Approvals -- Those governmental actions required to be obtained by District and necessary for the completion of the Project.
32. Guaranteed Maximum Price ("GMP") -- The guaranteed maximum price District will pay for the completion of all Work described in the Contract Documents. The GMP is set forth in the Contract and further described in the cost proposal submitted by the Design-Build Entity.
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 District; 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
New Year's Eve Day – December 31

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 District to the Design-Build Entity stating that upon timely compliance by the Design-Build Entity with the conditions precedent listed therein, District will sign and deliver the Contract.
38. Notice of Completion – The form which may be executed by District 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 District to the Design-Build Entity fixing the date on which the Design-Build Entity may proceed with the applicable work and when Contract Time will commence to run.

40. Notice to Proceed with Construction -- A written notice given by District to the Design-Build Entity fixing the date on which the Design-Build Entity may proceed with the Construction Phase and when Contract Time will commence to run.
41. Partial Utilization -- Use by District of a substantially completed part of the Work prior to Completion of all the Work.
42. Performance Specifications -- That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work.
43. 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 District or by Separate Contractors for the Project.
44. 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.
45. 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.
46. Proposal -- The proposal submitted by the Design-Build Entity in response to the Request for Proposal for this Project.
47. Request for Proposal (“RFP”) -- The request for proposal issued by District for the Project and includes all documents, exhibits, attachments, and addenda thereto.
48. 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.
49. Schematic Design Phase -- The second of four phases of the Work. The scope of the Schematic Design Phase is further defined in the Contract Documents.
50. Separate Contractor -- A person, or firm, under separate contract with District performing other work at the Project site which may affect the Work.
51. 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.
52. Site -- Lands or areas indicated in the Contract Documents as being furnished by District upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by District which are designated for the use of Design-Build Entity.
53. Stop Payment Notice -- A written notice as defined in Civil Code section 8044.

54. 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.
55. Submittal - Written or graphic information and physical samples prepared and supplied by the Design-Build Entity demonstrating various portions of the Work.
56. 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.
57. Technical Specifications – All documents developed by the Design-Build Entity and which are ready for final construction.
58. 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.
59. Unexcusable Delay -- Any delay other than an Excusable Delay, as further described in Article 10 of these General Conditions, that does not entitle the Design-Build Entity to an adjustment of the Guaranteed Maximum Price and does not entitle the Design-Build Entity to an adjustment of the Project Completion Date.
60. Warranty -- A written guarantee provided to District by the Design-Build Entity that the Work remain free of defects and perform in accordance with specifications in the Contract Documents for the period required by the Contract Documents or the longest period permitted by the law of this State, whichever is longer.
61. 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.
- B. Furnish, Install, Perform, Provide.
 1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the 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.
- C. 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. Before District will execute the Contract, the Design-Build Entity shall furnish and file with District 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.

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 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 Guaranteed Maximum 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 endorsements shall be delivered to District within fifteen (15) Days after receipt of the Notice of Award and before execution of the agreement for construction by District.

2.4 Execution of Contract.

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

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

- A. Work shall commence within fifteen (15) Days of the date stated in District's Notice to Proceed with Construction. No 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 Preconstruction Conference; Designation of Authorized Representatives.

- A. Before any Work at the Project site is started, a conference attended by District, Design-Build Entity, District'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.
- B. At this conference District and Design-Build Entity each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.7 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, District's Representative, and others as appropriate will be held to review for acceptability to District'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 District's Representative.
- B. Acceptance of the schedules by District'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.

2.8 Subcontractor Mobilization Meeting.

Prior to the start of each major Subcontractor's site work, the Design-Build Entity, the involved Subcontractor, and District's Representative shall attend a pre-start meeting to discuss the schedule, coordination, procedures, and other administrative issues.

2.9 Project Signage.

District will permit a single project sign, which shall be subject to District's prior and sole discretion and approval, as to all matters including, without limitation, size, location, material, colors, style and size of printing, logos and trademarks (if any), text, and selection of names to be displayed.

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 District. Clarifications and interpretations of the Contract Documents shall be issued by District'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.
- 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 District, Design-Build Entity, or District'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 District or District'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.

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.

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. 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).
- A. 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. Amendments, 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. Construction Documents prepared by Design-Build Entity; and
 8. Drawings prepared by Design-Build Entity;
- B. 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. Amendment or Change Order drawings govern over Drawings;
 4. Drawings govern over standard drawings.
- C. 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 formal Contract Amendment or Change Order.

3.5 Interpretation and Use of Contract Documents.

- A. 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 District, the Construction Documents become a part of the Contract Documents and define the entire scope of work. 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 District’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 District.

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 District'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 Guaranteed Maximum 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 District and A/E and specific written verification or adaptation by the A/E.
- B. The prohibitions of this Article 3.6 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 District or District's Representative to Design-Build Entity, or by Design-Build Entity to District or District'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 District, provided the Design-Build Entity has been appropriately compensated in accordance with the terms of the Contract. District and the Design-Build Entity explicitly agree that all materials and documents developed in the performance of this Contract are the property of District pursuant to the requirements of District, provided the Design-Build entity has been appropriately compensated under this Contract. The Design-Build Entity agrees to, and hereby does, grant to District a royalty free license to all such data developed in the performance of this Contract for the Project and 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 District. Any use or reuse by District of the Construction Documents on any project without employing the services of the Design-Build Entity shall be at District's own risk.. If District uses or re-uses the Construction Documents without employing the services of the Design Build Entity, 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 District's Representative.

- A. During the term of this Design-Build Contract, District's Representative shall have the right to review the Design-Build Entity's Work at such intervals as deemed appropriate by District's Representative. However, no actions taken during such review or site visit by District'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. District'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, District and the Design-Build Entity shall communicate through District's Representative. Communications by the Design-Build Entity with District's consultants and District's Representative's consultants shall be through District's Representative. Communications by District and District'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 District's Representative. The Design-Build Entity shall not rely on oral or other non-written communications.
- D. Based on District's Representative's Project site visits, review of the Work, and evaluations of the Design-Build Entity's Applications for Payment, District's Representative will recommend

amounts, if any, due the Design-Build Entity and will issue Certificates for Payment in such amounts.

- E. District's Representative will have the authority to reject Work on the Project, or any portion thereof, which does not conform to the Contract Documents. District's Representative will have the authority to stop Work on the Project, or any portion thereof. Whenever District's Representative considers it reasonably necessary, or advisable, for implementation of the intent of the Contract Documents, District's Representative will have the authority to require additional inspection or testing of the Work on the Project, at the District's expense and in accordance with the Contract Documents, whether or not such Work is fabricated, installed, or completed. However, no authority of District'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 District or District's Representative to the Design-Build Entity, or any person or entity claiming under, or through, the Design-Build Entity.
- F. District's Representative will have the authority to conduct inspections in connection with beneficial occupancy and to determine the dates of Completion, such determination shall not be unreasonably delayed; 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. District's Representative will be, in the first instance, the interpreter of the requirements of the Contract Documents. 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 District's Representative in writing and request interpretation, or clarification. District'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 District's Representative, any portion of the Work on the Project which is not done in accordance with District'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. District may at any time and from time to time, without prior notice to or approval of the Design-Build Entity, replace District's Representative with a new District Representative. Upon receipt of notice from District informing the Design-Build Entity of such replacement and identifying the new District's Representative, the Design-Build Entity shall recognize such person or firm as District'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. District shall furnish the Project site. District 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. District 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 District.

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 District. 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 District's Representative, be permitted to use in the Work without charge, any such materials which meet the requirements of the Contract Documents, provided District 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 stop work in the affected area and inform District by notice immediately. Notwithstanding anything to the contrary herein, the Design-Build Entity shall not be responsible for, and the District 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 District 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 District, 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 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 except where the violation relates to Hazardous Materials not introduced onto the Project Site by Design-Build Entity.

4.4 Protection and Restoration of Existing Improvements and Reference Points.

- A. Design-Build Entity shall be responsible for confirming whether any historical stamps/impressions or survey monuments are located on existing sidewalks or curbs, which may be affected by the Work or construction activities. Design-Build Entity shall be solely responsible for ensuring that the design provides for the protection of existing improvements.
- B. 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 District. Design-Build Entity shall report to District'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 District 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 District 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 \$5,000,000 per occurrence, \$5,000,000 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: \$5 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. Intentionally Omitted.
6. Professional Liability/Errors and Omissions: \$2,000,000 per claim.
7. Pollution Liability Insurance: \$2,000,000 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 District. If such coverage is cancelled or materially reduced, Design-Build Entity shall, within thirty (30) Days after receipt of written notice of such cancellation or reduction of coverage, file with District 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, District 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 District 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, District, 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 District, 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 District, before District'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 District, 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) District, 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 District, 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 District, 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 exact equivalent, to waive all rights of subrogation against District, 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. Design-Build Entity shall obtain a Certificate of Insurance from A/E and provide the District with a copy evidencing that A/E has Professional Liability Insurance in place 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 District by the insurer, for a period of five (5) years after the completion of all of the Design-Build Entity's services hereunder and District'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 District 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 District and any other additional insureds.
 3. standard separation of insureds provisions.
 4. no special limitations on the scope of protection afforded to District, 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 District, 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 District 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 District accepts no responsibility for the Work until the Work is formally accepted by the District. The Design-Build Entity shall provide a certificate evidencing this coverage before commencing performance of the Work.
- B. The named insured shall be Design-Build Entity. The District, its elected officials, officers, employees, agents and authorized volunteers shall be listed as Additional Insureds. Design-Build Entity shall not be required to maintain property insurance for any portion of the Work following acceptance by District.
- 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, defective 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; and (4) coverage 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 District 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. District shall be named as an Additional Insured.

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.

Intentionally Omitted.

5.7 Partial Utilization, Acknowledgement of Property Insurer.

If District 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 District.

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:

- A. The Retroactive Date must be shown and must be before the date of the Contract or the beginning of contract work.
- B. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after District's acceptance of the Work.
- C. 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 District’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 District of such insurance. If requested by Design-Build Entity, District may approve different scopes or minimum limits of insurance for particular subcontractors. Design-Build Entity shall confirm that District and entities identified in the Special Conditions shall be named as additional insureds on all subcontractors’ policies of Commercial General Liability Insurance and Commercial Automobile Insurance.
- 5.11 Subconsultant Insurance Requirements. Design-Build Entity shall not allow any subconsultants to commence work on any subcontract relating to the Work until Design-Build Entity has verified that all subconsultants maintain insurance meeting all requirements under this Section and has provided evidence to District of such insurance. If requested by Design-Build Entity, District may approve different scopes or minimum limits of insurance for particular subcontractors. Design-Build Entity shall confirm that District and entities identified in the Special Conditions shall be named as additional insureds on all subcontractors’ policies of Commercial General Liability Insurance and Commercial Automobile Insurance.
- 5.12 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 District.
- 5.13 Verification of Coverage. Design-Build Entity shall furnish District with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to District. 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 District before work commences. In the event of a claim, District reserves the right to require the relevant portions of the required insurance policies, redacted to remove DBE’s confidential and/or proprietary information, as necessary to resolve such claim.
- 5.14 Reservation of Rights. District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- 5.15 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 District 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 Guaranteed Maximum 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 construction/installation obligation of Design-Build Entity remains. Nothing herein shall limit

the District'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. Subject to the limitations in Article 4 of the Design Build Contract, the Payment Bond and Performance Bond shall be in effect on the date the Contract is signed by District. 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 District.
- C. Should, in District's sole opinion, any bond become insufficient or surety found to no longer comply with requirements contained herein, the Design-Build Entity shall renew or replace the effected bond within 10 Days of receiving notice from District.
- D. 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 District, 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 District.
- E. To the extent, if any, that the Guaranteed Maximum Price is increased in accordance with the Contract, the Design-Build Entity shall, upon request of District, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to District. The bonds shall further provide that no change or alteration of the Contract (including, without limitation, an increase in the Guaranteed Maximum 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, District may terminate the Contract for cause.

ARTICLE 6 -DESIGN-BUILD ENTITY'S RESPONSIBILITIES

6.1 Design-Build Entity Responsibility; Independent Contractor.

The Design-Build Entity shall be responsible to District 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 contract with the Design-Build Entity or any of its Subcontractors. District 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 District. 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 District, 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.

Design-Build Entity shall indemnify, hold harmless, release and defend District, its officials, officers, employees, agents and volunteers from and against any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind arising out of any violation of California Government Code section 1090 by Design-Build Entity. Design-Build Entity's indemnity obligations shall survive expiration or termination of this Contract.

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 District with the others and with information furnished by District, and shall promptly report in writing to District's Representative any errors, inconsistencies, or omissions in the Contract Documents provided by District 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 District in writing.
- B. The Design-Build Entity is responsible for the design and construction of the Project and shall use 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 District'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 District's Representative, the Design-Build Entity shall be responsible for the resultant losses, including, without limitation, the costs of correcting Defective Work.
- D. District 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 no less than the industry standard of design, engineering and construction practices. The Design-Build Entity has the duty to act in District'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.
- B. The Design-Build Entity shall be responsible to District 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 District or District'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. Unless otherwise provided in the Contract Documents, the Design-Build Entity shall be entitled to any necessary adjustments in the Contract Time or Contract Price where Design-Build Entity is unable to perform all Work in accordance with the Contract Document because of the acts or omissions of District or District'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 Riverside, Orange or Los Angeles 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, 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 District-approved Construction Documents, which are developed from the District-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 District, 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.
- I. The Design-Build Entity shall at all times maintain good discipline and order among its employees and Subcontractors. The Design-Build Entity shall provide competent, fully qualified personnel to perform all Work on the Project.

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 6:30 a.m. and 4:30 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 District's written consent given after prior written notice to District's Representative. The Design-Build Entity shall be responsible for, and shall reimburse District for, all inspection costs outside regular working hours, including overtime, unless requested by the District.

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 District or as required by progress of the Work. The Design-Build Entity, District'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.
- B. District'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 District's Representative for acceptance proposed adjustments in the Project Schedule that will not result in changing the Project Completion Date.

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 Contract Amendment or Change Order.
3. Should any of the following conditions exist, District may require Design-Build Entity to prepare, at no extra cost to District, 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 District, of sufficient magnitude that District 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 District, 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 District's request:
 - (i) If Design-Build Entity asserts that District is responsible for the delay, failure to submit the recovery schedule within seven (7) Days of District'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 District's request may result in District 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 District directs Design-Build Entity to prepare a recovery schedule pursuant to this Article 6.6, Design-Build Entity shall promptly undertake appropriate action at no additional cost to District 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 District'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 Guaranteed Maximum 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 District. If required by District'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 District has accepted the Work.
- 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 District free from any claims, liens, or encumbrances.
- F. Materials shall be stored on the Project site in such manner so as not to interfere with any operations of District or any independent contractor.

G. 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 the site of the Work. To allow sufficient time to provide for inspection, the Design-Build Entity shall submit to District'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. Design-Build Entity shall provide written notice as to when Materials will be delivered at the Site of Work and District shall inspect upon arrival.
2. The inspection of materials 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 District'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.

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.

Design-Build Entity will prepare and deliver a Schedule of Submittals to District'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 District's Representative. Each Submittal must be delivered to District'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.

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 District comments and resubmit. The Design-Build Entity shall identify changes made since previous submission.
 - g. District'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 District's attention to such deviations at time of submission and District's has taken no exception to the deviation. District'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 District's Representative will not be acknowledged or processed.
 - i. Incomplete Submittals will not be reviewed by District's Representative, unless approved in writing and required for timely ordering of equipment. Delays resulting from incomplete submittals are not the responsibility of District'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, unless the District is responsible for unreasonable delays in its review and approval.
- 2. Where a Submittal, Shop Drawing or Sample is required by the Construction Documents, any related Work performed prior to District's Representative's review and approval of the pertinent Submittal will be at the sole expense and responsibility of the Design-Build Entity.
 - 3. Schedule Milestones for Submittals. 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.

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 District'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 District'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 District's Representative the services, materials, and equipment Design-Build Entity proposes to provide and to enable District's Representative to review the information Representative for assessing conformance with information given and design concept expressed in Contract Documents.
 2. 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.
 3. 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 District's Representative to review the submittal for assessing conformance with information given and design concept expressed in Contract Documents.
 2. Samples should be of appropriate size and detail to assess functional, aesthetic, color, texture, patterns and finish selection.
- E. District's Representative's Review.
1. District's Representative will review Shop Drawings and Samples in accordance with the Schedule of Submittals and within 10 days of receipt of submittals. District'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. District'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. District'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 District'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 District'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 District's Representative on previous Submittals.
- G. District will review the first resubmittal of Shop Drawings at its cost. District reserves the right to reduce the Guaranteed Maximum 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 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. District'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 District 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 District.
2. However, it is acknowledged by the parties hereto that inherent in a Design-Build concept, 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 District for review in accordance with the agreed upon schedule, unless otherwise approved in writing by District. The Project Schedule shall

indicate the times for District 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 District at the times indicated on the Project Schedule and as defined in the Scheduling Specification. Meetings between the Design-Build Entity and District 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 District in accordance with the schedule approved by District. The Design-Build Entity will be responsible for preparing and circulating for the parties review, design meeting minutes from all such meetings.
4. The Construction Documents for hazardous and/or toxic abatement efforts and demolition activity shall be of sufficient clarity and shall be fully detailed when submitted to District for review.

B. Shop Drawings, Product Data, Samples, Materials, and Equipment.

1. Shop drawings means drawings, submitted to the Design-Build Entity by Subcontractors, manufacturers, supplier or distributors, showing in detail the proposed fabrication and assembly of building elements and the installation (e.g., form, fit, and attachment details) of materials or equipment.
2. The Design-Build Entity shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and the Design-Build Entity's Construction Documents and shall indicate its approval thereon as evidence of such coordination and review.
3. Materials and equipment incorporated in the Work on the Project shall match the approved samples within tolerances appropriate to the items, and as may be described in the Contract Documents.
4. The Design-Build Entity shall submit shop drawings approved by the A/E and samples of submittals that relate to finish materials and products.
5. Wherever the name or brand of manufacturer or an article is listed in the Contract Documents, it is to be used in Work on the Project as the standard. Any variation in quality must be approved by District.

C. 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.

D. Geotechnical and Survey.

1. District 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 District (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 District 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. Except as otherwise indicated in the Contract Documents, 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.
- B. To the fullest extent permitted by Applicable Laws, Design-Build Entity shall indemnify, defend, and hold harmless District and District'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.

Permits and licenses necessary for prosecution of the Work shall be secured and paid for by Design-Build Entity, unless otherwise specified in the Contract Documents.

- 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 District.
- 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 District'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 District.

6.15 Design-Build Entity Standard of Care.

- A. The Design-Build Entity warrants to District that all Design Work will be performed in accordance with the 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 Design-Build Entity warrants to District 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. If required by District's Representative, the Design-Build Entity shall furnish satisfactory evidence of compliance with this Article 6.15. Further, the type, quality and quantity of such evidence shall be within the sole discretion of District's Representative.

- B. The Design-Build Entity 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 Design-Build Entity shall be solely responsible for the means, methods, techniques, sequences, and procedures of design and construction of the Project.

6.16 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 District nor District's Representative shall be responsible for monitoring Design-Build Entity's compliance with any Applicable Laws.
- B. 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.

6.17 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 District. Permissible working hours shall be between 7:00 a.m. to 8:00 p.m. and shall not be changed except with consent of District.
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 District, 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 District. If District 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 District 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 District 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 District 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 District staff shall be made by and pursuant to the sole discretion of a representative of District. All Work on the Project or other activities which could present a hazard or unreasonable disruption to District staff shall be performed before or after normal working hours, on weekends, or on a District 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. District 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 District’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 District, 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 District 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 District. Design-Build Entity shall defend, indemnify and hold the District, 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 District. 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 District, 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 District, 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 District.

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. Prior to commencement of work, Design-Build Entity shall sign and file with District the following certification:

"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.”

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.

6.18 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 District. 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.

6.19 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. All such costs shall be included in the Contract Price. 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.

6.20 Use of Site and Other Areas.

A. Limitation on Use of Site and Other Areas.

1. 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 District or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such District 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 District. 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.

6.21 Utility Usage.

- A. Unless otherwise agreed to be provided by the District in writing and defined in the Scope of Work, 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.
- B. Design-Build Entity shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Work, including but not limited to startup and testing required in the Contract Documents. As Work is to be performed in existing District's facilities, Design-Build Entity may, to the extent authorized by District in writing, use District's existing utilities.
- C. All permanent meters installed shall be listed in the Design-Build Entity's name until the Work is accepted.

6.22 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 District'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 District'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 District, for the accuracy of such information, and for any errors or omissions which may or may not appear on the record drawings.

6.23 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.
- C. Design-Build Entity shall comply with the applicable requirements of District's safety programs, if any. The Special Conditions identify any District's safety programs that are applicable to the Work.
- D. Design-Build Entity shall inform District and District's Representative of the specific requirements of Design-Build Entity's safety program with which District's and District's Representative's employees and representatives must comply while at the Site.
- E. 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.
- F. Design-Build Entity's duties and responsibilities for safety and for protection of the Work shall continue until District files the Notice of Completion in accordance with Contract Documents.

6.24 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 District's Representative the name and contract information of the safety representative in writing. Design-Build Entity shall provide District's Representative the name and contact information of the safety representative in writing.

6.25 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.

6.26 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 District, shall act to prevent such threatened loss or injury; and Design-Build Entity shall so act, without appeal, if directed or instructed by District. Any compensation claimed by Design-Build Entity on account of emergency work shall be determined in accordance with the Contract Documents.

6.27 Continuing The Work.

- A. Design-Build Entity shall carry on the Work during negotiation of all Change Orders and all disputes or disagreements with District. No Work shall be delayed or postponed pending resolution of any Change Orders, disputes or disagreements, unless District and Design-Build Entity otherwise agree in writing.

6.28 Warranty.

- A. The Design-Build Entity warrants 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 and that 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 set forth on the certificates of Substantial Completion (the "Warranty Period"). Multiple certificates of Substantial Completion will be issued for segments of Work as set forth in the Scope of Work and the respective Warranty Periods for such segments of Work will be set forth in the certificates of Substantial Completion. 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 District; ordinary wear and tear and abuse excepted.
- B. The foregoing warranty excludes acts of god, improper operation, or normal wear and tear under normal usage under the control of District. 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 District to maintain an action for breach of contract against the Design-Build Entity. Nothing contained in these Contract Documents pertaining to warranty shall be construed as limiting any other rights District may have at law, including rights for latent defects under Code of Civil Procedure Section 337.15.

- C. The Design-Build Entity further agrees, within thirty (30) Days, or as such shorter period as may be designated for emergency repairs, after being notified in writing by District, 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 District finds that the Design-Build Entity fails to cure or diligently commence to cure the identified defects in the Work, District 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. District 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.
- D. 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.
- E. Design-Build Entity's obligations under this Article are in addition to any other obligation or warranty and do not limit District's rights and remedies pursuant to California Code of Civil Procedure sections 337.10 and 337.15. or any other Applicable Law.
- F. Notwithstanding the foregoing provisions, in the event of an emergency constituting an immediate hazard to health or safety of District employees, property, or licensees, District 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.

6.29 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 reasonable to District), indemnify and hold District, 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, arising out of, related to, or in connection with any negligent 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 reasonable 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 District. The Design-Build Entity shall defend, at the Design-Build Entity's own cost, expense and risk, with counsel of District's choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against District, 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 District, its officials, officers, agents, employees and representatives, in any such aforesaid suit, action or other legal proceeding. The Design-Build Entity shall reimburse District, 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 District and District's Representative, for regulatory agency or court imposed fees, fines, or penalties imposed on District and District's Representative arising from the Design-Build Entity's failure to complete the Project in accordance with the plans, designs or specifications contained in the Contract Documents and any applicable permits or Applicable Laws. The Design-Build Entity's responsibility and obligation to pay, or reimburse District and District'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 6.30 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 6.30 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. The indemnification obligations under this Article 6.30 shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.
- E. Joint and Several Liability. 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 6.30.
- F. 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.

6.30 Superintendent.

- A. The Design-Build Entity shall employ a competent Superintendent satisfactory to District 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 District 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 District. 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.

6.31 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.

District 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 District, including but not limited to, failure or refusal to perform Work on the Project in a manner acceptable to District, uncooperative or incompetent performance on the Project, threatening the adequate or timely completion of the Project, or threatening the safety of persons or property.

6.32 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 District'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 District'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 District, 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 District, 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 District, its officials, officers, agents, employees or authorized volunteers. District reserves the right to defend any enforcement action or civil action brought against the District 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 District for the costs associated with, any enforcement action and/or settlement reached between the District and any relevant enforcement entity.

6.33 Monthly Report.

The Design-Build Entity shall prepare and submit to District, 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 District. 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.

6.34 Other Reports.

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

6.35 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 District.
- 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.

6.36 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.

6.37 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 District's Representative.

6.38 Access to Work.

- A. District, District's Representative, their consultants, and other persons authorized by District 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.

6.39 Concealed Or Unknown Conditions.

- A. If conditions are encountered at the Project Site which are (i) concealed physical conditions which differ materially from facts or information of which Design-Build Entity has actual knowledge or which are reasonably foreseen or inferable from such knowledge or (ii) unknown physical conditions, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, hereinafter ("Concealed Conditions"), then, Design-Build Entity shall give the District notice of such Concealed Conditions within three (3) Days in writing and District shall investigate the site conditions promptly after receiving the notice. If the conditions do materially differ and if they do actually cause an increase or decrease in Contractor's cost or the time required for performing any part of the Work, the parties shall negotiate a Change Order modifying Contract Terms to provide for the change in design details and to provide for an adjustment in the Guaranteed Maximum Price and/or Project Completion Date pursuant to Articles 9 and 10.

6.40 Liability for and Repair of Damaged Work.

- A. Multiple certificates of Substantial Completion will be issued for segments of Work as set forth in the Scope of Work. Design-Build Entity shall be liable for any and all damages and losses to the Work (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to District's issuance of a Certificate of Substantial Completion. Upon issuance of a Certificate of Substantial completion, Design-Builder shall be released from any damage and losses to that segment of Work identified in the Certificate of Substantial Completion.

6.41 Permits, Fees, and Notices.

- A. Except for the permits and approvals which are to be obtained on behalf of District or the requirements with respect to which District is not subject, the Design-Build Entity shall secure, and pay for, all other permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of Work on the Project. The Design-Build Entity shall deliver to District all original licenses, permits, and approvals obtained by the Design-Build Entity in connection with Work on the Project prior to the final payment or upon termination of the Contract, whichever is earlier.

6.42 Environmental Quality Protection

- A. Landscape and Vegetation Preservation

1. General. 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.
2. Damage and Restoration. 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.
3. 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. General. 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 District 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 District within 2 Days.
2. Procedures. 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.
3. If directed by the District 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 District directed changes to the Work as a result of a siting will be pursuant to the Contract Documents.
4. False Siting. Any costs or delays incurred by District 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. General. 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 Construction/Archeological Monitor and/or the District 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 the Construction/Archeological Monitor and/or District within 2 Days.

2. Procedures. 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.
3. If directed by the District 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. Should the presence of cultural resources be confirmed, the Design-Build Entity will assist the District Representative and the Construction/Archeological Monitor in the preparation and implementation of a data recovery plan. 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 District directed changes to the Work as a result of the cultural resource will be pursuant to the Contract Documents.
4. Design-Build Entity's Liability. 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 District pursuant to the Contract Documents.

6.43 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 District's operation and maintenance staff. The Design-Build Entity shall furnish to District 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 District 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 District in inventory. Each manufacturer or supplier shall indicate the name, address, and telephone number of its nearest outlet of spare parts to assist District 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. District 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 District'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 District 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 District 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 District 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 District'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 District'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 District 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 District'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 District'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 District pursuant to the Contract Documents.
- F. District'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 District's Representative for a decision in the matter. Design-Build Entity shall comply with direction from District'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, District, or District'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 District or District'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 District 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. The Design-Build Entity shall not, without the consent of District: substitute any person or entity as a Subcontractor in place of the Subcontractor designated in the Price 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 Price Proposal, without written notification to District. 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 District's Representative.
- B. The Design-Build Entity shall submit to District's Representative after selecting Subcontractors, 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. Any increase in the cost of the Work on the Project resulting from the replacement or substitution of a Subcontractor 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 Guaranteed Maximum Price or an extension of Project Completion Date due to such replacement or substitution, unless such a substitution is required by District. In that case, Design-Build Entity may be entitled to increases in the Contract Price and/or extension of time.
- D. 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 District 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 District 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.

ARTICLE 9 -CHANGE IN GUARANTEED MAXIMUM PRICE; CHANGE IN CONTRACT TIMES

9.1 Contract Change Orders.

- A. District, without invalidating the Contract, may order changes in the work consisting of additions, deletions or other revisions, and the Guaranteed Maximum 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 Guaranteed Maximum 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. Both Parties agree to act in good faith and promptly when considering a Change Order requested by the other party but neither party is obligated to execute a Change Order. 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 District even when the parties have not reached agreement on whether the change increases the

scope of Work or affects the Guaranteed Maximum Price or Contract Time, if any. All claims for additional compensation to the Design-Build Entity shall be presented in writing. In the event the parties cannot reach agreement on the terms of a Change Order then the parties can submit the claim for dispute resolution. 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. District Directive

1. The District 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 Guaranteed Maximum 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. 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 Guaranteed Maximum Price and/or Contract Time for work performed under the directive. The District shall not be liable to Design-Build Entity for work performed or omitted by Design-Build Entity in reliance on verbal orders.
2. The District shall have the right to order changes in the Work by a unilateral Change Order setting forth the District's determination of the reasonable additions or savings in the Guaranteed Maximum 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 Guaranteed Maximum Price and/or Contract Time for District directed changes in the Work or for Additional Work or Excusable Delays to completion of the Project caused by the acts, errors, or omissions of the District, or caused by unforeseen or Concealed Conditions if, and only if, the Design-Build Entity follows the procedures specified in this Article. Any Work necessary to achieve the agreed upon energy savings and that the Design-Build Entity should have reasonably foreseen and included in the Construction Documents, and/or any Work resulting from ambiguities in the Design and Construction Documents shall not be considered Additional Work and the District 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 District 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) business Days after the District's work directive or Design-Build Entity discovers the circumstances causing the need for the Change Order. 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.

4. 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 Guaranteed Maximum 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 Reimbursable 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 District 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.
5. If the District denies the Change Order Request or disagrees with the proposal submitted by Design-Build Entity, it will notify the Design-Build Entity, and the District will provide its opinion of the appropriate change to the Guaranteed Maximum Price and/or Contract Time. If no agreement can be reached, the District shall have the right to order the work by a unilateral Change Order setting forth the District's determination of the reasonable additions or savings in the Guaranteed Maximum Price and/or Contract Time, if any. The District's determination shall become final and binding if the Design-Build Entity fails to submit a Claim in writing to the District 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 District may reasonably require. If the Change Order includes additions to the Work to be performed, the District shall continue to pay Design-Build Entity in accordance with the District's determination of the addition to the GMP, subject to resolution of the Dispute pursuant to Article 14.

C. Change Order Format

1. The District 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 District'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. 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 the 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, fifteen percent (15%) of material costs, and fifteen percent (15%) 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 ten percent (10%) of the Subcontractor's Net Cost of the Work to which the Design-Build Entity may add up to fifteen percent (15%) of the Subcontractor's Net Cost.
 - d. For Work performed by a sub-subcontractor, the added cost for overhead and profit shall not exceed five percent (5%) of the sub-subcontractor's Net Cost for Work to which the Subcontractor may add up to an additional five percent (5%) and Design-Build Entity may add up to an additional fifteen percent (15%) 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.
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.

9.4 Design-Build Entity’s Wavier 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 GUARANTEED MAXIMUM 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 District or available to the District through other means, is not a mere formality but is of crucial importance to the ability of the District 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 District Reservation of Rights.

- A. By signing the Contract, the parties agree that District 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 District, if any, in the Contract Documents; Changes resulting from

District'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 District or District's Representative to timely perform any Contract obligation and delays for District's convenience.
- B. If the District exercises any or all of the rights contained herein then Design-Build Entity shall be entitled to an equitable adjustment in the Guaranteed Maximum Price and Contract Time.
- C. If the District suspends Work for a period of time in excess of 180 days then Design-Build Entity shall have the right to terminate the contract and District shall compensate Design-Build Entity for all work performed up to the time of termination plus reasonable termination and demobilization costs.

ARTICLE 10 -PROJECT COMPLETION DATE

10.1 Progress and Completion.

- A. By signing the Contract:
1. The Design-Build Entity represents to District that the Project Completion Date is reasonable for performing the Work and that the Design-Build Entity is able to perform and complete the Work within the Project Completion Date.
 2. The Design-Build Entity agrees that District is purchasing the right to have the Design-Build Entity present on the Project for the full duration of the time period necessary to complete the Work.
- B. The Design-Build Entity shall not, except by agreement or instruction of District in writing, commence operations on the Project site or elsewhere prior to the effective date of insurance required by to be furnished by the Design-Build Entity. The date of commencement and the Project Completion Date shall not be changed by the effective date of such insurance.
- C. The Design-Build Entity shall proceed expeditiously with adequate forces and shall achieve full completion of the Work by the Project Completion Date. If District'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 District, 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 District's representative, the Design-Build Entity shall immediately notify District's Representative of all measures to be taken to ensure full completion of the Work within the Project Completion Date.

10.2 Delay.

- A. There are two kinds of delay, Excusable Delay (which may be compensable or non-compensable) and Unexcusable Delay. Only Excusable Delay, that meets the requirements

specified herein may result in the adjustment of the Project Completion Date, and/or the Guaranteed Maximum Price. All other delay(s) are Unexcusable, and except and only to the extent provided otherwise in Articles 9 and 10, by signing the Contract, the Design-Build Entity agrees: to bear the risk of non-compensable and Unexcusable Delays to completion of the Work on the Project and that the Proposal was made with full knowledge of this risk.

- B. In agreeing to bear the risk of Unexcusable Delays to completion of the Work on the Project, the Design-Build Entity understands that, except and only to the extent provided otherwise in Articles 9 and 10, the occurrence of events that result in any delay in completion of the Work on the Project shall not excuse the Design-Build Entity from its obligation to achieve full completion of the Work on the Project within the Project Completion Date, and shall not entitle the Design-Build Entity to an adjustment of the Guaranteed Maximum Price.

10.3 Adjustment of The Project Completion Date for Excusable Delay.

- A. The Project Completion Date will be extended for an Excusable Delay, if and only if, the Design-Build Entity demonstrates that all of the following conditions are met:
 - 1. When the event causing the delay commences, the Design-Build Entity has complied with all Contract requirements for maintaining, submitting, and updating Project Schedules.
 - 2. The delay is critical. A delay is critical if and only to the extent it delays a Work activity that cannot be delayed without delaying completion of the entire Project beyond the Project Completion Date. Additionally:
 - 3. If the Project Schedule shows completion of the Project before the Project Completion Date, a delay is critical if and only to the extent the delay pushes completion of the entire project to a date that is beyond the Project Completion Date.
 - 4. When two or more delays occur concurrently, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Project Completion Date should be adjusted pursuant to Article 10.4B, such concurrent critical delays shall be treated as a single delay which commences at the start of the delay that begins first and terminates at the cessation of the delay that ends last.
 - 5. The delay is supported by the Project Schedule (or, if appropriate, the Preliminary Schedule), current at the commencement of the event giving rise to the delay. A delay is supported only to the extent the Project Schedule (or, if appropriate, the Preliminary Schedule) corroborates that it causes a delay to completion of the entire Project beyond the Project Completion Date because of its effect on the operation referred to in Article 10.4A(2).
 - 6. Within fourteen (14) Days of the date the Design-Build Entity discovers or reasonably should discover an act, error, omission or unforeseen condition causing the delay, (even if the Design-Build Entity has not been delayed when the Design-Build Entity discovers or reasonably should discover the act, error, omission or unforeseen condition giving rise to the delay) the Design-Build Entity submits a timely Change Order Request that meets the requirements of Article 9.
 - 7. The delay is not caused by:

- a. The financial inability, misconduct or default of the Design-Build Entity, a Subcontractor or supplier; or
 - b. An error or omission in the Contract Documents caused by the Design-Build Entity or the Design-Build Entity's design consultants.
8. The delay is caused by: Fire; Strikes, boycotts, or like obstructive actions by employees or labor organizations; Acts of God, including earthquakes in excess of a magnitude of 3.5 on the Richter Scale, tidal waves, floods, unusually severe weather, pandemic, quarantine restrictions, epidemic, or other severe natural disaster; A man made (not naturally occurring) unforeseen site condition such as buried utility lines, pipes, and the like; An error or omission in the Contract Documents caused by District; District's decision to change the Work, where such decision is not the result of any default or misconduct of the Design-Build Entity; District's decision to suspend the Work on the Project, where such decision is not the result of any default or misconduct of the Design-Build Entity; or The failure of District, District's representative or a Separate Contractor to timely perform any Contract obligation unless such failure is due to the Design-Build Entity's default or misconduct.
- B. If and only if a delay meets all conditions prescribed in this Article, then the Project Completion Date will be extended by the number of days completion of the entire Project is delayed beyond the Project Completion Date for full completion of the Work on the Project.
- C. If for any reason one or more of the conditions prescribed in this Article held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Project Completion Date.

10.4 Compensation for Excusable Delay

- A. District's liability to Design-Build Entity for delays for which the District is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall the District 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 District delay that impact the critical path, including delays caused by items that are the responsibility of District pursuant to Government Code section 4215, shall be compensated at the Reverse Liquidated Damages rate established in the Contract, no other calculations, proportions or formulas shall be used to calculate any delay damages.
- B. Design-Build Entity shall be deemed to waive any right to delay damages unless: Design-Build Entity complies with all requirements of the Contract for providing timely notice to the District and timely requests for adjustments to the Price and/or Guaranteed Completion Date and Design-Build Entity meets all conditions of an Excusable Delay and is granted an extension of the Guaranteed Completion Date.

10.5 Waiver

- A. A waiver of, or failure by, the District or the District's Representative to enforce any requirement in this Article, including without limitation the requirements of an Excusable Delay, in connection with any or all past delays shall not constitute a waiver of, and shall not preclude the District from enforcing, such requirements in connection with any present or

future delays. The Design-Build Entity agrees and understands that no oral approval, either express or implied, of any time extension by the District or its agents shall be binding upon the District unless and until such approval is ratified by execution of a written Change Order.

- B. District and District's Representative, and the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each of them, shall not be liable to Design-Build Entity for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Design-Build Entity on or in connection with any other project or anticipated project.

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 District or District'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. District, District'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 District'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, District 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 District'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 District and District'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 District.

- E. District 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 District 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 District's Representative, Design-Build Entity shall, if requested by District's Representative, uncover such Work for observation.
- B. Uncovering Work shall be at Design-Build Entity's expense unless Design-Build Entity has given District's Representative timely notice of Design-Build Entity's intention to cover the same and District's Representative has not acted with reasonable promptness in response to such notice.
- C. If Design-Build Entity has given District's Representative timely notice of Design-Build Entity's intention to cover the work and District's Representative has not acted with reasonable promptness in response to such notice, and District's Representative later considers it necessary or advisable that covered Work be observed by District's Representative or inspected or tested by others, Design-Build Entity, at District's Representative's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as District'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 District shall be entitled to an appropriate decrease in the GMP.
 - 2. If the uncovered Work is not found to be defective, Design-Build Entity shall be allowed an increase in the GMP and/or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

11.5 District May Stop The Work.

- A. If the Work is defective, District 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 and Warranty Period.

- A. Promptly after receipt of written notice, Design-Build Entity shall correct all Defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by District or District's Representative, remove it from the Project and replace it with Work that is not defective.

- B. When correcting Defective, Design-Build Entity shall take no action that would void or otherwise impair District's special warranty and guarantee, if any, on said Work.
- C. The Design-Build Entity shall (1) correct Defective Work that becomes apparent during the progress of the Work on the Project or during the Warranty Period and (2) replace, repair, or restore to District'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 District's Representative or District, 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 correct, replace, repair, or restore, such Defective Work, and perform any necessary additional testing, and inspection. The Design-Build Entity shall perform corrective Work on the Project at such times and in such a manner as to avoid, to the extent practicable, disruption to District's activities.
- D. If immediate correction of Defective Work is required for life safety or the protection of property and is performed by District or Separate Contractors, the Design-Build Entity shall pay to District all reasonable costs of correcting such Defective Work. The Design-Build Entity shall replace, repair, or restore to District'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.
- E. 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 District.
- F. The Design-Build Entity's obligations under this Article are in addition to and not in limitation of its standard of care owed on the Project to District under Article 6 or any other obligation of the Design-Build Entity under the Contract Documents. 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 District may have under the Contract Documents or at law or in equity for Defective Work. Establishment of the Warranty Period relates only to the specific obligation of the Design-Build Entity to correct the Work on the Project and in no way limits either the Design-Build Entity's liability for Defective Work or the time within which proceedings may be commenced to enforce the Design-Build Entity's obligations under the Contract Documents.
- G. If the Design-Build Entity fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services, with respect to either the Schematic Design or Construction phases, to maintain the Contract Schedule, or otherwise fails to comply with any material term of the Contract Documents, and fails within ten (10) business days after receipt of notice from District to promptly commence and thereafter diligently continue to completion the correction of such failure, District may, without prejudice to other remedies District may have, correct such failure at the Design-Build Entity's sole expense. In such case, District will be entitled to deduct from payments then or thereafter due the Design-Build Entity the cost of correcting such failure, including compensation for the additional services and expenses of District's Representative and District's consultants made necessary thereby. If payments then or thereafter due the Design-

Build Entity are not sufficient to cover such amounts, the Design-Build Entity shall pay the additional amount to District.

11.7 Acceptance of Defective Work.

- A. If, after Design-Build Entity attempts to repair and/or replace the Defective Work, the District prefers to accept it, District may do so. If the District chooses to accept the Defective Work, then District shall accept the Work as-is, and releases the Design-Build Entity from any and all guarantee or warranty obligations related to the Work and the parties shall agree upon a reduction in the Guaranteed Maximum Price to address 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 District's evaluation of and determination to accept such Defective Work and for the diminished value of the Work.

11.8 District May Correct Defective Work.

- A. If Design-Build Entity fails within a reasonable time after written notice from District's Representative to correct or diligently commence to correct Defective Work, or to remove and replace rejected Work as required by District, District may, after seven (7) business days written notice to Design-Build Entity, correct, or remedy any such deficiency.
- B. In connection with such corrective or remedial action, District 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, and incorporate in the Work all materials and equipment stored at the Site for which District has paid Design-Build Entity but which are stored elsewhere. Design-Build Entity shall allow District and District's Representative, and the agents, employees, other contractors, and consultants of each of them, access to the Site to enable District 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 District 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 District shall be entitled to an appropriate decrease in the GMP.
- D. 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.
- E. If the Change Order is executed after all payments under the Contract have been paid by District, then an appropriate amount will be paid by Design-Build Entity to District.
- 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 District correcting defective work.

ARTICLE 12 -PAYMENTS TO DESIGN-BUILD ENTITY AND COMPLETION

12.1 Progress Payments.

The Cost-Loaded CPM Progress Schedule will serve as the basis for progress payments and will be incorporated into a form of Application for Payment agreed upon by the parties as a schedule of values, for purposes of payment and tracking progress of the Work only. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Design-Build Entity's Design and Construction Fee shall be shown as a single separate item.

A. Applications for Payments.

1. Within ten (10) days of the Date of Commencement, Customer shall make payment to Design-Build Entity for project mobilization expenses, including but not limited to any design or engineering fees not already invoiced, project start-up and mobilization, equipment and material procurement, bonds and other expenses incurred to date ("Project Mobilization Payment") in the amount of not to exceed 15% of the implementation contract payment total of the Contract Price.
2. By the twenty-fifth (25th) day of each month Design-Build Entity shall submit to District'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 District 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 District's interest therein, all of which must be satisfactory to District.
3. Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Build Entity on account of that portion of the Work for which the Design-Build Entity has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the GMP allocated to that portion of the Work in the schedule of values.
4. To compute the amount of each progress payment, the amount of each progress payment shall first include: That portion of the GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of Work by the share of the GMP allocated to that portion of the Work in the most recent schedule of values; That portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the District, suitably stored off the site at a location agreed upon in writing; That portion of Change Orders reasonably justified; and The Design-Build Entity's Design and Construction Fee.

5. The amount of each progress payment shall then be reduced by: The aggregate of previous payments made by the District; The amount for failure of the Design-Build Entity to make payments properly to Subcontractors or for material or labor (unless a labor and material payment bond has been furnished by the Design-Build Entity); The shortfall, if any, indicated by the Design-Build Entity in the documentation required to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the District's auditors in such documentation; and Retention.
6. 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 District in the prior Applications for Payment.

B. Review of Applications.

1. Within seven (7) days of receipt of a Payment Application, District's Representative will either indicate in writing a recommendation of payment to District or return the Application for Payment to Design-Build Entity indicating in writing District'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.
2. In taking action on the Design-Build Entity's Applications for Payment, the District 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 District 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 District has made exhaustive or continuous on-site inspections; or that the District 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 District, will be performed by the District's auditors acting in the sole interest of the District.
3. By recommending any such payment District's Representative will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to District's Representative in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Design-Build Entity to be paid additionally by District or entitle District to withhold payment to Design-Build Entity.
4. Neither District's Representative's review of Design-Build Entity's Work for the purposes of recommending payments nor District's Representative's recommendation of any payment, including final payment, will impose responsibility on District's Representative:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;

- c. for Design-Build Entity's failure to comply with Applicable Laws applicable to Design-Build Entity's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Design-Build Entity has used the moneys paid on account of the GMP; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to District free and clear of any Liens.
5. District'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. District retains the right to revise or revoke any such payment recommendation previously made, to such extent as may be necessary in District's opinion to protect District from loss.

C. Payment Becomes Due.

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

D. Retention and Securities in Lieu of Retention.

- 1. Unless Project has been deemed substantially complex as noted in the Contract Documents, District will retain five percent (5%) of the amount invoiced in accordance with Applicable Laws. Multiple certificates of Substantial Completion will be issued for segments of Work as set forth in the Scope of Work and Design-Build Entity shall be entitled to payment of the retainage amount corresponding to the value of any segment of Work that receives a certificate of Substantial Completion. Payment shall be released upon issuance of said certificate of Substantial Completion.
- 2. Pursuant to Public Contract Code section 22300, Design-Build Entity may substitute securities for any moneys withheld as a retention by District 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 District, 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.
- 3. Alternatively, Design-Build Entity may request, and District 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 District authorizes the escrow agent to release these funds to the Design-Build Entity, pursuant to the terms of Public Contract Code section 22300.

4. 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 District.
5. Design-Build Entity shall be the beneficial District of any securities substituted for moneys withheld and shall receive any interest thereon.
6. The escrow agreement shall be in the form of the Escrow Agreement provided as part of the Contract Documents.

E. District's Reduction in Recommended Payment.

1. In addition to reductions recommended by District's Representative, District may refuse to make payment of the full amount recommended by District's Representative because:
 - a. Claims have been made against District on account of Design-Build Entity's performance or furnishing of the Work.
 - b. Stop Payment Notices or Liens have been filed in connection with the Work.
 - c. Defective Work not remedied.
 - d. Failure of Design-Build Entity to make proper payments to its subcontractors or suppliers.
 - e. Completion of the Contract if there exists a reasonable doubt that the Work can be completed for the unpaid Contract balance.
 - f. Damage to another contractor or third party.
 - g. Amounts which may be due the District for claims against Design-Build Entity.
 - h. Failure of Design-Build Entity to keep the record ('as-built') drawings up to date.
 - i. Failure to provide updates on the construction schedule.
 - j. Site cleanup.
 - k. Failure of the Design-Build Entity to comply with requirements of the Contract Documents.
 - l. Liquidated Damages.

Upon completion of the Contract, District 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.

12.2 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 District no later than the time of payment free and clear of all Liens.

12.3 Partial Utilization.

- A. District 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.

12.4 Final Inspection.

- A. Upon written notice from Design-Build Entity that the entire Work is complete, District's Representative will promptly make a final inspection with District 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.

12.5 Final Acceptance.

- A. After Design-Build Entity has, in the opinion of District'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, District 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.

12.6 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 District 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 District conducts an audit of the Work, the District will either issue to the Design-Build Entity a final Certificate for Payment, or notify the Design-Build Entity in writing of the District's reasons for withholding a certificate. If the District'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 District shall pay the Design-Build Entity the amount certified in the District'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. District's Representative's Review of Application and Acceptance.

1. If, on the basis of District's Representative's observation of the Work during construction and final inspection, and District's Representative's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, District's Representative is satisfied that the Work has been completed and Design-Build Entity has satisfied all other requirements for final payment, District's Representative will indicate in writing District's Representative's recommendation of payment and present the Application for Payment to District for payment. Otherwise, District'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 District's Representative of the proper and complete final Application for Payment and accompanying documentation, the amount recommended by District's Representative, less any sum District is entitled to set off pursuant to the Contract Documents, will become due and will be paid by District to Design-Build Entity.

12.7 Waiver of Claims.

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

ARTICLE 13 -SUSPENSION OF WORK AND COMPLETION

13.1 District May Suspend Work.

- A. District 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 District'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 GMP 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 Contract) and an extension of the Contract Times equal to the number of days performance of Work is suspended; provided, however, that no adjustment of GMP 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. Further, in the event said suspension continues in excess of 180 days, then Design-Build Entity may elect to terminate for convenience.

13.2 District May Terminate for Cause.

- A. District 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 District; 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 District's satisfaction, or makes arrangements acceptable to District for the required corrective action, District 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. District 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 District for any excess costs or other damages incurred by District to complete the Work. If District takes over the Work, District 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 District May Terminate for Convenience.

- A. In addition to its right to terminate this Contract for default, District 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 District, 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 District, 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 accordance with 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. Design-Build Entity shall be relieved of this requirement in the event that Work necessary to ensure safety is not specified and authorized in the Notice of Termination.
 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 District, within thirty (30) 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 District'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 District 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 District's Termination for Convenience."
 7. District's total liability to Design-Build Entity by reason of the termination shall be limited to the total (without duplication of any items) of:
 - a. The actual 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. Deductions shall be made for cost of materials to be retained by the Design-Build Entity (provided the materials may be reused for other projects or returned to the supplier), 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.

- b. When, in District'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.
 - c. 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.
 - d. Reasonable costs to the Design-Build Entity of handling material returned to vendors, delivered to District or otherwise disposed of as directed by District.
 - e. A reasonable allowance for the Design-Build Entity's internal administrative costs in preparing termination claim.
 - f. Reasonable demobilization costs, and reasonable payments made to Subcontractors or suppliers on account of termination.
8. In no event shall District 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.
9. District shall have no obligation to pay the Design-Build Entity under this Article unless and until the Design-Build Entity provides District with updated and acceptable as-builts and Record Documents for Work completed prior to termination as required by the Contract Documents.
10. 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:
- a. 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,
 - b. Any claim District 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
 - c. 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 District.

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.

11. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, District may immediately order Design-Build Entity to cease Work until such safety or liability issues are addressed to the satisfaction of District or the Contract is terminated.
12. If District 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 GMP 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 Change 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 District, (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 District. 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 GMP 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 District 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. District Response to Claim. Upon receipt of a Claim pursuant to this Article, District 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 District issues its written response.
1. If District 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, District 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. District may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the Claim or relating to defenses or Claims District may have. If additional information is needed thereafter, it shall be provided upon mutual agreement of the District and the Design-Build Entity. District'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 District's response, or if District fails to respond within the statutory time period(s), the Design-Build Entity may so notify District, 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, District 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 District 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 District 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 District 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 District 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 District.
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 District.

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 District'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 District 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 District.

ARTICLE 15 -MISCELLANEOUS PROVISIONS

15.1 Limitations On District's Responsibilities.

- A. District 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. District 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 District.

15.3 Cumulative Remedies.

- A. Except where explicitly stated otherwise, 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 District's Right to Audit.

- A. The Design-Build Entity shall make available to District for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to District. If the Design-Build Entity submits a Change Order Request or a Claim to District, District shall have the right to audit the Design-Build Entity's books, records, documents, and other evidence to the extent they are relevant.
- B. In accordance with Government Code Section 8546.7, records of both District 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.

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 District, such prior written consent shall not be unreasonably withheld. Any assignment without the written consent of District 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 District 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 District, 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 District official or representative who is authorized in such capacity and on behalf of District 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 District, at no increase in the Guaranteed Maximum Price or Contract Time, so as to strictly comply with the Applicable Laws and without prejudice to the rights of either party hereunder. In the event an Applicable Law takes effect after execution of this Contract, and is inserted herein,

and impacts the schedule or costs of the Project then either party may request changes to the GMP or Contract Time resulting from such new Applicable Law.

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 District 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 District'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, District 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 District.

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

SHOP DRAWING SUBMITTAL FORM

Submittal No: _____ Specifications Section: _____

And/or Contract Drawing(s) _____

Submittal Description: _____

PROJECT INFORMATION	ROUTING	DATE
Client/Owner: Valley Sanitary District	Design-Build Entity to C.M.	
Project Name:	C.M. to Engineer	
Project No.:	Engineer to C.M.	
Design-Build Entity:	C.M. to Design-Build Entity	

We are sending you: _____ Attached _____ Under Separate Cover Via _____

Other: _____

_____ Submittals for Approval (*Submit a minimum of 7 copies for approval*).

_____ Product Data for Information Only (*Submit a minimum of 4 copies*).

Item	Copies	Date	Section No.	Description	Review/Action

Design-Build Entity to Certify either A or B:

_____ A. We have verified that the material or equipment contained in this submittal meets all requirements, including coordination with all related work, as specified (no exceptions).

_____ B. We have verified that the material or equipment contained in this submittal meets all the requirements specified, except for the following (or attached) deviations:

Certified By: _____
 Design-Build Entity's Signature

 Date Signed

REQUEST FOR CLARIFICATION

Owner: Valley Sanitary District

Project: _____

Design-Build Entity: _____

Project No.: _____

Date: _____

RFC No.: _____

RFC DATA / INFORMATION		
Originator:	Date Transmitted:	
Directed To:	Date Received:	
Drawing Reference:	Date Reply Transmitted:	
Specification Section:	Date Reply Received:	
Subject:		
Date Reply Required:		
Message:		
Originator:	Date:	
Reply:		
Reply By:	Firm:	Date:

**ATTACHMENT 3
PERFORMANCE BOND**

WHEREAS the VALLEY SANITARY DISTRICT (also herein "District") have awarded to _____ (hereinafter the "Design-Build Entity"), a contract for work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of the _____ Project and all other required structures and facilities within the rights-of-way, easements and permits;

WHEREAS, the Work to be performed by the Design-Build Entity 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 Design-Build Entity 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 Design-Build Entity 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 District 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 Design-Build Entity, 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-year guarantee of all materials and workmanship; and shall indemnify and save harmless the District, 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 condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above guarantee obligation shall hold good for a period of one (1) year after the acceptance of the work by District, during which time if the Design Build Entity shall fail to make full, complete, and satisfactory repair and replacements, and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship, the above obligation in penal sum thereof shall remain in full force and effect. The obligations of Surety hereunder shall continue so long as any obligation of Design-Build Entity remains. Nothing herein shall limit the District's rights or the Design-Build Entity or

Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

As a part of the obligation secured hereby, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by District in enforcing such obligation.

Whenever Design-Build Entity shall be, and is declared by the District to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the District'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 District, 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 Design-Build Entity by the District under the Contract and any modification thereto, less any amount previously paid by the District to the Design-Build Entity and any other set offs pursuant to the Contract Documents.
- (3) Permit the District 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 Design-Build Entity by the District under the Contract and any modification thereto, less any amount previously paid by the District to the Design-Build Entity and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the District shall be entitled to approve any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Design-Build Entity, such approval shall not be unreasonably withheld by District.

Where Design-Build Entity has been terminated for default by the District, the Surety shall not utilize Design-Build Entity in completing the Project nor shall Surety accept a bid from Design-Build Entity for completion of the Project unless the District, when declaring the Design-Build Entity in default, notifies Surety of the District's written agreement to have Design-Build Entity'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, including, but not limited to, the provisions of sections 2819 and 2845 of the California Civil Code.

Notwithstanding any provision to the contrary herein, this Performance Bond shall guarantee only the performance of the installation portion of the Contract, and shall not be construed to guarantee the performance of: (1) any efficiency or energy savings guarantees, or (2) any support or maintenance service agreement.

[Remainder of Page Left Intentionally Blank.]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

DESIGN-BUILD ENTITY/PRINCIPAL

Name

By _____

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 may be attached hereto.

**ATTACHMENT 4
PAYMENT BOND (LABOR AND MATERIALS)**

WHEREAS the **VALLEY SANITARY DISTRICT** (hereinafter "Obligee") have awarded to _____ (hereinafter the "Design-Build Entity"), a contract for work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of the _____ Project and all other required structures and facilities within the rights-of-way, easements and permits;

WHEREAS, the Work to be performed by the Design-Build Entity is more particularly set forth in that certain contract for the said Public Work dated _____, (hereinafter the "Public Work Contract"); and

WHEREAS, the Design-Build Entity is required to furnish a bond in connection with said Public Work Contract providing that if the Design-Build Entity or any of his or its subcontractors shall fail to pay for any materials, provisions, or other supplies, or terms 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 provisions of 3248 of the California Civil Code, with respect to such work or labor, that the Surety on this bond will pay the same together with a reasonable attorney's fee in case suit is brought on the bond.

NOW, THEREFORE, we _____, the undersigned Design-Build Entity(s), as Principal and _____, a corporation organized and existing under the laws of the State of _____ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Obligee and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the said Public Work, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to said Public Work to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid excepting the Design-Build Entity, the sum of _____ Dollars, \$ _____, said sum being not less than 100% of the total amount payable by said Obligee under the terms of the said Public Work Contract, for which payment 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 Principal, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Work contracted to be done, or for work or labor thereon of any kind, or fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all

other applicable laws of the State of California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

In case legal action is required to enforce the provisions of this bond, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to court costs, and necessary disbursements. In addition to the provisions hereinabove, it is agreed that this bond will inure to the benefit of any and all persons, companies and corporations entitled to make claims under Section 9100 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the said Public Work Contract or to the Work to be performed thereunder or the specification accompanying the same 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 or to the Work or to the Specifications, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereto set our hands and seals this ____ day on _____, 20____.

Design-Build Entity

By: _____
President

Surety

By: _____

Attorney-in-Fact

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On this ____ day of _____, in the year _____, before me, _____, a Notary Public in and for said state, personally appeared _____, known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument as the Attorney-in-Fact of the _____ (surety) and acknowledged to me that he subscribed the name of the _____ (surety) thereto and his own name as Attorney-in-Fact.

Notary Public in and for said State

(SEAL)

My Commission Expires _____

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ Secretary of the corporation named as principal in the attached bond, that _____ who signed the said bond on behalf of the principal was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

Signature

Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On this ____ day of _____, in the year _____, before me, _____, a Notary Public in and for said state, personally appeared _____, known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to

the within instrument as the Attorney-in-Fact of the _____
(surety) and acknowledged to me that he subscribed the name of the
_____ (surety) thereto and his own name as Attorney-in-Fact.

Notary Public in and for said State

(SEAL)

My Commission Expires _____

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____
Secretary of the corporation named as principal in the attached bond, that
_____ who signed the said bond on behalf of the principal was
then _____ of said corporation; that I know his signature,
and his signature thereto is genuine; and that said bond was duly signed, sealed and attested for
and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

Signature

Date

**NOTE: A copy of the power of attorney to local representatives of the bonding company
may be attached hereto.**

**ATTACHMENT 5
HOURLY RATE SCHEDULE**

Schneider Electric Billing Classification	Hourly Rate
Principal-In-Charge	\$300
Solutions Architect	\$245
Program Manager	\$230
Project Manager	\$230
Senior Engineer	\$205
Energy Engineer	\$195
QA/QC and Commissioning	\$205
Construction Services Manager	\$205
Construction Project Manager	\$205
Construction On-Site Supervisor	\$160
Warranty, Operations/Maintenance	\$205
Financing Manager	\$140
Rebates and Grant Writing / Management/ Ongoing Reporting	\$130
Safety Plan and Administration	\$135
Construction Admin	\$125
Stantec Billing Classification	Hourly Rate
Principal-In-Charge	\$326
Construction Manager	\$303
Principal Professional II	\$286
Principal Professional I	\$265
Supervising Professional	\$252
Senior Professional	\$240
Professional	\$220
Associate Professional	\$175
Assistant Professional	\$155
Designer	\$150
Senior Designer	\$180
Supervising Designer	\$221
Cost Estimator	\$242
Senior Admin	\$140
Administrator	\$127
Clerical	\$105
Survey Crews 1 - Person	\$190
Survey Crews 2 - Person	\$285
Survey Crews 3 - Person	\$385

**ATTACHMENT 6
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 7
ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION

Design-Build Entity hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations “New Material Hazardous”, shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Design-Build Entity's work on the Project for District.

Design-Build Entity further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District’s determination. The costs of any such tests shall be paid by Design-Build Entity if the material is found to be New Hazardous Material.

All Work or materials found to be New Hazardous Material or Work or material installed with “New Hazardous Material” containing equipment will be immediately rejected and this Work will be removed at Design-Build Entity's expense at no additional cost to the District.

Design-Build Entity has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

Date: _____

Name of Design-Build Entity: _____

Signature: _____

Print Name: _____

Title: _____

ATTACHMENT 8
ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between _____ whose address is _____ hereinafter called "Owner", and _____ whose address is _____ hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the Owner, Design-Build Entity, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, Design-Build Entity has the option to deposit securities with an Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Design-Build Entity for _____ dated _____ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Design-Build Entity, the Owner shall make payments of the retention earnings directly to the Escrow Agent. When Design-Build Entity deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within ten (10) days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Design-Build Entity. Securities shall be held in the name of _____, and shall designate the Design-Build Entity as the beneficial Owner.

(2) The Owner shall make progress payments to the Design-Build Entity for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Design-Build Entity until such time as the escrow created under this Contract is terminated. The Design-Build Entity may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.

(4) Design-Build Entity shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the escrow account and all expenses of Owner. These expenses and payment terms shall be determined by the Owner, Design-Build Entity and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Design-Build Entity and shall be subject to withdrawal by the Design-Build Entity at any time and from time to time without notice to the Owner.

(6) Design-Build Entity shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Design-Build Entity.

(7) The Owner shall have a right to draw upon the securities in the event of default by the Design-Build Entity. Upon seven (7) days written notice to the Escrow Agent from the Owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Design-Build Entity has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Design-Build Entity all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the Owner and the Design-Build Entity pursuant to Sections (5) to (8), inclusive, of this agreement and the Owner and Design-Build Entity shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Design-Build Entity in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner:

Title

Name

Signature

Address

On behalf of Design-Build Entity:

Title

Name

Signature

Address

On behalf of Escrow Agent:

Title

Name

Signature

Address



**Valley Sanitary District
Board of Directors Meeting
June 23, 2020**

TO: Board of Directors

FROM: Beverli A. Marshall, General Manager

SUBJECT: **Amend Resolution 2020-1130 to Make Minor Administrative Corrections to the VSD Wage Schedule and Grant Additional Holiday Hours for Employees Assigned to the “Operator of the Day” Shift Consistent with Long-Standing Practice**

<input checked="" type="checkbox"/> Board Action	<input type="checkbox"/> New Budget Approval	<input type="checkbox"/> Contract Award
<input type="checkbox"/> Board Information	<input type="checkbox"/> Existing FY Approved Budget	<input type="checkbox"/> Closed Session

Executive Summary

The purpose of this report is for the Board to consider the minor wage corrections and staff’s request to continue the current holiday hours practice.

Strategic Plan Compliance

This item complies with VSD Strategic Plan Objective 1.1: Fully Staff with a Highly Trained and Motivated Team.

Fiscal Impact

The fiscal impact of the discussion is included in the proposed Comprehensive Budget for Fiscal Year 2020/21.

Background

At the May 25, 2020, meeting, the Board adopted Resolution No. 2020-1130 approving the employee wages and benefits effective July 1, 2020. Subsequent to the meeting, staff identified several rounding differences that resulted in the Grade II and III classifications receiving slightly less than the full one percent COLA – 0.8% and 0.5%, respectively (see Attachment A). The total amount to fix the rounding differences is nominal to the budget and ensures that the COLA is applied equitably.

Regarding holiday time off, common practice is to treat holidays as a standard workday, which is eight hours. Resolution No. 2020-1130 states that:

*Employees will be paid for eight hours of time off on each holiday.
Employees working alternative schedules (9/80) will be paid for eight hours of time off on each holiday and will be given the option for the remaining one or two hours to utilize Vacation or Administrative Leave or*

to work the one or two hours in the same pay period in which the holiday falls.

The District's past practice, as well as Employee Benefits policy (3.20.1.1), states the following:

When a paid holiday falls on an employee's regularly scheduled workday, the employee will be paid holiday pay for his/her regularly scheduled hours. No additional day off will be given.

When a paid holiday fall on an employee's regularly scheduled flex day, the employee will have eight (8) hours (or 10 hours for the 4/10 schedule) add to their vacation leave.

This practice results in Operators scheduled as the "Operator of the Day" and who work the 10-hour shift (there are typically two each week) receiving an additional two hours of holiday time for each holiday, for a total of 24 hours per year. This would be comparable to 15 holidays using the eight-hour standard workday.

Because this practice confers additional benefits to a select group of employees, and to be transparent, the additional benefit should be stated along with the other benefits approved in the resolution (see Attachment B).

Recommendation

Staff recommends that the Board amend Resolution No. 2020-1130 to make minor administrative corrections to the VSD Wage Schedule and grant additional holiday hours for employees assigned to the "Operator of the Day" shift consistent with long-standing practice.

Attachments

Attachment A: Resolution No. 2020-1130 showing changes

Attachment B: Wage Schedule showing changes

RESOLUTION NO. 2020-1130
A RESOLUTION OF THE BOARD OF DIRECTORS OF VALLEY SANITARY DISTRICT AMENDING EMPLOYEE WAGES & BENEFITS EFFECTIVE JULY 1, 2020

WHEREAS, the General Manager submitted to the Board of Directors a draft budget for Fiscal Year 2020/21 that included employee wages and benefits; and,

WHEREAS, the Board of Directors has considered the issues relating to employee wages and benefits from an economic viewpoint and has concluded that a one percent (1%) Cost of Living Adjustment (COLA) adjustment is warranted.

NOW, THEREFORE, the Board of Directors of Valley Sanitary District **HEREBY RESOLVES**:

1. The Wage Schedule attached to this Resolution as Exhibit 1 replaces the Wage Schedules adopted effective July 1, 2019.
2. The District will contribute to CalPERS the established Employer Contribution Rate of 12.527% toward retirement of all "Classic" employees enrolled in the Tier 1 Retirement Plan and 7.874% for all "PEPRA" employees enrolled in the Tier 2 Retirement Plan.
3. Employees will contribute the Employee Contribution rate of 8% for all "Classic" employees enrolled in the Tier 1 Retirement Plan and 7.250% for all "PEPRA" employees enrolled in the Tier 2 Retirement Plan.
4. The District will contribute the required PEMHCA Minimum Employer Contribution to CalPERS on behalf of employees for enrollment in one of the available medical plans through CalPERS. The current contribution amount is \$139 per month.
5. The District will contribute up to \$1,800 into the District's cafeteria plan toward medical, dental, and vision plan premiums. The cost of the premiums in excess of the District's contribution will be paid by the employee through payroll deduction.
6. Employees who waive enrollment in one of the available medical plans, and who provide proof of enrollment in another qualifying medical plan, will receive a monthly stipend of \$450.
7. The District will enroll employees in a life insurance plan at no cost to the employee. The plan coverage is 1 x employee's annual base wages, with a minimum of \$50,000, \$10,000 per spouse, and \$5,000 per dependent child.
8. Employees will receive \$100 per month as an incentive to encourage longevity with the District upon completion of their 7th anniversary with the District. Each five-year anniversary following this milestone will increase the premium by \$100. The

premium, and each subsequent increase, becomes effective the first day of the pay period following each longevity milestone anniversary.

9. Employees assigned to Standby will receive special assignment pay of \$40.00 per weekday and \$80.00 per Saturday, Sunday, and District observed holidays.

10. Employees whose assigned shift includes Saturday or Sunday will receive special assignment pay of 5% of base hourly pay rate for the hours worked on Saturday or Sunday. This differential will not be paid for hours worked on the other days of the employee's shift.

11. Employees assigned to be available to translate or interpret in the course of their work will receive special assignment pay of \$100 per month.

12. Employees who obtain and maintain a certification that is **not** required by their classification will receive an incentive of 5% of the employee's base hourly pay rate for each type of certification that is obtained. If a higher level of certification is obtained, no additional incentive will be applied. This incentive pay will be applied as of the first pay period following when the employee provides certification documentation.

13. Board members are offered a medical, vision, and dental stipend for the calendar year. The annual amount is set at the monthly PEMHCA rate established by CalPERS multiplied by 12 months.

14. The District observes the following holidays. Employees will be paid for eight hours of time off on each holiday. Employees working alternative schedules (9/80-~~or~~ 4/10) will be paid for eight hours of time off on each holiday and will be given the option for the remaining one or two hours to utilize Vacation or Administrative Leave or to work the one or two hours in the same pay period in which the holiday falls. For employees assigned to the "Operator of the Day" 4/10 shift, which is an additional two hours (for a total of 10 hours per holiday) and is consistent with long-standing practice.

Holiday	Day Observed
New Year's Day	January 1
MLK Jr. Birthday	Third Monday in January
Presidents' Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veterans' Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day After Thanksgiving	Friday after Thanksgiving Day
Christmas Eve	December 24
Christmas Day	December 25
New Year's Eve	December 31

15. The effective date of these changes is July 1, 2020.

16. Resolution 2019-1125 is rescinded.

ADOPTED**AMENDED** this ~~26th~~ 23rd day of ~~May~~ June 2020, by the following roll call vote.

AYES:

NAYES:

ABSENT:

ABSTAIN:

Mike Duran, President

ATTEST:

Debra Canero, Secretary

VSD Wage Schedule - AMENDED
Effective July 1, 2020

	A	B	C	D	E	F	G
Accounting Technician	4,760	4,998	5,248	5,510	5,786	6,075	6,379
Accounting Analyst	5,039	5,291	5,555	5,833	6,125	6,431	6,753
Administrative Assistant	4,318	4,534	4,760	4,998	5,248	5,511	5,786
Assistant Engineer	5,785	6,075	6,378	6,697	7,032	7,384	7,753
Associate Engineer	7,374	7,743	8,130	8,536	8,963	9,411	9,882
Collection System Tech-in-Training	3,842	4,034	4,236	4,448	4,670	4,904	5,149
Collection System Tech I	4,318	4,534	4,760	4,998	5,248	5,511	5,786
Collection System Tech II	4,7580	4,99687	5,2436	5,50498	5,78473	6,07362	6,3765
Collection System Tech III	5,2248	5,511486	5,7860	6,07648	6,37950	6,6968	7,03304
Development Services Tech I	4,531	4,757	4,995	5,245	5,507	5,783	6,072
Development Services Tech II	4,984	5,233	5,495	5,770	6,058	6,361	6,679
Development Services Tech II (Y-rated)							7,567
Development Services Tech III	5,482	5,756	6,044	6,346	6,664	6,997	7,347
Electrician/Inst Tech I	4,318	4,534	4,760	4,998	5,248	5,511	5,786
Electrician/Inst Tech II	4,7580	4,99687	5,2436	5,50498	5,78473	6,07362	6,3765
Electrician/Inst Tech III	5,2248	5,511486	5,7860	6,07648	6,37950	6,6968	7,03304
Engineering Technician	4,984	5,233	5,495	5,770	6,058	6,361	6,679
Environmental Comp Tech I	4,760	4,998	5,248	5,510	5,786	6,075	6,379
Environmental Comp Tech II	5,236	5,498	5,773	6,061	6,365	6,683	7,017
Environmental Comp Tech III	5,760	6,048	6,350	6,668	7,001	7,351	7,719
Human Resources Specialist	5,039	5,291	5,555	5,833	6,125	6,431	6,753
Lab Technician I	4,760	4,998	5,248	5,510	5,786	6,075	6,379
Lab Technician II	5,236	5,498	5,773	6,061	6,365	6,683	7,017
Lab Technician III	5,760	6,048	6,350	6,668	7,001	7,351	7,719
Maintenance Tech-in-Training	3,842	4,034	4,236	4,448	4,670	4,904	5,149
Maintenance Tech I	4,318	4,534	4,760	4,998	5,248	5,511	5,786
Maintenance Tech II	4,7580	4,99687	5,2436	5,50498	5,78473	6,07362	6,3765
Maintenance Tech III	5,2248	5,511486	5,7860	6,07648	6,37950	6,6968	7,03304
Management Analyst	6,166	6,474	6,798	7,138	7,495	7,870	8,263
Procurement Technician	4,104	4,309	4,524	4,750	4,988	5,237	5,499
Wastewater Operator-in-Training	3,842	4,034	4,236	4,448	4,670	4,904	5,149
Wastewater Operator I	4,318	4,534	4,760	4,998	5,248	5,511	5,786
Wastewater Operator II	4,7580	4,99687	5,2436	5,50498	5,78473	6,07362	6,3765
Wastewater Operator III	5,2248	5,511486	5,7860	6,07648	6,37950	6,6968	7,03304
Collection System Supervisor	6,379	6,698	7,033	7,385	7,754	8,142	8,549
Development Services Supervisor	6,379	6,698	7,033	7,385	7,754	8,142	8,549
Electrical/Instrumentation Supervisor	6,379	6,698	7,033	7,385	7,754	8,142	8,549

Facilities Maintenance Supervisor	6,379	6,698	7,033	7,385	7,754	8,142	8,549
Laboratory & Compliance Supervisor	6,379	6,698	7,033	7,385	7,754	8,142	8,549
Wastewater Operations Supervisor	6,379	6,698	7,033	7,385	7,754	8,142	8,549
Business Services Manager	7,033	7,384	7,753	8,141	8,548	8,976	9,424
Engineering Services Manager	9,895	10,390	10,909	11,455	12,027	12,629	13,260
Facility Operations Manager	7,033	7,384	7,753	8,141	8,548	8,976	9,424
General Manager (Contract)							18,828



**Valley Sanitary District
Board of Directors Meeting
June 23, 2020**

TO: Board of Directors

FROM: Beverli A. Marshall, General Manager

SUBJECT: Adopt Resolution No. 2020-1134 Specifying Payment of Candidate Election Statement

<input checked="" type="checkbox"/> Board Action	<input type="checkbox"/> New Budget Approval	<input type="checkbox"/> Contract Award
<input type="checkbox"/> Board Information	<input type="checkbox"/> Existing FY Approved Budget	<input type="checkbox"/> Closed Session

Executive Summary

The purpose of this report is for the Board to consider who will be responsible for payment of the candidates' election statements.

Strategic Plan Compliance

This item complies with VSD Strategic Plan Objective 6.6: Improve Governance.

Fiscal Impact

There is no fiscal impact from adopting the recommended resolution.

Background

In preparation for the upcoming November 3, 2020 General District Election, the Registrar of Voters of the County of Riverside has provided the following information:

1. Notice of General District Election Form: This form must be completed and returned as soon as the board adopts regulations regarding payment of the candidate's statement. This form must be returned to the Registrar of Voters by July 1, 2020.
2. The Estimated Cost of the Candidate Statement: The estimated cost of the candidate statement is \$700. Candidates may receive a bill or a refund for the difference depending on how many candidates file a candidate statement. Electronic Distribution of Candidate Statement cost is \$260.
3. Election Calendar.

Terms expire on December 6, 2020 for the following District Directors:

- Debra Canero, Division B

- Mike Duran, Division D
- William Teague, Division E

Recommendation

Staff recommends that the Board adopt Resolution No. 2020-1134 specifying that payment of the candidates' election statement is the responsibility of each candidate and that a General District Election notice be filed with the Registrar of Voters in compliance with Election Codes §§ 10509,10522; W.C. § 71451 in preparation for the November 3, 2020 General District Election.

Attachments

- Attachment A: Notice of General Election Form
- Attachment B: Election Calendar
- Attachment C: Resolution No. 2020-1134

**NOTICE TO THE REGISTRAR OF VOTERS
(ELECTIONS CODE §§ 10509, 10522; W.C. § 71451)
GENERAL DISTRICT ELECTION, NOVEMBER 3, 2020**

DISTRICT: _____ **PHONE:** _____

ADDRESS: _____ **FAX:** _____

MAILING ADDRESS: _____ **E-MAIL:** _____

LIST NAMES OF DISTRICT DIRECTORS WHOSE TERMS EXPIRE ON DECEMBER 4, 2020

NAME OF DIRECTOR	DIVISION NUMBER (IF APPLICABLE)

The following section applies only if a Director(s) was/were appointed to fill a vacancy in an office, which is not normally scheduled to be voted on this year (Short term).

NAME	DIVISION (If applicable)	DATE APPOINTED	DIRECTOR REPLACED

STATEMENT OF ECONOMIC INTERESTS: The Government Code now requires all candidates to file a Form 700 with the Registrar of Voters by the nomination period deadline. If the candidate has previously filed an initial, assuming office, or annual statement for the same office sought within 60 days before the nomination deadline then the candidate does not have to file the Form 700 again.

CANDIDATE'S STATEMENT: Who is to pay the cost of the printing and handling of statement?
Please check appropriate box. **CANDIDATE** **DISTRICT**

NOTICE OF ELECTION published by Registrar of Voters in _____
(Insert name of Local Newspaper)

CANDIDATES may obtain nomination documents from the Registrar of Voters, 2720 Gateway Drive, Riverside, CA 92507, or from the District Secretary located at:

(Insert Location Name, Address, and Business Hours)

DISTRICT MAP: Attach 34" x 42" map showing district boundaries and divisions, if applicable.

Enclosed Map Contains Boundary/Division Changes YES NO

I certify that the enclosed map of the district boundaries and divisions is true and correct as of this date, and is submitted in compliance with Section 10522 of the California Elections Code for use in the General District Election to be held on November 3, 2020, or that there have been no changes to the boundaries as of the last General District Election.

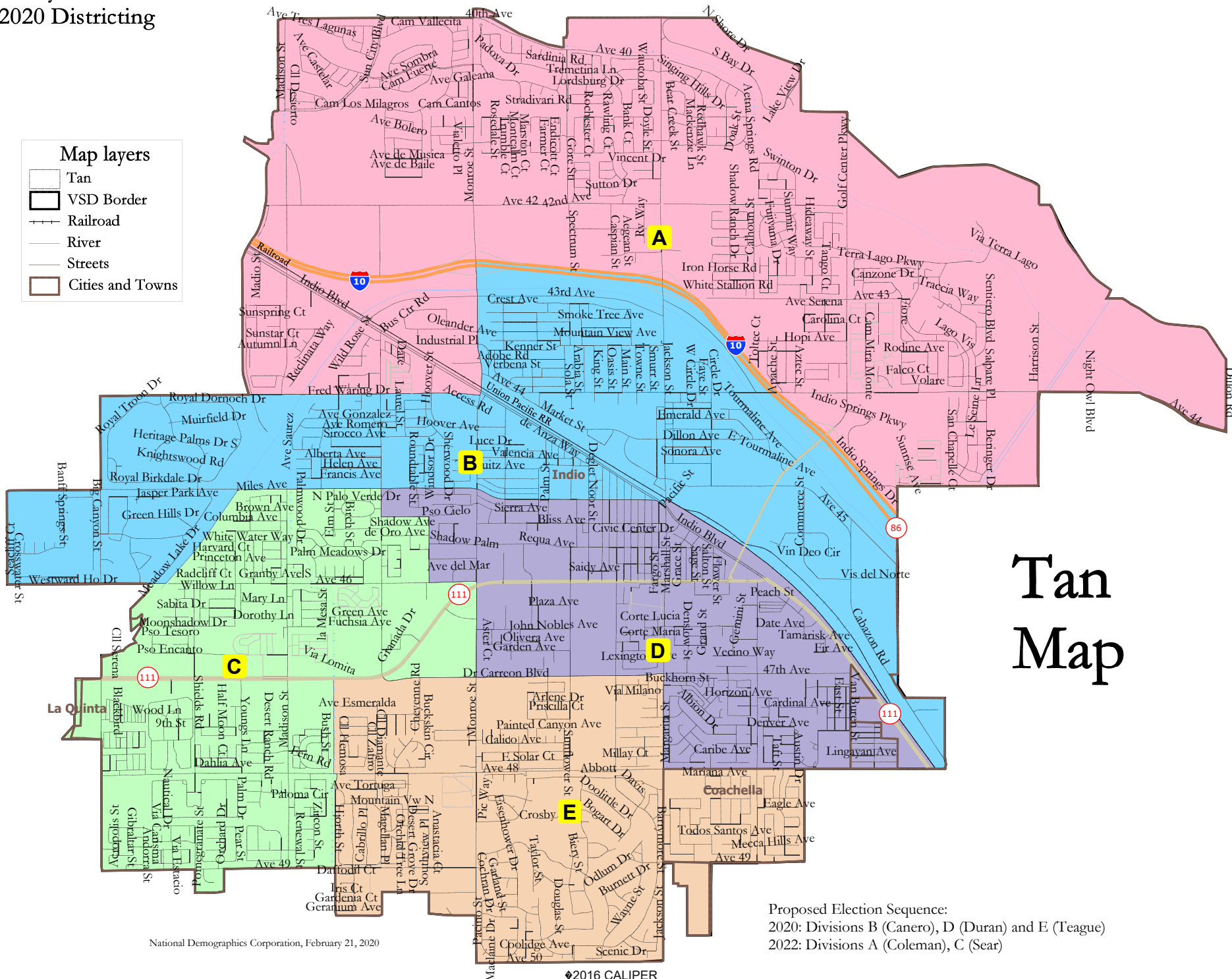
Dated: _____ **Contact Person:** _____

Sign: _____
(District Secretary)

Valley Sanitation District 2020 Districting

Map layers

- Tan
- VSD Border
- Railroad
- River
- Streets
- Cities and Towns



Tan Map

Proposed Election Sequence:
 2020: Divisions B (Canero), D (Duran) and E (Teague)
 2022: Divisions A (Coleman), C (Sear)

National Demographics Corporation, February 21, 2020

Valley Sanitation District - Tan Map

District		A	B	C	D	E	Total
	Total Pop	15,109	15,357	14,856	15,581	14,232	75,135
	Deviation from ideal	82	330	-171	554	-795	1,349
	% Deviation	0.55%	2.20%	-1.14%	3.69%	-5.29%	8.98%
Total Pop	% Hisp	55%	78%	73%	87%	70%	73%
	% NH White	38%	20%	22%	8%	26%	23%
	% NH Black	2%	1%	2%	3%	2%	2%
	% Asian-American	4%	1%	2%	1%	2%	2%
Citizen Voting Age Pop	Total	11,514	8,643	9,389	7,214	8,749	45,509
	% Hisp	50%	66%	65%	84%	59%	63%
	% NH White	44%	29%	31%	12%	35%	32%
	% NH Black	2%	2%	2%	3%	3%	3%
	% Asian/Pac.Isl.	4%	2%	2%	1%	2%	2%
Voter Registration (Nov 2018)	Total	8,451	5,746	6,799	3,849	5,644	30,489
	% Latino est.	48%	64%	63%	87%	63%	62%
	% Spanish-Surnamed	43%	57%	56%	78%	57%	56%
	% Asian-Surnamed	1%	1%	1%	1%	1%	1%
	% Filipino-Surnamed	1%	1%	2%	1%	1%	1%
	% NH White est.	47%	33%	34%	10%	34%	34%
	% NH Black	2%	2%	2%	2%	2%	2%
Voter Turnout (Nov 2018)	Total	5,295	3,261	3,812	1,700	3,072	17,140
	% Latino est.	40%	52%	54%	83%	52%	52%
	% Spanish-Surnamed	36%	46%	49%	75%	46%	47%
	% Asian-Surnamed	1%	1%	1%	1%	1%	1%
	% Filipino-Surnamed	1%	1%	2%	1%	1%	1%
	% NH White est.	54%	44%	42%	12%	45%	44%
	% NH Black	3%	3%	3%	3%	2%	3%
Voter Turnout (Nov 2016)	Total	5,770	4,098	4,753	2,459	3,909	20,988
	% Latino est.	38%	67%	59%	86%	58%	58%
	% Spanish-Surnamed	34%	60%	53%	77%	52%	52%
	% Asian-Surnamed	1%	1%	1%	1%	1%	1%
	% Filipino-Surnamed	1%	1%	1%	1%	1%	1%
	% NH White est.	54%	25%	35%	9%	39%	36%
	% NH Black est.	5%	3%	3%	2%	1%	3%
ACS Pop. Est.	Total	18,676	15,874	16,322	15,129	14,578	80,580
Age	age0-19	28%	31%	29%	31%	26%	29%
	age20-60	49%	51%	53%	54%	54%	52%
	age60plus	22%	18%	18%	15%	20%	19%
Immigration	immigrants	21%	30%	25%	40%	28%	29%
	naturalized	47%	34%	40%	34%	36%	38%
Language spoken at home	english	54%	33%	43%	24%	43%	40%
	spanish	41%	64%	53%	75%	56%	57%
	asian-lang	3%	1%	2%	0%	1%	2%
	other lang	3%	2%	1%	0%	1%	1%
Language Fluency	Speaks Eng. "Less than Very Well"	18%	34%	24%	43%	28%	29%
Education (among those age 25+)	hs-grad	62%	54%	65%	50%	66%	60%
	bachelor	15%	6%	10%	7%	9%	9%
	graduatedegree	10%	3%	5%	2%	4%	5%
Child in Household	child-under18	29%	30%	31%	36%	28%	31%
Pct of Pop. Age 16+	employed	56%	52%	58%	54%	58%	56%
Household Income	income 0-25k	14%	34%	25%	34%	20%	25%
	income 25-50k	22%	28%	26%	34%	29%	27%
	income 50-75k	19%	18%	19%	16%	24%	19%
	income 75-200k	41%	19%	27%	15%	26%	26%
	income 200k-plus	4%	1%	2%	1%	2%	2%
Housing Stats	single family	98%	79%	86%	60%	73%	80%
	multi-family	2%	21%	14%	40%	27%	20%
	rented	22%	39%	30%	45%	37%	34%
	owned	78%	61%	70%	55%	63%	66%

Total population data from the 2010 Decennial Census.








Surname-based Voter Registration and Turnout data from the California Statewide Database.

Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2013-2017 American Community Survey and Special Tabulation 5-year data.



UNIFORM DISTRICT ELECTION LAW ELECTION
NOVEMBER 3, 2020
(E.C. §§ 9300 et seq., 10500 et seq.)

The materials contained in this calendar represent the research and opinions of the staff at the Riverside County Registrar of Voters. The contents of this calendar and any legal interpretations contained herein are not to be relied upon as being correct either factually or as legal opinion. Reliance on the content without prior submission to and approval of your appropriate public counsel is at the reader's risk.


Please call (951) 486-7200 if you have any questions or comments or visit our website at www.voteinfo.net. Thank you.

DATE	PERSON RESPONSIBLE	DESCRIPTION
July 1 (125)	District	<p><i>BOUNDARY CHANGES (E.C. § 12262)</i></p> <p>Last day boundary changes may be made for this election.</p>
July 1 (125)	District	<p><i>DELIVER NOTICE OF ELECTION AND MAP OF DISTRICT (E.C. §§ 10502, 10504, 10509, 10522)</i></p> <p>No later than this date the District Secretary shall deliver a notice containing the elective offices to be filled and whether the district or candidate is to pay for the Candidates Statement. Said notice shall bear the secretary's signature and the district seal. The District Secretary shall also deliver a map showing the current boundaries of the district and divisions, if any.</p>
July 4	Registrar of Voters	<p><i>INDEPENDENCE DAY (CO. ORD. 358.8)</i></p> <p>The Registrar of Voters office will be closed.</p>
July 6 – August 5 (120 – 90)	Registrar of Voters / District Secretary	<p><i>PUBLISH NOTICE OF ELECTION (E.C. §§ 12112, 12113)</i></p> <p>Between these dates the Registrar of Voters shall publish once in a newspaper of general circulation published in the district or, if no such newspaper exists, a newspaper having general circulation in the district, a Notice of Election, which shall contain the following:</p> <ul style="list-style-type: none">  Date of election.  Name of each office for which candidates may file.  Qualifications required by the principal act for each office.  The location where Declaration of Candidacy may be obtained.  Office in which completed declarations are required to be filed.  Date and time after which no Declaration of Candidacy may be accepted for filing.  Statement that appointment to office will be made pursuant to E.C. 10515 if there are insufficient nominees and no petition has been filed requesting the election be held. <p>Said notice shall also be delivered to the District Secretary and posted in the district office.</p> <p><i>GENERAL PRESS RELEASE (E.C. § 12112)</i> Press release should include offices to be filled and telephone number information regarding filing for elective office.</p>
July 10 (116)	Registrar of Voters	<p><i>PRECINCTING SECTION TO COMPLETE BOUNDARY CHANGES</i></p> <p>No later than this date, precinct section must complete boundary changes.</p>



UNIFORM DISTRICT ELECTION LAW ELECTION
NOVEMBER 3, 2020
(E.C. §§ 9300 et seq., 10500 et seq.)

DATE	PERSON RESPONSIBLE	DESCRIPTION
July 13 – August 7 (113 – 88)	Candidates / Registrar of Voters / District Secretary	<p><i>OBTAIN AND FILE DECLARATION OF CANDIDACY (E.C. §§ 10510, 13107)</i></p> <p>Between these dates a candidate may obtain and file a Declaration of Candidacy with the Registrar of Voters in person, or by mail. If by mail, Declaration of Candidacy may be returned by certified mail in time to reach the Registrar of Voters by no later than the filing deadline. The Ballot Designation Worksheet must be filed at the same time as the Declaration of Candidacy.</p> <p>Either the Registrar of Voters or the District Secretary will issue the Declaration of Candidacy.</p> <p>No candidate shall withdraw his or her Declaration of Candidacy after 5 p.m. on the 88th day prior to the election.</p>
July 13 – August 7 (113 – 88)	Candidates / Registrar of Voters / District Secretary	<p><i>CANDIDATE STATEMENT (E.C. §§ 10540, 13307, 13309, 13311, 18351)</i></p> <p>Candidates who want to file a candidate's statement must file it with the Registrar of Voters at the same time that the Declaration of Candidacy is filed. Candidate statements are confidential until deadline for filing has passed.</p> <p> <i>PUBLIC EXAM PERIOD (E.C. § 13313)</i> The 10 day exam period for Candidate Statements will be held August 8 through August 17. If extension applies, see extension period.</p>
July 13 – August 7 (113 – 88)	Candidates / Registrar of Voters / District Secretary	<p><i>CODE OF FAIR CAMPAIGN PRACTICES (E.C. § 20400 et seq.)</i></p> <p>At the time a candidate is issued nomination papers each candidate will be issued a Code of Fair Campaign Practices. Filing it is voluntary and it may be filed with the Registrar of Voters any time prior to the election. It is available for public inspection until 30 days after the election.</p>
July 13 – August 7 (113 – 88)	Candidates / Registrar of Voters	<p><i>STATEMENT OF ECONOMIC INTEREST (G.C. §§ 87200 et seq.)</i></p> <p>A Statement of Economic Interests must be filed for all candidates with the Registrar of Voters by the close of the nomination period.</p>
August 7 (88)	Candidates / Registrar of Voters	<p><i>FILE DECLARATION OF CANDIDACY AND / OR WITHDRAW (E.C. §§ 10510, 13307)</i></p> <p>Last day for candidates to file their Declarations of Candidacy and Candidate Statements with the Registrar of Voters. (Candidate Statement is optional). This is also the last day to withdraw candidacy. Candidate must withdraw before 5 p.m., unless there is an extension of the nomination period.</p> <p> <i>PUBLIC EXAM PERIOD (E.C. § 13313)</i> There will be a 10 day exam period for Candidate Statements filed. The period will be held August 8 through August 17.</p>





UNIFORM DISTRICT ELECTION LAW ELECTION
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(E.C. §§ 9300 et seq., 10500 et seq.)

DATE	PERSON RESPONSIBLE	DESCRIPTION
August 7 (88)	District	<p><i>BALLOT MEASURE (E.C. §§ 9312, 10403, 13247)</i></p> <p>Last day for resolution calling a measure to be submitted to the Registrar of Voters. A copy shall be made available to any voter. The statement of all measures submitted to the voters shall be abbreviated on the ballot. The statement shall contain not more than 75 words for each measure to be voted on.</p>
August 7 (88)	Registrar of Voters	<p><i>PUBLISH NOTICE OF ELECTION (E.C. § 12111; G.C. §§ 6060, 6061)</i></p> <p>Publish a notice of election as soon as possible pursuant to section 12111 of the California Elections Code. A synopsis of the measure(s) shall be included in the publication. Government Code 6061 requires the notice to be published once. The last day to submit arguments to the Registrar of Voters should also be included in the notice. A copy of the notice shall be delivered to the district and posted in the district office.</p>
August 10 (85)	Candidates / Registrar of Voters	<p><i>LAST DAY TO WITHDRAW CANDIDATE STATEMENT (E.C. § 13307)</i></p> <p>Last day to withdraw candidate statements, unless there is an extension of the nomination period. Withdrawal of candidate statements must be in writing</p>
August 12 (83)	Candidates / Registrar of Voters / District	<p><i>EXTENSION OF NOMINATION PERIOD (E.C. § 10516)</i></p> <p>If the incumbent does not file by 5 p.m. on the last day of the nomination period, any eligible person, other than the incumbent, shall have until 5 p.m. of the 83rd day prior to the election to file a Declaration of Candidacy. The nomination extension is not applicable where there is no incumbent to be elected. If this section is applicable, a candidate may withdraw his or her Declaration of Candidacy up until 5:00 p.m. on the 83rd day before the election.</p> <p> <i>PUBLIC EXAM PERIOD (E.C. § 13313)</i> The 10 day exam period for Candidate Statements will be held August 13 through August 22.</p>
August 12 (83)	District	<p><i>LAST DAY TO WITHDRAW MEASURE (E.C. § 9605)</i></p> <p>Whenever a legislative body has ordered that a measure be submitted to the voters of any jurisdiction at an election, the order of election shall not be amended or withdrawn after this date.</p>
August 12 (83)	Registrar of Voters / District Secretary	<p><i>NOTICE WHETHER ELECTION WILL BE HELD (E.C. § 10515)</i></p> <p>If there are insufficient nominees for the offices to be filled, and a petition requesting the election be held has not been presented to the officer conducting the election, then the election shall not be held.</p> <p>The Registrar of Voters shall request the Board of Supervisors to appoint the qualified candidate(s) to such office. If there are no candidates, the Board shall appoint a qualified person to each office. Persons appointed shall qualify, take office, and serve as if elected.</p>

UNIFORM DISTRICT ELECTION LAW ELECTION
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DATE	PERSON RESPONSIBLE	DESCRIPTION
August 13 (82)	Candidates / Registrar of Voters	<p><i>WITHDRAW CANDIDATE STATEMENT (EXTENSION) (E.C. §§ 10516, 13307)</i></p> <p>In the event there is an extension of the nomination period, candidates may have until this date to withdraw their candidate's statement. Withdrawal must be in writing.</p>
August 13 (82)	Secretary of State	<p><i>RANDOMIZED ALPHABET (E.C. § 13112)</i></p> <p>On this date the Secretary of State shall conduct a drawing of the alphabet for determining the order of candidate's names on the ballot.</p>
August 13 (82)	Registrar of Voters	<p><i>SEND LIST OF CANDIDATES TO DISTRICT SECRETARY</i></p> <p>Approximate date to send list of qualified candidates to District Secretary and other county if it is involved. If election is not held, inform district of procedures that will be followed.</p>
August 17 (78)	Registrar of Voters	<p><i>REQUEST BOARD OF SUPERVISORS TO APPOINT (if election will not be held) (E.C. § 10515)</i></p> <p>Registrar of Voters shall request the Board of Supervisors at a regular or special meeting held prior to the Monday before the first Friday in December in which the election would have been held, to appoint to such office or offices the qualified candidate(s); or if no candidate(s), the Board shall appoint any qualified person to such office.</p>
August 17 (78)	County Counsel	<p><i>LAST DAY TO SUBMIT IMPARTIAL ANALYSIS (E.C. §§ 9313, 9314)</i></p> <p>Last day for County Counsel to submit impartial analysis to Registrar of Voters. The analysis shall include a statement indicating whether the measure was placed on the ballot by petition signed by the requisite number of voters or by the governing body of the district. The analysis shall be printed in the Voter Information Guide section of the Sample Ballot preceding the arguments for or against the measure. The analysis is limited to 500 words.</p> <p> <i>PUBLIC EXAM PERIOD (E.C. § 9380)</i> There will be a 10-day exam period for the Impartial Analysis from August 18 through August 27.</p>
August 17 (78)	Proponents / Opponents	<p><i>LAST DAY TO FILE ARGUMENTS (E.C. §§ 9315, 9316, 9600)</i></p> <p>Last day set by Registrar of Voters to submit arguments in favor or against the measure. Arguments may not exceed 300 words. No more than five signatures shall appear with any arguments. Authors of Argument form shall accompany all arguments.</p> <p> <i>PUBLIC EXAM PERIOD (E.C. § 9380)</i> There will be a 10-day exam period for arguments from August 18 through August 27.</p>


UNIFORM DISTRICT ELECTION LAW ELECTION
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DATE	PERSON RESPONSIBLE	DESCRIPTION
August 27 (68)	Proponents / Opponents	<p><i>REBUTTALS (E.C. §§ 9317, 9600)</i></p> <p>Last day for the same authors of the primary argument to file rebuttals with the Registrar of Voters no later than 5:00 p.m. Rebuttals are limited to 250 words. Statement of Authors of Arguments form must be attached to the rebuttal.</p> <p> <i>PUBLIC EXAM PERIOD (E.C. § 9380)</i> There will be a 10-day exam period for Rebuttals from August 28 through September 6.</p>
September 7	Registrar of Voters	<p><i>LABOR DAY (CO. ORD. 358.8)</i></p> <p>The Registrar of Voters office will be closed.</p>
September 7 (57)	Candidates / Registrar of Voters	<p><i>FIRST DAY NOMINATION PAPERS FOR WRITE-IN CANDIDACY WILL BE AVAILABLE (E.C. § 8600 et seq.)</i></p> <p>Any qualifying person wishing to file as a write-in candidate may pick up nomination papers beginning on this date. Papers must be filed with the Registrar of Voters no later than 14 days prior to election day. Write-in candidates must also file Statement of Economic Interest (if applicable) and campaign disclosure statements.</p>
September 8 (56)	Registrar of Voters	<p><i>ORDER PRINTING OF ELECTION MATERIAL</i></p> <p>Suggested date to prepare copy for printer and order ballots.</p>
September 20 – September 24 (44 – 40)	Candidates / Committees / Registrar of Voters	<p><i>FILING PERIOD FOR FIRST PRE-ELECTION CAMPAIGN DISCLOSURE STATEMENT (G.C. §§ 84200.5, 84200.8)</i></p> <p>Filing period for 1st pre-election campaign statement covers transactions through September 19. Statements must be filed online, or sent by personal delivery or first class mail.</p>
September 21 (43)	Registrar of Voters	<p><i>SATELLITE LOCATION PRESS RELEASE (E.C. § 3018)</i></p> <p>Notice of satellite locations shall be made by the elections official by the issuance of a general news release, issued not later than 14 days prior to voting at the satellite location, except that in a county with a declared emergency or disaster, notice shall be made not later than 48 hours prior to voting at the satellite location. The news release shall set forth the following information:</p> <ul style="list-style-type: none">  The satellite location or locations.  The dates and hours the satellite location or locations will be open.  A telephone number that voters may use to obtain information regarding vote-by-mail ballots and the satellite locations.

UNIFORM DISTRICT ELECTION LAW ELECTION
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(E.C. §§ 9300 et seq., 10500 et seq.)

DATE	PERSON RESPONSIBLE	DESCRIPTION
September 24 – October 24 (44 – 10)	Registrar of Voters	<p><i>MAIL COUNTY VOTER INFORMATION GUIDES AND OTHER ELECTION MATERIAL TO VOTERS (E.C. §§ 9312, 10540, 13303, 13307)</i></p> <p>Between these dates the Registrar of Voters shall mail a County Voter Information Guide to each voter, who is registered at least 29 days prior to the election.</p>
October 5 (29)	Registrar of Voters	<p><i>MAILED BALLOT PRECINCTS (E.C. §§ 3005, 3010, 3017, 3018, 3020, 4000 et seq.)</i></p> <p>Approximate date to mail notices to voters in mailed ballot precincts, send official ballot and election material. Mail ballot precincts have less than 250 voters. Ballots must be postmarked on or before election day and received by the elections official within three days after election day to be counted.</p>
October 5 (29)	Registrar of Voters	<p><i>PRECINCTS, POLLING PLACES & ELECTION OFFICERS (E.C. §§ 12280 et seq., 12300 et seq.)</i></p> <p>Last day for Registrar of Voters to establish polling places and appoint election officers for this election. Immediately following appointment, the Registrar shall mail appointment notices to election officers.</p>
October 5 – October 24 (29 – 10)	Registrar of Voters	<p><i>PUBLISH POLLING PLACES & CENTRAL COUNTING PLACE (E.C. §§ 12105, 12109)</i></p> <p>Suggested date to publish polling places. The notice will include the hours that the polls will be open and a Notice of Central Counting Place.</p>
October 5 – October 27 (29 – 7)	Registrar of Voters	<p><i>VOTE-BY-MAIL BALLOT APPLICATIONS (E.C. §§ 3001, 3006, 3021, 3200)</i></p> <p>Applications for vote-by-mail ballots may be made in person or by mail during this time frame.</p>
October 12	Registrar of Voters	<p><i>COLUMBUS DAY (CO. ORD. 358.8)</i></p> <p>The Registrar of Voters office will be closed.</p>
October 18 (16)	Registrar of Voters	<p><i>VOTE-BY-MAIL PROCESSING PUBLIC NOTICE (E.C. § 15104)</i></p> <p>The elections official shall notify vote-by-mail voter observers and the public at least 48 hours in advance of the dates, times, and places where vote-by-mail ballots will be processed and counted.</p>
October 18 – October 22 (16 – 12)	Candidates / Committees / Registrar of Voters	<p><i>FILING PERIOD FOR SECOND PRE-ELECTION CAMPAIGN DISCLOSURE STATEMENT (G.C. §§ 84200.5, 84200.8)</i></p> <p>Filing period for 2nd pre-election campaign statement covers transactions through October 17. Statements must be filed online, or sent by personal delivery or guaranteed overnight service.</p>

UNIFORM DISTRICT ELECTION LAW ELECTION
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(E.C. §§ 9300 et seq., 10500 et seq.)

DATE	PERSON RESPONSIBLE	DESCRIPTION
October 19 (15)	Registrar of Voters	<p><i>COLLECTION CENTERS PUBLIC NOTICE (E.C. § 15260)</i></p> <p>In establishing a collection center, the elections official may designate a group of precincts which the center shall serve and this designation shall be available for public inspection no later than 15 days before the election.</p>
October 19 (15)	Registrar of Voters	<p><i>CLOSE OF REGISTRATION (E.C. §§ 2101, 2102)</i></p> <p>Last day to register or transfer registration for this election.</p>
October 20 (14)	Candidates / Registrar of Voters	<p><i>FILE DECLARATION OF WRITE-IN CANDIDACY (E.C. §§ 8600 et seq., 15340 et seq.)</i></p> <p>Last day for write-in candidates to submit their write-in nomination documents to the Registrar of Voters.</p>
October 20 (14)	Registrar of Voters	<p><i>PROCESS BALLOTS (E.C. § 15101 et. seq.)</i></p> <p>When ballots are to be counted by computer, the Registrar of Voters may begin processing ballots 10 business days prior to the election. No count may be made until after the polls close on election day.</p>
October 20 – October 27 (14 – 7)	Registrar of Voters	<p><i>POST ELECTION OFFICERS & POLLING PLACES (E.C. § 12105.5)</i></p> <p>Not less than one week before the election, the elections official shall post a list of all current polling places and a list of election officers appointed by the 15th day before the election. The elections official shall post this list in his or her office and on his or her Web site. The list shall remain posted for 30 days after completion of the canvass.</p>
October 20 (14)	Registrar of Voters	<p><i>PROCESS BALLOTS (E.C. § 15101 et. seq.)</i></p> <p>When ballots are to be counted by computer, the Registrar of Voters may begin processing ballots 10 business days prior to the election. No count may be made until after the polls close on election day.</p>
October 27 (7)	Registrar of Voters	<p><i>LOGIC AND ACCURACY TESTING (E.C. § 15000)</i></p> <p>No later than seven days prior to any election, the elections official shall conduct a test or series of tests to ensure that every device used to tabulate ballots accurately records each vote.</p>
October 30 (4)	Registrar of Voters	<p><i>MANUAL TALLY PUBLIC NOTICE (E.C. § 15360)</i></p> <p>The manual tally shall be a public process, with the official conducting the election providing at least a five day public notice of the time and place of the manual tally and of the time and place of the selection of the precincts to be tallied prior to conducting the tally and selection.</p>
November 3		<p><i>ELECTION DAY (E.C. § 3020, 4103)</i></p> <p>Voted ballots must be received by the elections official no later than the close of the polls on election day or be postmarked on or before election day and received no later than three days after election day to be counted.</p>

UNIFORM DISTRICT ELECTION LAW ELECTION
NOVEMBER 3, 2020
(E.C. §§ 9300 et seq., 10500 et seq.)

DATE	PERSON RESPONSIBLE	DESCRIPTION
November 5 (+2)	Registrar of Voters	<i>CANVASS ELECTION RETURNS (E.C. § 15301 et seq.)</i> Registrar of Voters shall commence the official canvass on this day.
November 5 – December 3 (+2 – 30)	Registrar of Voters	<i>ONE PERCENT MANUAL TALLY (E.C. § 15360)</i> During the Official Canvass the Elections Official shall conduct a public manual tally in 1 percent of the precincts chosen at random by the elections official.
November 11	Registrar of Voters	<i>VETERAN'S DAY (CO. ORD. 358.8)</i> The Registrar of Voters office will be closed.
November 26 – November 27	Registrar of Voters	<i>THANKSGIVING DAY / DAY AFTER THANKSGIVING (CO. ORD. 358.8)</i> The Registrar of Voters Office will be closed.
December 1 (+28)	Registrar of Voters	<i>POST ELECTION OFFICERS & POLLING PLACES (E.C. § 12105.5)</i> Not later than 28 days after the election, the elections official shall post an updated list of polling places and election officers that actually served on election day. The elections official shall post this list in his or her office and on his or her Web site. The list shall remain posted for 30 days after completion of the canvass.
December 3 (+30)	Registrar of Voters	<i>SEND STATEMENT OF RESULTS (E.C. §§ 10550, 10551, 10553, 15372, 15374)</i> As soon as the canvass is completed, no later than this date, the Registrar of Voters shall mail a statement of results of the election to the district. The Registrar of Voters will also deliver to each person elected a certificate of election.
December 3 (+30)	Registrar of Voters	<i>COST OF ELECTION</i> Approximate date to send invoice to jurisdiction for cost of election. Any refund on Candidate Statements will also be processed by this date.
December 4	District	<i>OFFICERS TAKE OFFICE (E.C. § 10554)</i> Elective officers, elected or appointed, take office at noon on the first Friday in December next following the general district election. Prior to taking office, each elective officer shall take the official oath and execute any bond required by the principal act.
January 1 – January 31	Candidates / Committees / Registrar of Voters	<i>FILING PERIOD FOR SEMI-ANNUAL CAMPAIGN DISCLOSURE STATEMENT (G.C. § 84200)</i> Statement covers transactions through December 31. Statements must be sent by personal delivery or first class mail.

Note: Whenever a date prescribed by law falls on a weekend or holiday, such act may be performed on the next business day (E.C. 15; G.C. 6700, 6701)

RESOLUTION NO. 2020-1134
A RESOLUTION OF THE GOVERNING BOARD OF THE VALLEY SANITARY DISTRICT SPECIFYING PAYMENT OF CANDIDATES ELECTION STATEMENTS

WHEREAS, the Uniform District Election Law, E.C. 235000 et seq., provides for filing of a candidate statement, and

WHEREAS, the determination as to payment of the fees for the candidate statement is to be made by Board resolution,

NOW, THEREFORE, the Governing Board of the Valley Sanitary District resolves that payment of the candidate election statement shall be made by each candidate.

PASSED, APPROVED and ADOPTED this 23rd day of June 2020, at a regular meeting of the Board of Directors by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mike Duran, President

ATTEST:

Debra Canero, Secretary



**Valley Sanitary District
Board of Directors Meeting
June 23, 2020**

TO: Board of Directors

THROUGH: Beverli A. Marshall, General Manager

FROM: Ronald Buchwald, Engineering Services Manager

SUBJECT: Discuss Capital Improvement Program for Fiscal Year 2020/21

<input type="checkbox"/> Board Action	<input type="checkbox"/> New Budget Approval	<input type="checkbox"/> Contract Award
<input checked="" type="checkbox"/> Board Information	<input type="checkbox"/> Existing FY Approved Budget	<input type="checkbox"/> Closed Session

Executive Summary

The purpose of this report is to inform and update the Board of Directors on the capital improvement projects that are currently planned for Fiscal Year 2020/21.

Strategic Plan Compliance

This item complies with VSD Strategic Plan Objective 3: Excellent Facilities.

Fiscal Impact

FY 2020-21 Budgets are included in the project summaries below.

Background

The District has programmed several major capital improvement projects for Fiscal Year 2020/21. This is an update on the cost, scheduling, and status of each project.

Recommendation

The following is a list of projects only and does not include the Revenue Bonds Repayment, Vehicle & Equipment Replacement Fund, Lateral Grant Fund, Sewer Main Emergency Repairs, and Contingency Fund.

Westward Ho Sewer Siphon Replacement Design and Construction

FY 2020/21 Budget	\$1,325,000
Design Complete	February 2021
Bid Period	February – April 2021
Estimated Construction Start Date	May 2021
Estimated Construction Completion Date	December 2021

Status: Carollo Engineers is currently working with VSD on the final design of a new sewer siphon that crosses the CVWD storm channel at Westward Ho Drive that will be below the new channel scour depth. The design being proposed

would utilize horizontal directional drilling to create a new sewer siphon alignment under the channel. Permit processing with at least CVWD and possibly other regulatory agencies may extend the design/permit period. Some or possibly all the project costs will be reimbursed by FEMA / CalOES.

Collections System Rehabilitation Projects

FY 2020/21 Budget	\$2,643,928
Design Complete	Varies
Bid Period	Varies
Estimated Construction Start Date	September 2020
Estimated Construction Completion Date	June 30, 2021

Status: Harris & Associates is assisting the District in creating a 10-year rehabilitation and replacement program for the collection system. Staff is currently working with Harris to prepare two projects for this fiscal year. The first project will consist of the rehabilitation of approximately 2,300 feet of sewer located in Indio Boulevard and underneath the railroad near Cabazon Avenue using cured in place lining. The second project will consist of construction a new sewer main within Salton Street to replace a deficient sewer main in the alley and alleviate service from businesses with old laterals between Salton and Flower Street. Near term projects are in the early planning & design stages and will continue towards bidding and construction.

Reclaimed Water Project Phase 1

FY 2020/21 Budget	\$5,749,692
Estimated Design Start Date	July 2020
Estimated Construction Start Date	November 2021

Status: The contract for this project is ready to be awarded to Schneider Electric / Stantec. The project design cost is \$2,200,000 and project schedule is approximately 460 days. Construction costs will be determined during the design phase and will be awarded to Schneider Electric / Stantec upon approval of the Board. The Reclaimed Water Project – Phase 1 will replace an aging and capacity restricting grit chamber and provide redundancy by adding a second digester and expanding the bar screens. This project will also include adding a biofilter, a sludge holding tank, and a sludge thickener building.

Influent Pump Station Rehabilitation

FY 2020/21 Budget	\$1,200,000
Estimated Design Start Date	November 2020
Estimated Construction Completion Date	March 2022

Status: Stantec is assisting the District as an Owner's Representative for the rehabilitation of the influent pump station structure which is showing significant signs of deterioration. VSD is currently soliciting qualified design-build entities. This process should be complete by August 2020. The request for proposal will follow thereafter and should be complete by October 2020 with Board award to a design-build entity. Stantec will also assist in reviewing proposals and provide construction management.

New Training and Office Building

FY 2020/21 Budget	\$100,000
Estimated Design Start Date	June 2020
Estimated Design Completion Date	March 2021

Status: The District has recently selected an architect for the initial design of a new training and office building. As part of this initial design a schematic layout of the building will be determined along with an estimated construction cost. This building will provide space for new offices for collections and maintenance personnel as well as a training area for company events and meetings.

Completion of Perimeter Fence Project

FY 2020/21 Budget	\$280,000
Design Complete	TBD
Bid Period	TBD
Estimated Construction Start Date	TBD
Estimated Construction Completion Date	TBD

Status: This project has been postponed due to the need for a design of the fence before construction. The location and terrain of the proposed fence is such that it will need design. Staff is limited with the number of projects already in process that have a higher priority than this project. Current night security patrol has limited the theft and damage of District property.

Van Buren Slope Protection

FY 2020/21 Budget	\$250,000
Design Complete	July 2020
Bid Period	August – September 2020
Estimated Construction Start Date	October 2020
Estimated Construction Completion Date	January 2021

Status: The slope along the south end of the District's property is being eroded during flooding events which is causing the posts of the chain link fence to become exposed and weakened. The City of Indio is working with the District to develop a solution to protect the slope (within City right-of-way) and provide a minimal fee permit to perform the work.

Additional Parking & Landscaping

FY 2020/21 Budget	\$250,000
Design Complete	TBD
Bid Period	TBD
Estimated Construction Start Date	TBD
Estimated Construction Completion Date	TBD

Status: The District is need of additional parking for employees and customers. Staff proposes to remove the lawn at the front of the property and replace it with parking and drought tolerant landscaping. This project is on hold for the time being until projects above are completed.

Steel Water Line Replacement

FY 2020/21 Budget	\$142,000
Design Complete	TBD
Bid Period	TBD
Estimated Construction Start Date	TBD
Estimated Construction Completion Date	TBD

Status: The above ground, steel waterline adjacent to the aeration basins is old and prone to leaks, especially at the grooved joints, and has exceeded its useful life. The new steel waterline will have traditional joints that will provide a longer life. This project has been on the books for several years and has been a lower priority due to lack of leaks in recent years and the difficult nature of replacement.

Steel Water Line Replacement

FY 2020/21 Budget	\$60,000
Design Complete	TBD
Bid Period	TBD
Estimated Construction Start Date	TBD
Estimated Construction Completion Date	TBD

Status: Staff would like to extend the secondary effluent pipeline system about 250 feet to the pond chlorine contact chamber to save significant potable water when cleaning the pond chlorine contact chamber. This will allow the use of secondary effluent water to be used to clean the chamber instead of potable water. This project has been in the budget for the second year. It has been on hold waiting for staff to have time to install the water main themselves.

Attachments: FY 2020-21 Capital Improvement & Capital Replacement Plan

VALLEY SANITARY DISTRICT - CAPITAL IMPROVEMENT AND CAPITAL REPLACEMENT PLAN - 2021 PLUS 5 YEAR INCREASE

NOTES	PROJECT	2020-2021		2021-2022		2022-2023		2023-2024		2024-2025		2025-2026		2026-2027		2027-2028		2028-2029		2029-2030		Total for Future Years		
		Fund 12 Costs	Fund 13 Costs	Fund 12 Costs	Fund 13 Costs	Fund 12 Costs	Fund 13 Costs	Fund 12 Costs	Fund 13 Costs	Fund 12 Costs	Fund 13 Costs	Fund 12 Costs	Fund 13 Costs	Fund 12 Costs	Fund 13 Costs	Fund 12 Costs	Fund 13 Costs	Fund 12 Costs	Fund 13 Costs	Fund 12 Costs	Fund 13 Costs	Fund 12 Costs	Fund 13 Costs	
Capital Projects - Plant																								
	Revenue Bonds 2015 - (11 year term)	\$428,959		\$426,926		\$426,567		\$426,119		\$426,956		\$426,836												
	Financing Payment Schedule 2022 - (20 year term)					\$1,680,400	\$1,680,400	\$1,680,400	\$1,680,400	\$1,680,400	\$1,680,400	\$1,680,400	\$1,680,400	\$1,680,400	\$1,680,400	\$1,680,400	\$1,680,400	\$1,680,400	\$1,680,400	\$1,680,400	\$1,680,400	\$1,680,400	\$35,288,400	\$35,288,400
	Reclaimed Water Project Phase 1 Design Build	\$3,449,815	\$2,299,877	\$7,998,563	\$5,332,375	\$8,238,519	\$5,492,346																	
	Reclaimed Water Project Phase 2 Design Build			\$2,605,833	\$1,737,222	\$10,423,334	\$6,948,889																	
	Reclaimed Water Project Phase 3 Design					\$3,489,473	\$5,234,210																	
	Reclaimed Water Project Phase 3 Construction							\$11,681,701	\$17,522,552	\$12,032,152	\$18,048,228													
	Future Plant Expansion 2040 & beyond																					\$108,979,876	\$163,469,814	
	Influent Pump Station Rehabilitation Design Build	\$1,200,000		\$1,391,129																				
	Training & Office Building - Design (Carry Over)		\$100,000		\$533,880																			
	Training & Office Building - Construction									\$1,768,241		\$2,961,835												
	Vehicle & Major Equipment Replacement Fund	\$638,000		\$638,000		\$638,000		\$638,000		\$638,000		\$638,000		\$638,000		\$638,000		\$638,000		\$638,000				
	Fence Extension & Fortification (Carry Over) plus	\$280,000																						
	Steel Water Line Replacement (Carry Over)																							
	Van Buren Slope Protection	\$250,000																						
	Additional Parking & Landscaping		\$250,000																					
	Recycled Water Main Extension (Carry Over)																							
	Switch Board Main Service Replacement			\$250,000																				
Capital Projects - Collections																								
	Lateral Grant Program	\$54,000		\$55,080		\$56,182		\$57,306		\$58,452		\$59,621		\$60,813		\$62,029		\$63,270		\$64,535				
	Sewer Main Rehabilitation or Replacement Design	\$834,074		\$1,293,148		\$1,336,598		\$1,385,517		\$1,432,071		\$1,480,188		\$1,529,923		\$1,054,219		\$544,820						
	Sewer Main Rehabilitation or Replacement Const.	\$1,809,854		\$3,741,341		\$5,800,570		\$6,012,871		\$6,214,904		\$6,423,724		\$6,639,561		\$4,575,105		\$2,364,407						
	Manhole Rehabilitation																				\$138,424			
	Sewer Main Emergency Repairs	\$112,000		\$115,360		\$118,821		\$122,386		\$126,058		\$129,840		\$133,735		\$137,747		\$141,879		\$146,135				
	Avenue 48 Sewer Main Upgrade Design																					\$56,625	\$169,875	
	Avenue 48 Sewer Main Upgrade Construction																					\$544,183	\$1,632,549	
	Interim Collection System CIP Design																					\$69,024	\$207,071	
	Interim Collection System CIP Construction																					\$663,850	\$1,991,549	
	Build-out Collection System CIP projects																						\$6,399,835	
	Emergency Sewer Siphon Replacement Design	\$325,000		\$318,800																				
	Emergency Sewer Siphon Replacement Const.	\$1,000,000		\$3,429,133																				
CONTINGENCY - All Departments Combined																								
		\$92,000		\$93,840		\$95,717		\$97,631		\$99,584		\$101,576		\$103,608		\$105,680		\$107,794		\$109,950			\$1,093,973	
	TOTAL	\$10,473,702	\$2,649,877	\$22,357,153	\$7,603,478	\$32,304,181	\$19,355,845	\$22,101,931	\$19,202,952	\$22,708,577	\$21,496,869	\$10,940,185	\$4,642,235	\$10,786,040	\$1,680,400	\$8,253,180	\$1,680,400	\$5,540,570	\$1,680,400	\$2,777,444	\$1,680,400	\$146,695,931	\$209,159,094	
	Cumulative total	\$10,473,702	\$2,649,877	\$32,830,855	\$10,253,355	\$65,135,036	\$29,609,200	\$87,236,967	\$48,812,151	\$109,945,545	\$70,309,021	\$120,885,730	\$74,951,256	\$131,671,770	\$76,631,656	\$139,924,950	\$78,312,056	\$145,465,520	\$79,992,456	\$148,242,964	\$81,672,856	\$197,452,981	\$258,807,073	
	Fund 13 CIP Expansion																							
	Fund 13 Capital Expenses		\$2,649,877	\$7,603,478		\$19,355,845		\$19,202,952		\$21,496,869		\$4,642,235		\$1,680,400		\$1,680,400		\$1,680,400		\$1,680,400		\$1,680,400	\$1,680,400	
	Projected Fund 13 Revenue		\$848,000	\$1,275,000		\$1,350,000		\$1,380,000		\$1,380,000		\$1,380,000		\$1,380,000		\$1,422,500		\$1,450,000		\$1,545,000		\$1,750,485		
	Financing Revenue 2022			\$25,000,000																				
	Projected Fund 13 Reserve beginning of year		\$6,340,607	\$4,538,730		\$23,210,252		\$5,204,407		(\$12,618,544)		(\$32,735,414)		(\$35,997,649)		(\$36,255,549)		(\$36,485,949)		(\$36,485,949)		(\$36,621,349)	(\$36,621,349)	
	Projected Fund 13 Reserve end of year		\$4,538,730	\$23,210,252		\$5,204,407		(\$12,618,544)		(\$32,735,414)		(\$35,997,649)		(\$36,255,549)		(\$36,485,949)		(\$36,485,949)		(\$36,621,349)		(\$36,551,264)		
	Fund 12 CIP Replacement																							
	Fund 12 Capital Expenses	\$10,473,702		\$22,357,153		\$32,304,181		\$22,101,931		\$22,708,577		\$10,940,185		\$10,786,040		\$8,253,180		\$5,540,570		\$2,777,444				
	Projected Fund 12 Revenue	\$5,149,104		\$5,767,056		\$6,423,752		\$7,115,692		\$7,890,376		\$8,791,304		\$8,793,304		\$8,844,304		\$8,904,044		\$8,965,576				
	Financing Revenue 2022			\$25,000,000																				
	Projected Fund 12 Reserve beginning of year	23,496,061		18,171,463		26,581,366		700,937		(14,285,302)		(29,103,503)		(31,252,384)		(33,245,120)		(32,653,996)		(29,290,522)		(29,290,522)		
	Projected Fund 12 Reserve end of year	\$18,171,463		\$26,581,366		\$700,937		(\$14,285,302)		(\$29,103,503)		(\$31,252,384)		(\$33,245,120)		(\$32,653,996)		(\$29,290,522)		(\$23,102,390)				

1 Cost allocation of 52% to expansion is based on \$6M of the \$11.5M bond funds having been applied to project costs that increased capacity.
 2 Cost allocation of 30% to expansion is based on engineer's cost estimate and evaluation
 3 Cost allocation of 40% to expansion is based on engineer's cost estimate and evaluation
 4 Cost allocation of 50% to expansion is based on engineer's cost estimate and evaluation
 5 Cost allocation of 75% to expansion is based on engineer's cost estimate and evaluation
 6 Cost allocation of 100% to expansion as the total need for project is due to future development.
 7 Cost allocation of 0% to expansion as this is replacement or rehabilitation of existing facilities or due to Fund 11 debt service