

INVITATION FOR BIDS

CONTRACT DOCUMENTS

FOR

ADMINISTRATION AND OPERATIONS FACILITY

Contract No. CI 401



March 2023

Channel Islands Beach Community Services District
353 Santa Monica Drive
Channel Islands Beach, CA 93035
(805) 985-6021

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PART 1

BIDDING

NOTICE OF MANDATORY PRE-BID MEETING AND SITE VISIT

FOR THE CONSTRUCTION OF

ADMINISTRATION AND OPERATION FACILITY

Contract No. CI 401

FOR THE

Channel Islands Beach Community Services District
Ventura County, California

Attendance at the pre-bid conference/site visit is mandatory. No other site visit will be provided. Bidders are responsible to understand the Project (Refer to Section 4 of the Instructions to Bidders).

Bidders must complete and upload to Public Purchase Bidding System all Bid Submittal Forms and Business Information Forms provided in this IFB. Bidders currently on the District's Pre-qualified Contractors List do not need to complete the Business Information Forms.

The pre-bid conference will be held at the time and place stated below:

Date & Time:

10:00 a.m. on Friday, March 24, 2023

Location:

Channel Islands Beach Community Services District
353 Santa Monica Drive
Channel Islands, CA 93035

Tentative Itinerary:

Preliminary question and answer session will begin at **10:00 a.m.** with site visits to follow.

Questions and requests for substitution pertaining to this project must be submitted to the District electronically via the Public Purchase Bidding System on or before **5:00 p.m. on Tuesday, April 11, 2023.**

NOTICE INVITING ELECTRONIC PROPOSALS (BIDS)

FOR THE CONSTRUCTION OF ADMINISTRATION AND OPERATION FACILITY

Contract No. CI 401

FOR THE

Channel Islands Beach Community Services District
Ventura County, California

NOTICE IS HEREBY GIVEN that the Board of Directors of said District invites and will receive sealed proposals (Bids) via its electronic bidding system up to the hour of **2:00 p.m. on the April 26, 2023**, for the furnishing to said District of all transportation, labor, materials, tools, equipment, services, permits, utilities, and other items necessary to construct said work. At said time, it will be the responsibility of the prospective bidder to log into the Public Purchase Bidding System for the Channel Islands Beach Community Services District to view the apparent lowest bidder for the project in question.

Contract Documents for the Project may be obtained through the District's Public Purchase Bidding System. Upon award of a Contract, Contractor will be furnished one (1) sets of plans and specifications.

Bids shall conform to and be responsive to the Contract Documents for the work.

Bidders must complete, and submit with bid, all information requested on the Bid Forms. District shall evaluate the apparent low bid to determine responsiveness and responsibility of bidder and determine if Bidder is qualified for successful performance of District construction projects in a timely manner and does not guarantee work with the District.

A contract may be awarded to the lowest, responsible bidder submitting a responsive bid for a specific project.

Each Bid shall be submitted through the Public Purchase Bidding System for the Channel Islands Beach Community Services District as part of the Contract Documents and must be accompanied by a scanned copy of the cashier's check, a certified check, or a Bidder's bond in an amount not less than ten percent (10%) of the amount of the Bid, made payable to the order of or for the benefit of the District. Each Bid shall be submitted electronically at or before the time in this notice provided. The check or bond shall be given as guarantee that the Bidder will enter into a contract with the District and furnish the required payment and performance bonds and certificates of insurance and endorsements if awarded the work, and will be declared forfeited if the Bidder refuses to timely enter into said contract or furnish the required bonds or certificates of insurance and endorsements if his/her Bid is accepted. A hardcopy of the Bidder's bond, cashier's check or certified check must be received at the District offices within two days of closing bid date.

The Board of Directors has obtained from the Director of the California Department of Industrial Relations a determination of the general prevailing rate of per diem wages and the

general prevailing rate for legal holiday and overtime work in the locality in which said work is to be performed for each craft, classification or type of worker needed. Not less than the determined rates shall be paid to all workers employed in the performance of the contract. Such rates of wages are on file with Department of Industrial Relations and in the Contracts office of the District and are available to any interested party upon request.

Pursuant to California Public Contracts Code Section 22300, the Contractor will be entitled to post approved securities with the District or an approved financial institution in order to have the District release funds retained by the District to insure performance of the Contract.

The District has endeavored to develop particularly fair and equitable provisions relating to indemnification, liability and related insurance for both the District and the Contractor. It is imperative that the Bidders carefully review this notice, and the accompanying forms, relating to the District's insurance requirements.

The successful Bidder will be held to comply with the insurance requirements as specified by the District herein, and in the event of Bidder's failure or inability to meet the insurance requirements after the award of Bid, the District shall have the right to consider such failure to be a material noncompliance by the successful Bidder and will look to exercise its right by (a) rejecting the Bid(s); or (b) declaring a forfeiture of the Bid bond.

It is recommended that Bidder carefully review District insurance requirements with its insurance agent/representative to determine Bidder's ability to comply with the insurance requirements, as specified.

Bidders are required to execute a certificate, which must be submitted with Bid indicating that Bidder has reviewed and understands the insurance requirements and that Bidder has the ability to provide insurance in accordance with Section 11 of the Construction Agreement.

This Project must be constructed and completed between specific calendar or working dates as specified in the contract. Liquidated Damages as specified in Section 6 of the Construction Agreement will be imposed if the Contractor fails to comply with the completion time specified in Section 4 of the Construction Agreement. Contractor is expected to begin work immediately upon receipt of District's Notice to Proceed.

The Board of Directors of the District reserves the right to select the schedule(s) under which the Bids are to be compared and contract(s) awarded, to reject any and all Bids, and to waive any and all irregularity in any Bid.

By the order of the Board of Directors of the Channel Islands Beach Community Services District.

Pete Martinez – General Manager

Date

**PART 1 – BIDDING
INSTRUCTIONS TO BIDDERS**

1. GENERAL

1.1 Definitions for capitalized terms used in this Invitation for Bids (IFB) are located on Page 3 of the General Conditions.

1.2 No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code Section 1771.1(a)].

No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5.

This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

1.4 The Bid shall be for all the Work to be performed as shown and specified in the Contract Documents included hereto and generally described as supplying all labor, equipment, materials, and forces necessary to complete the Work.

1.5 Bids shall be submitted on the Bid Forms provided by District, and in the manner described in this IFB (via Public Purchase Bidding System).

1.6 A Bidder may withdraw its Bid by a signed written request any time prior to the date and time for receiving Bids designated in this IFB. The withdrawal of a Bid does not prejudice the right of a Bidder to file a new Bid so long as the new Bid is delivered prior to the closing time specified for all Bids.

1.7 A **mandatory pre-bid conference**, which includes a site visit/ job walk, will be held as noted in this IFB.

1.8 A Bid delivered to District at the time set for opening shall be deemed irrevocable, and Bidder may not withdraw this Bid for a period of ninety (90) calendar days after the date set for opening. Extensions to this 90-day period may be requested in writing by District prior to the expiration date and may be extended pursuant to agreement by Bidder.

1.9 The Contract Documents provided to Bidder shall be provided by District at its election and may consist of the Notice Inviting Bids, Instructions to Bidders, Bid forms, the Construction Agreement, any addenda, General Conditions, Supplemental Conditions, District Standard Specifications and Standard Plans (for Water, Sewer, and Recycled Water Facilities), Project Plans and Specifications, and/or Greenbook Standard Specifications for Public Works Construction.

1.10 The Contract Documents are divided into parts, divisions, sections, articles, paragraphs and drawings in keeping with accepted industry practice in order to separate categories of subject matter for convenient reference thereto. There has been no attempt to divide the Specifications, the Specification sections or the Plans/Drawings into work performed by the various building trades, work by separate Contractors, or work required for

separate facilities in the project. The Contract Documents are complementary and what is called for by one shall be as binding as if called for by all.

1.11 Specifications are bound into these documents in the same order as they appear in the Table of Contents pages. Specifications section names and the section page numbers are shown at the bottom of each page.

2. LICENSING REQUIREMENTS FOR CONTRACTORS

In accordance with the provisions of California law, the District has determined that, at the time a Bid is submitted, the Bidder is acting in the capacity of Contractor and is required to be properly licensed in accordance with the laws of this State. Accordingly, the Contractor shall possess a valid **Class B** license at the time that Contractor submits its Bid. Contractor's License Declaration is required as a part of the Contract documentation with the Bid submittal and failure to do so is grounds for declaring the Bid non-responsive. Failure of the Bidder to obtain proper and adequate licensing for an award of a Contract shall constitute a failure to execute the Contract and shall result in the forfeiture of the security of the Bidder.

3. DOCUMENT INTERPRETATION AND ADDENDA

3.1 INTERPRETATION. The Contract Documents are intended to fully inform the Bidder and to provide all details reasonably required for the execution of the proposed Work. Any person contemplating the submission of a Bid shall have thoroughly examined all of the various parts of these Contract Documents, and should there be any doubt as to the meaning or intent of said Contract Documents, the Bidder shall immediately request from the District, in writing an interpretation thereof.

3.2 ADDENDA. Any interpretation or change in said Contract Documents will be made only in writing in the form of an Addendum to the Contract Documents, which will be furnished to all Bidders receiving a set of the Contract Documents. Questions received less than three (3) business days prior to the Bid Opening date may not be answered. Only formal responses by Addenda will be binding. Bidders shall acknowledge the receipt of all Addenda by indicating in the appropriate place in the Bid that they have received all Addenda. The District shall not be responsible for any other explanation or interpretations of said documents.

4. BIDDER'S UNDERSTANDING

4.1 Each Bidder shall carefully inspect and examine the project site and shall be thoroughly familiar with all the Contract Documents. Failure to do so will not relieve the successful Bidder of its obligation to enter into a Contract and complete the contemplated work in strict accordance with the Contract Documents. The Bidder shall verify and completely satisfy itself with all information concerning site and subsurface conditions.

4.2 The submission of a Bid shall be conclusive evidence that the Bidder has investigated and is satisfied as to the conditions to be encountered, the character, quality, and scope of work to be performed, the quantities of materials to be finished, and as to the requirements of the Contract Documents.

4.3 During the preparation of the Contract Documents, the District may have investigated the surface and subsurface conditions. Topographic maps, reports or other information relating to surface and subsurface conditions obtained by the District's investigations, if any,

are available for review by any interested party at the District's office located at 353 Santa Monica Drive, Channel Islands Beach, CA 93035, during normal working hours. Any and all documents relating to investigations of the surface and subsurface conditions including, but not limited to, logs of test borings, topographic maps, reports, or other information shall not be considered a part of the Contract Documents unless otherwise specified in the Supplemental Conditions or Project Plans and Specifications.

Any investigations conducted by the District of surface and subsurface conditions were made for the purpose of study and design. It is expressly understood and agreed that District assumes no responsibility whatsoever in respect to the sufficiency or accuracy of borings, or of the logs of test borings, topographic maps, reports, or of other investigations that have been made, or of the interpretations made thereof. There is no warranty or guarantee, either expressed or implied, that the conditions indicated by said documents and investigations are representative of those actually existing conditions or throughout such area, or any part thereof, or that unforeseen developments may not occur or that other materials or conditions may not be encountered.

Contractor is responsible for properly examining the site and making additional investigations as it may elect. Information derived from inspection of logs, test borings or topographic maps, or from drawings or other documents showing location of utilities and structures will not in any way relieve the Contractor from any risk or from properly fulfilling all the terms of the Contract Documents.

4.4 Each Bidder shall be aware of and, if awarded a Contract, shall comply with Federal, State, and local laws, statutes, and ordinances relative to the execution of the Work. This requirement includes, but is not limited to, applicable regulations concerning minimum wage rates, non-discrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, the burning and non-burning requirements, permits, fees, and similar subjects.

5. DRAWINGS

Where the Drawings are reduced in size from the original signed Mylar, a graphic scale will be provided. If a dimension is not clearly specified, it shall be obtained from the District.

No information derived from such inspection of records of investigations or compilation thereof made by the District or from the ARCHITECT, or his/her assistants, will relieve the Bidder or Contractor in any way from its risk of properly fulfilling the terms of the Contract.

6 TYPE OF PROPOSAL

6.1 UNIT PRICE ITEMS

Unless specifically stated otherwise, if the quantity of a unit-priced item is designated on the Bid Forms as an estimated quantity, and the actual quantity of the unit-priced item varies by more than twenty-five percent (25%) of the estimated quantity, an equitable adjustment in the Contract Price shall be made upon demand of either party. The equitable adjustment shall be based upon increase or decrease in costs due solely to the variations exceeding twenty-five percent (25%) of the estimated quantity. If the variation in the estimated quantity is such as to cause an increase in the time necessary for completion, the Contractor may request in writing, an extension of time to be received by the District within ten (10) days from the

beginning of the delay. Upon the receipt of a written request for an extension, the ARCHITECT will ascertain the facts and make an adjustment for extending the completion date as, in the judgment of the ARCHITECT, is justified. Adjustments under this Section shall be made by Change Order.

6.2 LUMP SUM ITEMS

When the work is to be submitted on a lump sum basis, a lump sum price shall be submitted in the appropriate place. The total amount to be paid to the Contractor for the Bid items shall be the amount of the lump sum item as adjusted for additions or deletions resulting from changes in the scope by the District. Lump sum items are shown as "LS" under the unit column in the Schedule of Work Items section of the Bid Form. For example, a lump sum item such as potholing may involve a number of potholes, however, no matter how many are required, all the work is included in the submitted lump sum amount.

In accordance with the Plans and Specifications, a Schedule of Values, which is an itemized list of the value or cost of each Bid item of work, shall be submitted to the ARCHITECT prior to or at the pre-construction meeting.

6.3 MOBILIZATION AND DEMOBILIZATION

The cost of mobilization and demobilization of the Work shall not exceed five percent (5%) of the total amount of the Bid excluding the cost of bonds and insurance unless otherwise stated in the Supplemental Conditions.

7. SPECIAL BIDDING REQUIREMENTS

In the event there is a need for special bidding procedures and requirements for parts of the work under this Contract, such requirements will be set forth in the Supplemental Conditions.

8. PREPARATION OF BIDS

8.1 All blank spaces in the Bid form must be completed in ink, in both words and figures where required. No modifications shall be made to the forms. Any modification to the Bid forms not specifically called for in the Contract Documents may result in the District rejecting the Bid as non-responsive.

8.2 Any Bid may be deemed non-responsive which contains omissions, erasures, alterations, additions of any kind, prices uncalled for, obviously unbalanced prices, or which in any manner shall fail to conform to the conditions of the IFB.

8.3 An authorized signatory shall execute the Bid form.

If the Bidder is a joint venture/partnership, it shall submit with its Bid a duly notarized venture/partner-executed irrevocable Power of Attorney that designates one of the ventures as a Management Sponsor along with a signed copy of the Joint Venture/Partnership Agreement. The Management Sponsor shall be empowered to execute the Bid on behalf of the Bidder and to act for and bind the Bidder in all matters relating to the Bid. The Power of Attorney shall specifically state that each venture/partner shall be jointly and severally liable for any and all of the duties and obligations of the Bidder that is assumed under the Bid and

under any contract arising therefrom. The Management Sponsor shall execute the Bid on behalf of the joint venture/partnership in its legal name.

8.4 The Bidder shall submit with its Bid a notarized Non-collusion Affidavit executed by the Bidder by the person or persons set forth above, otherwise the Bid will be regarded as not properly filed.

9. STATE AND LOCAL SALES AND USE TAXES

The state and local sales and use taxes, as required by the laws and statutes of the state and its political subdivisions, shall be paid by the Contractor. Prices quoted in the Bid shall include sales tax, unless provision is made in the proposal form to itemize the tax separately.

10. SUBMISSION OF BIDS

All Bids must be submitted at the time and place and in the manner prescribed in the IFB. Bids must be made on the Bid forms provided herein. If the IFB requires a hardcopy, each Bid must be submitted in a sealed envelope, marked to indicate its contents without being opened, and addressed in conformance with the instructions in the Contract Documents. If the IFB requires use of the electronic bidding system, Bids must be made on the Bid forms provided in the system.

11. SUBSTITUTIONS "OR-EQUAL"

Except for District-selected equipment items and items where "no substitution" is clearly specified; materials, articles, devices, products, fixtures, form, type of construction, or process are indicated or specified for the purpose of establishing a standard of quality and facilitating the description of the material or process desired by District. This procedure is not to be construed as eliminating from competition other products of equal or better quality by other manufacturers where fully suitable in design, and shall be deemed to be followed by the words "Or Equal". Such requests shall be made in writing by the Contractor to the District stating in detail how the proposed product differs in composition and performance from the designated product and shall be accompanied by complete data on which the District may make a determination on the merits of the proposed substitution.

In accordance with Public Contract Code Section 3400, Contractor may, in such cases, submit requests substantiating the substitution of "equal" items within thirty-five (35) days after the award of the Contract unless otherwise stated in the Supplemental Conditions or Project Plans and Specifications. If the District rejects the substitution of an "Or Equal" item, the Contractor shall provide the specified item without extra cost to the District.

12. MODIFIED AND ALTERNATIVE BIDS

12.1 Bids must not deviate from what is requested in this IFB.

12.2 A Bid shall be rejected when the Bidder imposes conditions or exceptions that would modify requirements of the IFB.

13. NAMING OF SUBCONTRACTORS

The Bidder shall submit in the Bid the names and business addresses of each subcontractor that will perform work under this Contract in excess of one-half of one percent ($\frac{1}{2}\%$) of the amount of the total Bid, and shall list the portion of the work that will be done by such subcontractor. If the Bidder fails to identify specifically any such subcontractor for any portion of the work to be performed under the Contract in excess of one-half of one percent ($\frac{1}{2}\%$), the Bidder agrees to perform that portion of the work. No listed subcontractor shall be substituted without prior District approval in accordance with Public Contract Code section 4107. Any proposed subcontractors must be properly and currently licensed as required by the subletting and subcontracting Fair Practice Act, commencing with Section 4100 of the Public Contract Code.

14. DISCREPANCIES IN BID ITEMS

14.1 The Bidder shall furnish a price for each individual Bid item, unless otherwise stated in the Schedule of Work Items. Failure to do so may render the Bid(s) incomplete and non-responsive and may cause its rejection. The Bid shall state the Unit Prices, the total amount of each Bid item, and the "Total Bid Price" for which the Bidder proposes to supply the labor, goods, and completely perform the Contract. If the Unit Price and the total amount stated by a Bidder for any item do not agree, the Unit Price alone shall be considered as representing the Bidder's intention, and the total price for that item shall be corrected by District to conform thereto. District will correct the extended Unit Price and math errors to determine the Total Amount of Bid.

14.2 Should any Unit Price be left blank, out of balance, or not accurately reflect the cost, the Bid may be considered non-responsive.

14.3 Should any Unit Price or total price be left blank the Bid will be considered non-responsive unless the blank item can be calculated from the information available (i.e., total price can be determined by multiplying the Unit Price by the estimated quantity).

If any one line item is left blank, and the above situations do not apply, no attempt shall be made to reconcile the amounts. The Bid in this case shall be considered non-responsive.

14.4 If the cumulative total price for all the individual items and the Total Amount of Bid stated by a Bidder do not agree, the sum of the cumulative total price for each of the unit items shall be considered as representing the Bidder's intention and the Total Amount of Bid entered by the Bidder shall be corrected by District to conform thereto.

15. MISTAKES IN BIDS (AFTER OPENING)

15.1 Bidder, who seeks to rescind its Bid due to a mistake or error in preparation of its Bid, shall notify District in writing within five (5) days of public opening.

15.2 Bidders alleging mistakes in Bids may seek relief in accordance with Section 5100, et seq. of the California Public Contracts Code.

16. BIDDERS INTERESTED IN MORE THAN ONE BID

No person, firm, or corporation shall be allowed to make or file, or be interested in more than one (1) Bid for the same work. A person, firm, or corporation submitting a sub-proposal to a Bidder, or that has quoted prices or material to a Bidder, is not thereby disqualified from submitting a sub-proposal or quoting prices to other Bidders.

17. BID SECURITY (Bid Bond)

Bids must be accompanied by a certified check, cashier's check drawn on a bank in good standing and payable to the District, or a Bidder's bond in favor of the District issued by a Surety authorized to issue such bonds in the State of California, in an amount not less than ten percent (10%) of the total amount of the proposal submitted. This Bid security shall be given as a guarantee that the Bidder will not withdraw the Bid for a period of ninety (90) calendar days after Bid opening, and that if awarded the Contract, the successful Bidder will execute the attached Contract and furnish the referenced documents within the time period specified in the Contract Documents. Failure of the Contractor who is awarded the Contract to sign the Contract or provide the District with all of the referenced documents within the time period specified by the Contract Documents shall result in the forfeiture of the Bid security to the District.

The Attorney-in-fact that executes a Bid bond on behalf of a Surety must attach a notarized copy of his/her power-of-attorney as evidence of his/her authority to bind the Surety on the date of execution of the bond. If the Bidder elects to furnish a Bid bond, Bidder shall use the Bid bond form bound herewith, or one conforming substantially thereto in form and content.

18. AWARD OF CONTRACT

Within ninety (90) calendar days after the opening of Bids, the District may accept one of the Bids and issue a Notice of Intent to Award to the lowest responsive and responsible Bidder in accordance with Article 20, Basis of Award, below. The Notice of Intent to Award shall be sent by U.S. mail or by other commercial business delivery method to all Bidders. If the District receives no protest within five (5) business days of the date of Notice of Intent to Award, pursuant to Section 24.2 below, the District may issue a Notice of Award to the lowest responsive and responsible Bidder. The Notice of Award shall be mailed or delivered to the office designated in the Bid. In the event of failure of the lowest responsive and responsible Bidder to sign and return the Contract with an acceptable performance bond and labor and materials bond, certificates of insurance and policies, certificate regarding worker's compensation insurance, and other required documents within the time specified in the Contract Documents, the District may award the Contract to the next lowest responsive and responsible Bidder. Such award, if made, will be made within ninety (90) calendar days after the Bid opening date.

19. RETURN OF BID SECURITY

Within sixty (60) calendar days *after the award* of the Contract, the District will return the Bid securities, except Bidder bonds and guarantees that have been forfeited, to all Bidders whose Bids are not to be further considered in awarding the Contract. Retained Bid securities will be held until the Contract has been finally executed, but in no case longer than sixty (60) calendar days after award of the Contract, after which all Bid securities, other than Bid bonds

and guarantees which have been forfeited, will be returned to the respective Bidders whose proposals they accompanied.

20. BASIS OF AWARD

If awarded, the award will be made by the District on the basis of the Bid from the lowest responsive and responsible Bidder that, in the District's sole and absolute judgment, will best serve the interest of the District.

21. EXECUTION OF CONTRACT

The successful Bidder shall, within fifteen (15) calendar days after receiving the Notice of Award, sign and deliver the Contract to the District together with the acceptable bonds, certificates of insurance and policies, certificate of worker's compensation insurance, and other documents as required in the Contract Documents. Within twenty-one (21) calendar days after receiving the signed Contract and all other required documents that are found acceptable to the District, the District's authorized agents will sign the Contract. Signature by both parties constitutes execution of the Contract.

22. PERFORMANCE BOND

The successful Bidder shall file a Performance Bond with the District on the form bound herewith in the full amount of the Contract Price, as security for the faithful performance of the Contract for the construction of the work, and to cover all warranties against defective workmanship or materials, or both, for a period of one (1) year after the filing date of Notice of Completion. The Surety furnishing this bond shall have a sound financial standing, be a State of California admitted Surety insurer and either submit those documents set forth in California Code of Civil Procedures, section 995.660, items (1) through (4), so that the District may determine whether the bond is sufficient in accordance with California Code of Civil Procedure section 995.660, or have a Best rating of A VII or better.

23. LABOR AND MATERIALS BOND (Payment Bond)

The successful Bidder shall file with the District at the time of execution of the Contract, a Labor and Materials Bond on the form bound herewith in the amount of one-hundred percent (100%) of the Contract Price, as security for the payment of all persons supplying labor and materials for the construction of the work. The Surety furnishing this bond shall have a sound financial standing, be a State of California admitted Surety insurer and either submit those documents set forth in California Code of Civil Procedures, section 995.660, items (1) through (4), so that the District may determine whether the bond is sufficient in accordance with California Code of Civil Procedure section 995.660, or have a Best rating of A VII or better.

24. POWER-OF-ATTORNEY

The Attorney-in-fact (Resident Agent) that executes the Performance Bond or Labor and Materials Bond on behalf of the Surety must attach a notarized copy of his/her power-of-attorney as evidence of his/her authority to bind the Surety on the date of execution of the bonds.

25. BID PROTESTS

25.1 IFB PROTESTS. The purpose of this IFB is to obtain competitive Bids and/or proposals from Bidders. Any Bidder that believes a particular specification or requirement is impractical, unduly restrictive, or ambiguous may advise District of its concerns, within ten (10) business days of issuance of this IFB, by filing a written protest with District's Contracts Officer. The protest will be evaluated, and, if deemed warranted, the IFB Documents may be revised by issuing an Addendum. Any Bidder, that has not filed its protest within ten (10) business days after issuance of this IFB, will be deemed, at the minimum, to have accepted this IFB as reasonable, not unduly restrictive, and unambiguous.

25.2 CONTRACT AWARD PROTEST. Bidders are permitted to protest District's decision to award a Contract. Unless otherwise specified in the IFB, the Bidder shall have five (5) business days from the date of issuance of the Notice of Intent to Award, or similar announcement, to file a protest.

The protest must be filed in writing with the Contracts Administrator and must specify, in detail, the grounds upon which the protest is based. A valid protest must:

1. Come from an actual Bidder for the Contract;
2. Come from a Bidder which has a lower Bid than the successful Bidder; and,
3. Contain the following information:
 - a. Name, address, and telephone number of the Protestor.
 - b. The title and Job/Contract number of the award being protested.
 - c. A detailed statement citing the provisions being protested, including the reasons for the protest.

If a protest is filed on the grounds that the (protesting) Bidder is the lowest responsive responsible Bidder, the Contract shall not be awarded until either the protest has been withdrawn or the District's Contract Officer has issued a Notice of Decision on the matter.

A protest shall not be considered valid if filed by a Bidder who cannot show that it should be awarded the Contract if its protest is accepted.

There is no basis for protest if the District in its sole discretion determines to reject all bids based on the best interests of the District.

The Contracts Officer will issue a written final decision by first-class mail and/or by electronic means, such as facsimile transmission or e-mail, within ten (10) business days of receiving the written protest and prior to Contract Award.

26. NOTICE TO PROCEED

Once the successful Bidder signs and returns the Contract with an acceptable performance bond and labor and materials bond, certificates of insurance and policies, certificate regarding worker's compensation insurance, and other required documents within the time specified in the Contract Documents (refer to Section 21 above), the District will fully execute the Contract

and issue a Notice to Proceed which states the date to proceed with construction. Bidders should be prepared to start work upon the Notice to Proceed.

27. RETENTION

Pursuant to Section 10261 (b) of the Public Contract Code, when the District has made a finding prior to bid that a specified project is substantially complex and therefore requires a higher retention amount than five percent (5%), the District shall include both this finding and the actual retention for the specified project amount in the Invitation for Bids. Any changes in retention shall be located in the Supplemental Conditions of the Construction Contract included in the Invitation for Bids.

28. DISTRICT RIGHTS

28.1 District may investigate the qualifications of any Bidder under consideration inclusive of, but not limited to, the information provided in the Bid form.

28.2 District may require confirmation of information furnished by the Bidder, and require additional evidence of qualifications to perform the work described in this IFB.

28.3 District reserves the right to:

1. Reject any or all of the Bids for any reason whatsoever, at its discretion, including multiple Bids, if multiple Bids are received;
2. Reject any Bids prejudicial to interests of the District or to other Bidders;
3. Reject any Bid that, in the opinion of District, is so unbalanced in comparison to other Bids received and/or to District's internal estimates that it does not accurately reflect the cost to perform the Work;
4. Cancel the entire Bid;
5. Issue subsequent Bids;
6. Seek the assistance of outside technical experts to evaluate Bids, disqualify the Bid(s) upon evidence of collusion with intent to defraud or other illegal practices on the part of the Bidder(s);
7. Waive any errors or informalities in any Bid, to the extent permitted by law;
8. District may, prior to, or after Contract award, delete any Bid line item at the line item Bid price. If District elects to request additive or deductive item cost in Bidding, as stated in the Supplemental Conditions, then District shall follow Public Contract Code Section 20103.8. Further, if District chooses determining the lowest Bidder other than as in Public Contract Code Section 20103.8(a), it will specify the same in the Supplemental Conditions. If District elects to delete any Bid line item after award, it shall be done pursuant to a Change Order.

- 9, Investigate the qualifications on any Bidder under consideration, inclusive of, but not limited to, the information provide in the Bid Submittal Forms. The District may require confirmation or additional evidence of qualifications to perform the work.

END INSTRUCTIONS TO BIDDERS

PART 2

CONTRACT DOCUMENTS

**PROPOSAL TO
CHANNEL ISLANDS BEACH COMMUNITY SERVICES DISTRICT
FOR THE CONSTRUCTION OF
ADMINISTRATION AND OPERATION FACILITY
Contract No. CI 401**

Name of Bidder: _____

Business Address: _____

Phone Number: _____

TO THE GOVERNING BODY OF THE
CHANNEL ISLANDS BEACH COMMUNITY SERVICES DISTRICT:

Pursuant to and in compliance with the IFB and the other documents relating thereto, the undersigned Bidder, being fully familiar with the terms of the Contract Documents, local conditions affecting the performance of the Contract, the character, quality, quantities, and scope of the work, and the cost of the work at the place where the work is to be done, hereby proposes and agrees to perform within the time stipulated in the Contract, including all of its component parts and everything required to be performed, and to furnish any and all of the labor, material, tools, equipment, transportation, services, permits, utilities, and all other items necessary to perform the contract and complete in a workmanlike manner, all of the work required in connection with the construction of said work all in strict conformity with the plans and specifications and other Contract Documents, including addenda Nos.: ____, ____, ____, and ____, on file in the office of the Owner for the prices hereinafter set forth.

The undersigned as Bidder, declares that the only persons or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any person, firm, or corporation; and Bidder proposes and agrees, if the proposal is accepted, that Bidder will execute a contract with the Owner in the form set forth in the Contract Documents and that Bidder will accept in full payment thereof the following prices, to wit:

SCHEDULE OF WORK ITEMS
(Exhibit A to Construction Agreement)

Item No.	Work Description	Site Work	Admin Bldg.	Ops Bldg.	UNIT PRICE	TOTAL AMOUNT
1	Div. 01 Gen Requirements				Lump Sum	\$_____
2	Div. 02 Existing Conditions				Lump Sum	\$_____
3	Div. 03 Concrete				Lump Sum	\$_____
4	Div. 04 Masonry				Lump Sum	\$_____
5	Div. 05 Metals				Lump Sum	\$_____
6	Div. 06 Wood, Plastics, and Composites				Lump Sum	\$_____
7	Div. 07 Thermal and Moisture Protection				Lump Sum	\$_____
8	Div. 08 Openings				Lump Sum	\$_____
9	Div. 09 Finishes				Lump Sum	\$_____
10	Div. 10 Specialties				Lump Sum	\$_____
11	Div. 12 Furnishings				Lump Sum	\$_____
12	Div. 13 Special Construction				Lump Sum	\$_____
13	Div. 22 Plumbing				Lump Sum	\$_____
14	Div. 23 Mechanical				Lump Sum	\$_____
15	Div. 26 Electrical				Lump Sum	\$_____
16	Div. 31 Earthwork				Lump Sum	\$_____
17	Div. 32 Exterior Improvements				Lump Sum	\$_____
18	Mobilization, Permits, Cleanup, & Demob.				Lump Sum	\$_____
TOTAL AMOUNT OF BID ITEMS 1 THROUGH 18						\$_____

Contracting Firm: _____

Award of Contract, if awarded, will not be made for less than the sum of all the Base Bid Items **1 through 18**. Any additive or deductive work item on the Schedule of Work Items may be selected by District after evaluation of Bids or, if required, after start of construction.

Each individual Bid item shall be determined from visiting the work site, reviewing the Plans and Specifications, and all other portions of the Contract Documents, and shall include all items necessary to complete the Work, including the assumption of all obligations, duties, and responsibilities necessary to the successful completion of the Contract, and the furnishing of all materials and equipment required to be incorporated in and form a permanent part of the Work: tools, equipment, supplies, transportation, facilities, labor, superintendence, and services required to perform and complete the Work; and bonds, insurance and submittals; all as per the requirements of the Contract Documents, whether or not expressly listed or designated.

It is understood that the foregoing quantities are approximate only and are solely for the purpose of facilitating the comparison of Bids, and that the Contractor's compensation will be computed upon the basis of the actual quantities in the completed work whether they be more or less than those shown.

- A. The General Contractor (Contractor) must perform at least fifteen percent (15%) of the total project work awarded and may sublet no more than eighty five percent (85%) of the total project work awarded to any one subcontractor.

The name and location of place of business of each subcontractor who will perform work or labor or render service to the General Contractor in or about the construction of the work, or improvements, in an amount in excess of one-half of one percent (1/2%) of the General Contractor's total Bid, and the portion of the work that will be done by each subcontractor is set forth as follows (***provide additional sheets as needed***):

<u>Name of Subcontractor</u>	<u>Location of Office</u>	<u>Work Subcontracted</u>
<u>License #:</u>		

<u>Name of Subcontractor</u>	<u>Location of Office</u>	<u>Work Subcontracted</u>
<u>License #</u>		

Except as hereinabove provided, Contractor acknowledges and agrees that Contractor will perform all required work in accordance with Section 4106 of the Public Contract Code.

- B. Person who inspected site of the proposed work for Bidder:

Name: _____ Date of Inspection: _____

- C. It is agreed that, if requested by the District, the Bidder shall furnish a notarized financial statement, references, and other information, sufficiently comprehensive to permit an appraisal of his/her current financial condition.
- D. ACCOMPANYING THIS BID IS _____ (Insert the words "cash", "Bidder's bond", or "certified check", as the case may be) in an amount equal to at least ten percent (10%) of the total amount of the Bid, payable to:

CHANNEL ISLANDS BEACH COMMUNITY SERVICES DISTRICT

The undersigned deposits the above-named security as a proposal guarantee and agrees that it shall be forfeited to the District as liquidated damages in case this proposal is accepted by the District and the undersigned fails to execute a contract with the District as specified in the Contract Documents or fails to furnish the required payment and performance bonds and insurance certificates and endorsements. Should the District be required to engage the services of an attorney in connection with the enforcement of this Bid, Bidder promises to pay District's reasonable attorney's fees, incurred with or without suit.

- E. Bidders shall indicate opposite each item listed below the name of the manufacturer or Supplier proposed to be used under the Contract. Award of a Contract under this proposal (Bid) will not imply approval by the District of a manufacturer or Supplier listed by the Bidder. However, if a manufacturer or Supplier is acceptable to the District, the successful Bidder shall furnish the items from the manufacturer or Supplier indicated. Each contracting Bidder shall inform in writing each named manufacturer or Supplier that the so named is listed for information purposes only and may be substituted, changed, or omitted by the successful Bidder, subject to the approval of the Bidder, without subjecting the District to any liability for the substitution, change, or omission. The successful Bidder shall reimburse the District for any expenses incurred by the District as a result of the successful Bidder's failure to so notify each named manufacturer or Supplier. Lead time for delivery of equipment from date of ordering shall also be shown.

<u>Item</u>	<u>Manufacturer</u>	<u>Lead Time Calendar Days</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

F. The names of all persons interested in the foregoing proposals as principals are as follows: (NOTE – If Bidder or other interested is a corporation, state legal name of corporation, also names of the president, secretary, treasurer, and manager thereof; if a general partnership, state true name of firm also names of all individual partners composing firm; if a limited partnership, the names of all general partners and limited partners; if Bidder or other interested person is an individual, state first and last name in full; if the Bidder is a joint venture, state the complete name of each venturer.)

G. Licensed in accordance with the California State Contractor's License Law.

Contractor's License No. _____

Signature of Bidder: _____

Business Address, Complete: _____

Dated: _____, 2023 Telephone Number: _____

NOTE: If Bidder is a corporation, the legal name of the corporation shall be set forth above, together with the signature of the officer or officers authorized to sign Contracts on behalf of the corporation and the corporate seal; if Bidder is a partnership, the true name of the firm shall be set forth above, together with the signature of the partner or partners authorized to sign Contracts on behalf of the partnership; if the Bidder is an individual, his/her signature shall be placed above; if the Bidder is a joint venture, the name of the joint venture shall be set forth above with the signature of an authorized representative of each venturer.

CONTRACTOR'S LICENSE DECLARATION

(Business and Professions Code Section 7028.15)

The undersigned declares that he or she is _____
of _____,
the party making the foregoing Bid (Hereinafter, the "Bidder").

- 1. Bidder's Contractor's License Number is as follows: _____,
- 2. The expiration date of Bidder's Contractor's License is: _____,
2023.
- 3. Bidder acknowledges that Section 7028.15(e) of the Business and Professions
Code provides as follows:

"Unless one of the foregoing exceptions applies, a Bid submitted to a public agency by a Contractor who is not licensed in accordance with this chapter shall be considered non-responsive and shall be rejected by the public agency. Unless one of the foregoing exceptions applies, a local public agency shall, before awarding a contract or issuing a purchase order, verify that the Contractor was properly licensed when the Contractor submitted the Bid.

Any contract awarded to, or any purchase order issued to, a Contractor who is not licensed pursuant to this chapter is void."

The undersigned declares under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2023, at _____
_____ (Insert city and state where declaration signed)

Signature

Typed Name

Title

Name of Bidder

**ACKNOWLEDGMENT OF INSURANCE REQUIREMENTS
AND CERTIFICATION OF ABILITY TO
PROVIDE COVERAGES SPECIFIED**

I, _____, the _____,
(Name of Signer) (President, Secretary, Manager, Owner or Representative)

of _____

certify that Section 11 of the Construction Agreement has been read and understood,
and that _____
(Name of Company/Corporation/Owner)

is able to provide the coverages required by District on the forms required by District.
Company/Owner understands no changes will be made to requirements after award
of Contract.

Signature of President, Secretary, Manager, Owner or Representative

Typed or Printed Name

Title

Date

THIS BOND FORM TO BE FULLY EXECUTED

BIDDER'S BOND

KNOW ALL MEN BY THESE PRESENTS,

That we, _____, as principal, and
_____, as Surety, are held and firmly
bound unto Channel Islands Beach Community Services District in the sum of

Dollars (\$), to be paid to the said District, its successors and assigns, for which
payment, will and truly be made, we bind ourselves, our heirs, executors and
administrators, successors or assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That if the certain proposal of the above bounden _____
_____ is accepted by Channel Islands Beach Community Services
District and if the above bounden

_____, his/her heirs, executors, administrators,
successors and assigns, shall duly enter into and execute a Contract for such
construction, and shall execute and deliver the Labor and Material, and the Faithful
Performance Bonds and other Contract Documents described, within fifteen (15) days
from the date of the award and notice of the above bounden _____
_____ and from said District, that said for Contract is ready execution,
then this obligation shall become null and void; otherwise, it shall be and remain in full
force and effect.

BIDDER

PRINCIPAL

SURETY

THIS AFFIDAVIT TO BE FULLY EXECUTED
NON-COLLUSION AFFIDAVIT

Affirmed in the STATE OF CALIFORNIA,

the COUNTY OF VENTURA,

and the CITY OF _____

on the _____ day of _____
(Day) (Month)

by _____, affiant, the
(Printed Name of Signatory)

(Title: President, Secretary, Manager, Owner or Representative of)

(Name of Company or Corporation or Owner)

as the person, corporation or company who makes the accompanying proposal,
having first been duly sworn, deposes and says:

That such proposal is genuine, and not sham or collusive, nor made in the interest or
behalf of any person not herein named, and that the Bidder has not directly or indirectly
induced or solicited any other Bidder to put in a sham Bid, or any other person, firm
or corporation to refrain from Bidding, and that the Bidder has not in any manner
sought by collusion to secure for itself an advantage over any other Bidder.

Signature of:

PROPOSER'S BUSINESS INFORMATION (PreQual)

Table of Contents

NOTE: If you are not currently on the District's Prequalified Contractors list, the following information must be completed and uploaded to Public Purchase Bidding System. The District will review Business Information to determine if the apparent low bidder is responsible. If the District finds the apparent low bidder to be non-responsible, the District will complete the process with the next lowest bidder.

- A. Business Information
- B. Business Requirements
- C. Financial Information
- D. Safety
- E. References/Relevant Projects

MINIMUM REQUIREMENTS FOR THIS SOLICITATION/CATEGORY:

- Minimum of 70 points in Section B – Business Requirements
- Minimum 5 years of relevant work history in Section E – References/Relevant Projects

A Business Information

Legal
Business

Name: _____ Date: _____

Address: _____

Street Address

Suite #

City

State

ZIP Code

Contact: _____ Title: _____

Phone: _____ Email: _____

Length of time in business: _____ Length of time at current location: _____ Federal Tax No. _____

In the last five years, has your firm changed names or license numbers? _____

If yes, provide prior names and licenses. _____

California State Contractor's License No.: _____

Department of Industrial Relations Registration No.: _____

Names and titles of officers of the Business:

Is your firm incorporated? YES NO

Name and remittance address that will appear on invoices:

Is your firm a sole proprietorship doing business under a different name? YES NO

If yes, please indicate sole proprietorship name and the name under which you are doing business:

B Business Requirements

5 points for either “No” or “Yes” indicating 1 such instance.

3 points for “Yes” indicating 2 such instance.

0 points for “Yes” or if more than 2 such instances.

Contractor may be immediately disqualified if answer to any of the questions 4-7 is “Yes”.

1. Contractor has submitted evidence of a liability insurance policy with a policy limit of at least \$5,000,000 per occurrence (refer to Section 11 of the Construction Agreement for specific insurance requirements).

Yes No

2. Contractor has submitted evidence of current workers’ compensation insurance policy as required by the Labor Code or is legally self-insured pursuant to Labor Code section 3700 et. seq.

Yes No

3. Contractor has carefully reviewed the insurance and indemnification requirements set forth in Section 4, and has signed the attached Acknowledgment of District Insurance and Indemnification Requirements (on Page 7).

Yes No

4. Has your contractor’s license been revoked at any time in the last five years?

Yes No

5. Has a surety firm completed a contract on your behalf, or paid for completion because your firm was default terminated by the project owner within the last five (5) years?

Yes No

6. At the time of submitting this proposal, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract, pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7?

Yes No

If the answer is “Yes,” state the beginning and ending dates of the period of debarment.

7. At any time during the last five years, has your firm or any of its owners or officers been convicted of a crime involving the awarding of a contract of a government construction project, or the bidding or performance of a government contract?

Yes No

8. At any time in the last five years, has your firm been assessed and paid liquidated damages after completion of a project under a construction contract with either a public or private owner?

Yes No

If yes, explain on a separate sheet of paper, identifying all such projects by owner, owner’s address, the date of completion of the project, amount of

liquidated damages assessed and all other information necessary to fully explain the assessment of liquidated damages.

9. In the last five years has your firm, or any firm with which any of your company's owners, officers or partners was associated, been debarred, disqualified, removed or otherwise prevented from bidding on, or completing, any government agency or public works project for any reason?

Yes No

If "yes," explain on a separate sheet of paper. State whether the firm involved was the firm applying for pre-qualification here or another firm. Identify by name of the company, the name of the person within your firm who was associated with that company, the year of the event, the owner of the project, the project and the basis for the action.

NOTE: "Associated with" refers to another construction firm in which an owner, partner or officer of your firm held a similar position, and which is listed in response to question 1 on page 8 of this form.

10. In the last five years, has your firm been denied an award of a public works contract based on a finding by a public agency that your company was not a responsible bidder?

Yes No

If "yes," explain on a separate sheet of paper. Identify the year of the event, the owner, the project and the basis for the finding by the public agency.

11. In the past five years, has any claim against your firm concerning your firm's work on a construction project been filed in court or arbitration?

Yes No

If "yes," on separate sheets of paper identify the claim(s) by providing the project name, date of the claim, name of the claimant, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution).

12. In the past five years, has your firm made any claim against a project owner concerning work on a project or payment for a contract and filed that claim in court or arbitration?

Yes No

If "yes," on separate sheets of paper identify the claim by providing the project name, date of the claim, name of the entity (or entities) against whom the claim was filed, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending, or if resolved, a brief description of the resolution).

13. Within the last five years, has there ever been a period when your firm had employees but was without workers' compensation insurance or state-approved self-insurance?

Yes No

14. In the last five years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

Yes No

C Financial Information

1. Attach to your Bid Form Submittal a complete set of current financial statements (as current as **December 2022**, if possible), including an accountant's opinion and footnotes, for two (2) preceding fiscal years.

Financial Statement include at a minimum: balance sheet, statement of income and retained earnings, and statement of cash flow.

2. Surety Company: _____
Name, address, and phone number

3. How many years has your organization been in business in California as a contractor under your present business name and license number? _____ years

4. Is your firm currently the debtor in a bankruptcy case?

Yes No

If "yes," please attach a copy of the bankruptcy petition, showing the case number, and the date on which the petition was filed.

5. Was your firm in bankruptcy at any time during the last five years? (This question refers only to a bankruptcy action that was not described in answer to question 7, above.)

Yes No

If "yes," please attach a copy of the bankruptcy petition, showing the case number and the date on which the petition was filed, and a copy of the Bankruptcy Court's discharge order, or of any other document that ended the case, if no discharge order was issued.

6. During the last five years, has a surety company ever denied your firm bond coverage, or has there ever been a period of time when your firm had no surety bond in place during a public construction project when one was required?

Yes No

If yes, provide details on a separate signed sheet indicating the date when your firm was denied coverage and the name of the company, or companies, which denied coverage; and the period during which you had no surety bond in place.

D Prevailing Wages

1. In the last 5 years, were there any occasion(s) in which your firm was required to pay either back wages or penalties for your own firm's failure to comply with the state's prevailing wage laws?

Yes No

2. In the last five years, has there been more than one occasion on which your own firm has been penalized or required to pay back wages for failure to comply with the Federal Davis-Bacon prevailing wage requirements?

Yes No

3. In the last five years, has your firm been found to have violated any provision of California apprenticeship laws or regulations, or the laws pertaining to use of apprentices on public works?

Yes No

If yes, provide the date(s) of such findings, and attach copies of the Department's final decision(s).

4. Provide the name, address and telephone number of the apprenticeship program sponsor(s) (approved by the California Division of Apprenticeship Standards) that will provide apprentices to your company for use on any public work project for which you are awarded a contract by Channel Islands Beach Community Services District

5. If your firm operates its own State-approved apprenticeship program:

a) Identify the craft or crafts in which your firm provided apprenticeship training in the past year.

b) State the year in which each such apprenticeship program was approved, and attach evidence of the most recent California Apprenticeship Council approval(s) of your apprenticeship program(s).

c) State the number of individuals who were employed by your firm as apprentices at any time during the past three years in each apprenticeship and the number of persons who, during the past three years, completed apprenticeships in each craft while employed by your firm.

E Safety

- Has any safety regulatory agency (examples: CalOSHA, Federal OSHA, MSHA, Department of Water Resources, Division of Dam Safety, etc.) cited and assessed penalties against your firm (company-wide) for any violations of its safety or health regulations in the past five years?

Yes No

If “yes,” attached a separate signed page describing the citations, including information about the dates of the citations, the nature of the violation, the project on which the citation(s) was or were issued, the amount of penalty paid, if any. If the citation was appealed to the Occupational Safety and Health Appeals Board and a decision has been issued, state the case number and the date of the decision.

- Has the EPA, Air Quality Management District, Regional Water Quality Control Board, Department of Water Resources, or any other regulatory agency for environmental laws cited either your firm or the owner of a project on which your firm was the contractor, in the past five years?

Yes No

If “yes,” attach a separate signed page describing each citation.

- How often do you require documented safety meetings to be held for construction employees and field supervisors during the course of a project? _____

- List your firm’s Experience Modification Rate (EMR) (California workers’ compensation insurance) for each of the past three premium years:

NOTE: Your workers’ compensation insurance carrier issues an Experience Modification Rate to your firm annually.

Current year: _____

Previous year: _____

Year prior to previous year: _____

If your EMR for any of these three years is or was 1.00 or higher you may, if you wish, attach a letter of explanation.

- Provide the following OSHA Recordable Injury and Illness Statistics for the current year and previous 3 years:

	2023	2022	2021	2020
Fatalities				
Lost Work Days Cases				
Lost and Restricted Day Cases				
Other Reportable Injury Cases				
Total Lost and Restricted Days				
OSHA Recordable Incident Rate				
OSHA Lost Time Incident Rate				
Total Hours Worked				

6. Submit the following items:
 - a) Table of Contents of Contractor's current Safety Plan or Program
 - b) Table of Contents of Contractor's Injury and Illness Prevention Program (IIPP)
 - c) OSHA 300 and 400 logs for the Current year and previous 5 years
 - d) If a fatality has been recorded on the firm's OSHA logs in the last 5 years, please provide a separate signed page describing the circumstances of each fatality and what corrective actions were implemented.

Contractor further acknowledges that it shall be required to submit its full Injury and Illness Prevention Plan for review and acceptance by District, upon award of a contract with the District.

CONFIDENTIAL – INFORMATION PROVIDED HEREIN NOT SUBJECT TO DISCLOSURE

5. Performance History / Relevant Projects

This information provided in determining bidder responsibility, and is considered a confidential document not subject to public disclosure under California law.

PROJECT NAME AND LOCATION	ROLE	DESCRIPTION OF WORK	OWNER'S NAME, ADDRESS, PHONE NO., AND CONTACT PERSON	CONTRACT VALUE	ESTIMATED COMPLETION DATE
	<input type="checkbox"/> Prime <input type="checkbox"/> Sub			\$	
	<input type="checkbox"/> Prime <input type="checkbox"/> Sub			\$	
	<input type="checkbox"/> Prime <input type="checkbox"/> Sub			\$	
	<input type="checkbox"/> Prime <input type="checkbox"/> Sub			\$	
	<input type="checkbox"/> Prime <input type="checkbox"/> Sub			\$	
	<input type="checkbox"/> Prime <input type="checkbox"/> Sub			\$	

	<input type="checkbox"/> Prime <input type="checkbox"/> Sub			\$	
	<input type="checkbox"/> Prime <input type="checkbox"/> Sub			\$	
	<input type="checkbox"/> Prime <input type="checkbox"/> Sub			\$	
	<input type="checkbox"/> Prime <input type="checkbox"/> Sub			\$	
	<input type="checkbox"/> Prime <input type="checkbox"/> Sub			\$	
	<input type="checkbox"/> Prime <input type="checkbox"/> Sub			\$	
	<input type="checkbox"/> Prime <input type="checkbox"/> Sub			\$	
	<input type="checkbox"/> Prime <input type="checkbox"/> Sub			\$	

Please list at least three references for projects of similar size and scope, including governmental agencies if available.

1) AGENCY/COMPANY: _____
PROJECT NAME: _____
ADDRESS: _____

CONTACT PERSON: _____ EMAIL: _____
PHONE NUMBER: _____ LENGTH OF CONTRACT: _____
WORK PERFORMED: _____
INITIAL COST/CHANGE ORDERS: _____

2) AGENCY/COMPANY: _____
PROJECT NAME: _____
ADDRESS: _____

CONTACT PERSON: _____ EMAIL: _____
PHONE NUMBER: _____ LENGTH OF CONTRACT: _____
WORK PERFORMED: _____
INITIAL COST/CHANGE ORDERS: _____

3) AGENCY/COMPANY: _____
PROJECT NAME: _____
ADDRESS: _____

CONTACT PERSON: _____ EMAIL: _____
PHONE NUMBER: _____ LENGTH OF CONTRACT: _____
WORK PERFORMED: _____
INITIAL COST/CHANGE ORDERS: _____

CONSTRUCTION AGREEMENT FOR CHANNEL ISLANDS BEACH COMMUNITY SERVICES DISTRICT

ADMINISTRATION AND OPERATION FACILITY

THIS AGREEMENT, Contract No. CI 401, is made and entered into, to be effective, this ____ day of _____, 2023, by and between [company name], hereinafter referred to as "Contractor", and CHANNEL ISLANDS BEACH COMMUNITY SERVICES DISTRICT, Ventura County, California, by and through its Board of Directors, hereinafter referred to as "District".

SECTION 1

GENERAL CONDITIONS

Contractor certifies and agrees that it is fully familiar with all the terms, conditions and obligations of the Contract Documents as hereinafter defined, the location of the job site, and the conditions under which the work is to be performed, and that it enters into this Contract based upon its investigation of all such matters and is in no way relying upon any opinions or representations of District. It is agreed that this Contract represents the entire agreement. It is further agreed that the Contract Documents, which include the Notice Inviting Bids, Instructions to Bidders, Bid forms/Contractor's Bid, the Construction Agreement, any Change Orders or Addenda, General Conditions, Supplemental Conditions, Project Plans and Specifications, District Standard Specifications and Standard Plans (for Water, Sewer, and Recycled Water Facilities), and/or Greenbook Standard Specifications for Public Works Construction are incorporated into this Contract by reference, with the same force and effect as if the same were set forth at length herein, and that Contractor and its subcontractors, if any, will be and are bound by any and all of said Contract Documents, insofar as they relate in any part or in any way, directly or indirectly, to the work covered by this Contract.

The Contractor's signing of the Contract signifies its acceptance of the time of completion as being sufficient for completion of the Work, as well as acceptance of all of the other terms and conditions of the Contract Documents.

SECTION 2
PROJECT

The project is described as:

ADMINISTRATION AND OPERATION FACILITY

The scope of this project involves demolition of 2,058.7 SF Administration Building and construction of a new 2462.3 SF, 2-story Administration Building, renovation of 851.7 SF of existing Operations Building. The work also includes site improvements including paving, landscaping, trash enclosure and site utilities.

SECTION 3
PLANS AND SPECIFICATIONS

Project shall be performed in accordance with the attached Plans and Specifications. Said Plans and Specifications including Project Plans and Specifications, District Standard Plans, and/or Greenbook Standard Specifications for Public Works Construction and any revision, amendments, or addenda thereto are attached hereto and incorporated herein as part of this Contract and referred to by reference. The work to be done must also be in accordance with the Contract Documents, which are incorporated herein and referred to by references.

SECTION 4
TIME OF COMMENCEMENT AND COMPLETION

Contractor agrees to commence the Project on the date set forth in the "Notice to Proceed" sent by District and shall diligently prosecute the work to Final Completion within two hundred and fifty (250) business days from the date set forth in the Notice to Proceed, excluding delays caused or authorized by the District as set forth in Section 5.3.3 of the General Conditions included in these Contract Documents. The time for completion includes five (5) days determined by District likely to be inclement weather when Contractor will be unable to work.

SECTION 5
TIME IS OF THE ESSENCE

Time is of the essence on this Contract. As required by the Contract Documents, Contractor shall prepare and obtain approval of all shop drawings, details and samples, and do all other things necessary and incidental to the prosecution of Contractor's work in conformance with an approved construction progress schedule. Contractor shall coordinate the work covered by this Contract with that of all other

Contractors, subcontractors and of the District, in a manner that will facilitate the efficient completion of the entire work in accordance with Section 4 herein of this Construction Agreement. District shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time or order in which the various portions of the work shall be installed or the priority of the work of other subcontractors, and in general, all matters representing the timely and orderly conduct of the work of Contractor on the premises.

SECTION 6

LIQUIDATED DAMAGES FOR DELAY

The parties agree that if the total work called for under this Contract, in all parts and requirements, is not completed within the time specified in Section 4 above, plus the allowance made for delays or extensions authorized under Section 5 of the General Conditions, the District will sustain damage that would be extremely difficult and impracticable to ascertain. The parties therefore agree that Contractor will pay to District the sum of **One Thousand Dollars (\$1000)** per day for each and every calendar day during which completion of the project is so delayed.

Contractor agrees to pay such Liquidated Damages and further agrees that District may offset the amount of Liquidated Damages from any monies due or that may become due Contractor under this Contract.

SECTION 7

CONTRACT PRICE

District agrees to pay and the Contractor agrees to accept as full consideration for the faithful performance of this Contract, subject to any subsequent additions or deductions as provided in approved Change Orders, the sum of **[Bid price] (\$XXX,XXX)** as itemized on the attached Exhibit "A". Payments shall be made in accordance with provisions in Section 7 of the General Conditions.

SECTION 8

SUBSTITUTION OF SECURITIES IN LIEU OF RETENTION OF FUNDS

Pursuant to California Public Contracts Code Section 22300, the Contractor will be entitled to post approved securities with the District or an approved financial institution in order to have the District release funds retained by the District to insure performance of the Contract. Contractor shall be required to execute an addendum to this Contract in a form required by District, together with escrow instructions and any other documents in order to effect this substitution.

SECTION 9
COMPLETION

Within ten (10) days after the contract completion date of the Project, Contractor shall file with the District's ARCHITECT its affidavit stating that all workers and persons have been paid in full, and that there are no claims outstanding against the Project for either labor or material, except those certain items, if any, to be set forth in an affidavit covering disputed claims, or items in connection with Stop Notices that have been filed under the provisions of the statutes of the State of California. District may require affidavits or certificates of payment and/or releases from any subcontractor, laborer or material Supplier.

SECTION 10
SURETY BONDS

Contractor shall, before entering upon the performance of this Agreement, furnish bonds approved by the District Counsel; one in the amount of one-hundred percent (100%) of the Contract price Bid, to guarantee the faithful performance of the work and one-year warranties required under Section 13 of this Construction Agreement, and the other in the amount of one-hundred percent (100%) of the Contract Price to guarantee payment of all claims for labor and materials furnished. This Contract shall not become effective until such Bonds are supplied to and approved by the District. The amount of said Bonds shall be adjusted to include any increases in the value of the Contract Price and any time extensions granted under this Contract.

SECTION 11
INSURANCE

Minimum Scope and Limits of Insurance: Contractor shall procure and maintain for the duration of the contract, *and for five (5) years thereafter*, insurance against claims for injuries or death to persons or damages to property that may arise from, or in connection with, the performance of the work hereunder by the Contractor, his/her agents, representatives, employees, or subcontractors.

Coverage – Coverage shall be at least as broad as the following:

1. **General Liability – Commercial General Liability (CGL)** – Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 00 01) including products and completed operations, property damage, bodily injury, personal and advertising injury with limit of at least five million dollars (\$5,000,000) per occurrence or the full per occurrence limits of the policies available, whichever is greater. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (coverage as broad as the ISO CG 25 03, or ISO CG 25 04 endorsement provided to

Channel Islands Beach Community Services District or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability** – Insurance Services Office (ISO) Business Auto Coverage (Form CA 00 01), covering Symbol 1 (any auto) with limit of one million dollars (\$1,000,000) for bodily injury and property damage each accident.
3. **Workers' Compensation Insurance** – The Contractor shall provide workers' compensation coverage as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than one million dollars (\$1,000,000) per accident for bodily injury or disease. **Waiver of Subrogation** (also known as Transfer of Rights of Recovery Against Others to Us): The Contractor hereby agrees to waive rights of subrogation to obtain endorsement necessary to affect this waiver of subrogation in favor of the Channel Islands Beach Community Services District, its directors, officers, employees, and authorized volunteers, for losses paid under the terms of this coverage which arise from work performed by the Named Insured for the Channel Islands Beach Community Services District; this provision applies regardless of whether or not the Channel Islands Beach Community Services District has received a waiver of subrogation from the insurer.
4. **Contractor's Pollution Liability** – (optional: if project involves environmental hazards) with limits no less than five million dollars (\$5,000,000) per occurrence or claim, and ten million dollars (\$10,000,000) policy aggregate.

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

Other Required Provisions – The Commercial General Liability policy and Contractors Pollution (if necessary) are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured Status:** Channel Islands Beach Community Services District, its directors, officers, employees, and authorized volunteers are to be given insured status (at least as broad as ISO Form CG 20 10 11 85 or, if not available, through the addition of **both** CG 20 10 10 01 and CG 20 37 10 01, with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance.
2. **Primary Coverage:** For any claims related to this project, the Contractor's insurance coverage shall be primary at least as broad as ISO CG 20 01 04 13

as respects to the Channel Islands Beach Community Services District, its directors, officers, employees, and authorized volunteers. Any insurance or self-insurance maintained by the Channel Islands Beach Community Services District, its directors, officers, employees, and authorized volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Contractor shall name the following entities as additional insured:

Contractor shall name the Channel Islands Beach Community Services District [insert District if applicable], its directors, council members, officers, Architects, employees, and agents as additional insured on Contractor's general liability insurance as described above.

Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Channel Islands Beach Community Services District.

Acceptability of Insurers – Insurance is to be placed with insurers having a current A.M. Best rating of no less than A: VII or equivalent, or as otherwise approved by Channel Islands Beach Community Services District.

The Contractor agrees and he/she will comply with such provisions before commencing work. All of the insurance shall be provided on policy forms and through companies satisfactory to Channel Islands Beach Community Services District. The Channel Islands Beach Community Services District reserves the right to obtain complete, certified copies of all required insurance policies, including the policy declarations page with endorsement number. Failure to continually satisfy the Insurance requirements is a material breach of contract.

Responsibility for Work – Until the completion and final acceptance by Channel Islands Beach Community Services District of all the work under and implied by this agreement, the work shall be under the Contractor's responsible care and charge. The Contractor shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by causes of any nature whatsoever.

Deductibles and Self-Insured Retentions – Insurance deductibles or self-insured retentions must be declared by the Contractor, and approved by the Channel Islands Beach Community Services District. At the election of Channel Islands Beach Community Services District, the Contractor shall either cause the insurer to reduce or eliminate such self-insured retentions as respects the Channel Islands Beach Community Services District, its directors, officers, employees, and authorized volunteers or the Contractor shall provide a financial guarantee satisfactory to the Channel Islands Beach Community Services District guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may

be satisfied by either the named insured or the Channel Islands Beach Community Services District.

Verification of Coverage – Evidences of Insurance – Contractor shall furnish the Channel Islands Beach Community Services District with copies of certificates and amendatory endorsements effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the Channel Islands Beach Community Services District before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Channel Islands Beach Community Services District reserves the right to require complete, certified copies of all required insurance policies, including policy Declaration pages and Endorsement pages, required by these specifications, at any time. Failure to continually satisfy the Insurance requirements is a material breach of contract.

Continuation of Coverage – The Contractor shall, upon demand of Channel Islands Beach Community Services District deliver evidence of coverage showing continuation of coverage for at least five (5) years after completion of the project. Contractor further waives all rights of subrogation under this agreement. When any of the required coverages expire during the term of this agreement, the Contractor shall deliver the renewal certificate(s) including the general liability additional insured endorsement and evidence of waiver of rights of subrogation against Channel Islands Beach Community Services District (if builder's risk insurance is applicable) to Channel Islands Beach Community Services District at least ten (10) days prior to the expiration date.

Sub-Contractors – In the event that the Contractor employs other Contractors (sub-contractors) as part of the work covered by this agreement, it shall be the Contractor's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above (via as broad as ISO CG 20 38 04 13). The Contractor shall, upon demand of Channel Islands Beach Community Services District, deliver to Channel Islands Beach Community Services District copies such policy or policies of insurance and the receipts for payment of premiums thereon.

SECTION 12

RISK AND INDEMNIFICATION

Indemnification and Agreement to Defend and Hold Harmless

To the extent permitted by law, Contractor shall defend, indemnify, and hold harmless Channel Islands Beach Community Services District, its directors, officers, employees, and authorized agents from and against all claims, damages, losses and expenses, including reasonable attorneys' fees and costs to defend arising out of the performance of the work described herein, and caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone whose acts any of them may be liable except where caused by the active negligence, sole negligence, or willful misconduct of the Channel Islands

Beach Community Services District, its directors, officers, employees and authorized agents.

SECTION 13

WARRANTY

The Contractor agrees to perform all work under this Contract in accordance with the Contract Documents.

Contractor warrants to make, at its own expense, all repairs or replacements necessitated by defects in materials or workmanship, supplied under terms of this Contract, and pay for any damage to other works resulting from such defects, which become evident within one (1) year after the date of Final Acceptance of the work by the Board of Directors (and filing the Notice of Completion) as described in Section 6.4 of the General Conditions or within such longer period of time as described in District Standard Specification 01 78 36 or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents. This warranty period shall apply to the entire Work completed under this Contract with the exception of those portions of Work occupied and used by the District pursuant to Section 6.2.3 of the General Conditions, Use Prior to Completion.

Contractor further assumes responsibility for a guarantee for all work and materials provided by any subcontractor or manufacturers of packaged equipment components. The Contractor also agrees to hold the District harmless from liability of any kind arising from damage due to said defects. The Contractor shall make all repairs and replacements promptly upon receipt of written demand for the same from the District. If the Contractor fails to make the repairs and replacements promptly, the District may do the work, and the Contractor and its labor and materials bond insurer per Section 10 of the Construction Agreement shall be liable for the cost thereof.

All repairs and replacements by the Contractor during the warranty period shall carry a one (1) year warranty on those items from the date the defective materials or workmanship was corrected. District may, at its election, require extension of the material bond to cover the additional warranty period. This obligation is in addition to any liability imposed by law and is not intended to waive any other rights the District may have.

The Contractor's warranty shall cover and include any work installed on property not owned by the District, whether public or private, and shall include the repair of damage to improvements and existing conditions on such other property caused by the settlement or otherwise resulting from the Contractor's operations unless the owner of such other property shall in writing release the District from liability and responsibility for work or damage on such other property.

As a precedent to final inspection, the Contractor shall deliver to the District all the manufacturers' warranties for equipment, materials and machinery installed as required by the Contract, with the District named as a beneficiary. In addition, for all equipment, materials and machinery bearing a manufacturer's warranty that extends for a longer period of time than the Contractor's warranty, the Contractor shall secure and deliver the warranties to the District in the same manner and shall ensure that the District is named as a beneficiary.

The Contractor's obligations under this clause are in addition to the Contractor's other express or implied assurances under this Contract or state law and in no way diminish any other basis of responsibility for faulty materials, equipment or work.

SECTION 14

SAFETY

In the performance of this contract, the Contractor shall comply with all applicable federal, state and local statutory and regulatory requirements including, but not limited to California Department of Industrial Relations (Cal/OSHA) regulations; and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act, related to their scope of work and operations. In case of conflict in regulations, the most stringent shall apply. The Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. Safety precautions shall include, but shall not be limited to: adequate life protection and life-saving equipment; adequate illumination; instructions in accident prevention for all employees, such as the use of machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection, and other safety devices; equipment and wearing apparel as are necessary, or lawfully required, to prevent accidents, injuries, or illnesses (including, but not limited to, exposure to the Coccidioides fungus and Valley Fever); and adequate facilities for the proper inspection and maintenance of all safety measures.

Contractor must obtain all applicable Division of Occupational Safety and Health (CAL-OSHA) permit(s) and others required by California Labor Code and California Government Code, prior to the initiation of any practices, work, method, operation, or process related to the work covered in the contract. Permits required by governmental authorities will be obtained at Contractor's expense.

It is a condition of this contract, and shall be made a condition of each subcontract which the Contractor enters into pursuant to this contract, that the Contractor, and any subcontractor, shall not permit any employee in performance of the contract to work in surroundings or under conditions that are unsanitary, hazardous or dangerous to his/her health or safety, as determined under Cal/OSHA health and safety standards.

The Contractor shall be responsible for the safeguarding of all utilities. At least two (2) working days before beginning work, the Contractor shall call the Underground Service Alert (USA) in order to determine the location of sub-structures. The Contractor shall immediately notify Channel Islands Beach Community Services District and the utility owner if he/she disturbs, disconnects, or damages any utility.

In accordance with Section 6705 of the California Labor Code, the Contractor shall submit to Channel Islands Beach Community Services District specific plans to show details of provisions for worker protection from caving ground during excavations of trenches of five feet (5') or more in depth. The excavation/trench safety plan shall be submitted to, and accepted by, Channel Islands Beach Community Services District prior to starting excavation. The trench safety plan shall have details showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground. If such a plan varies from the shoring system standards established by the Construction Safety Orders of the California Department of Industrial Relations (Cal/OSHA), the plan shall be prepared by a California registered civil, or structural, Architect. As part of the plan, a note shall be included stating that the registered civil or structural Engineer certifies that the plan complies with the Cal/OSHA Construction Safety Orders, or that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping or other provisions of the Safety Orders. In no event shall the Contractor use a shoring, sloping, or protective system less effective than that required by said Construction Safety Orders. Submission of this plan in no way relieves the Contractor of the requirement to maintain safety in all areas. If excavations or trench work requiring a Cal/OSHA permit are to be undertaken, the Contractor shall submit his/her permit with the excavation/trench work safety plan to Channel Islands Beach Community Services District before work begins.

SECTION 15 ASSIGNMENT

No assignment by the Contractor of this Contract or any part hereof, or of funds to be received hereunder, will be recognized by the District unless such assignment has had prior written approval and consent of the District and the Surety.

SECTION 16 ATTORNEYS' FEES

If any action at law or in equity is necessary to enforce or interpret the terms of this Contract, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which it may be entitled. If any action is brought against the Contractor or any subcontractor to enforce a Stop Notice or Notice to Withhold, which names the District as a party to said action, the District shall be entitled to reasonable attorneys' fees, costs and necessary disbursements arising out of the defense of such action by the District. The District

shall be entitled to deduct its costs for any Stop Notice filed, whether court action is involved or not.

SECTION 17
COUNTERPARTS

This Agreement may be executed in counterparts, including by facsimile or electronic transmission, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and all such counterparts together shall constitute one and the same instrument.

SECTION 18
NOTICES

Any notice required or permitted under this Contract may be given by ordinary mail at the address set forth below. Any party whose address changes shall notify the other party in writing.

TO DISTRICT: Street and Mailing Address:
Channel Islands Beach Community Services District
353 Santa Monica Drive
Channel Islands Beach, CA 93035

TO CONTRACTOR: [Contractor]
 [address]
 [city, state zip]

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date first hereinabove written.

CONTRACTOR: _____

By _____

Its _____

Print Name _____

Contractor's State License No. _____

DISTRICT:

CHANNEL ISLANDS BEACH COMMUNITY SERVICES DISTRICT

By _____
General Manager

**SUPPLEMENTAL AGREEMENT FOR SUBSTITUTION OF
SECURITIES FOR FUNDS WITHHELD
PURSUANT TO CONSTRUCTION CONTRACT**

THIS SUPPLEMENTAL AGREEMENT is made and entered into, to be effective, this _____ day of _____, 2023, by and between: CHANNEL ISLANDS BEACH COMMUNITY SERVICES DISTRICT, (hereinafter referred to as "District"), AND _____, (hereinafter referred to as "Contractor"). The parties have heretofore entered into a contract dated _____, for the construction of _____ by the Contractor (hereinafter "Contract"), and this Supplemental Agreement shall be deemed part of said Contract as of the date hereof.

This Supplemental Agreement is made and entered into pursuant to the provisions of California Public Contracts Code Section 22300. Its purpose is to provide for the release to Contractor of funds that District would otherwise withhold from progress payments due to the Contractor.

District and Contractor agree as follows:

1. The funds that District has withheld or is to withhold from progress payments to Contractor under the terms of the Contract if the Contractor deposits with District or with a state or federally-chartered bank, as Escrow Agent, securities as described in California Government Code Section 16430, or certificates of deposit (hereinafter "CDs"), under the following conditions:
 - A. Any CDs deposited with District or with an escrow agent must be issued by banks authorized to do business in California that have its accounts insured by the Federal Deposit Insurance Corporation, or by Savings and Loan Associations authorized to transact business in California that have its accounts insured by the Savings Association Insurance Fund. Securities or CDs shall be in bearer form or be unconditionally endorsed to District.
 - B. District shall have thirty (30) days from the receipt of this Supplemental Agreement, properly completed and executed by Contractor, and if applicable, accompanied by a fully executed Escrow Agreement satisfactory to District, to approve the Supplemental Agreement and Escrow Agreement and to determine the value of the securities and/or CDs to be deposited.

- C. District shall release to Contractor, at the time of each progress payment, funds equivalent to the amount that would otherwise have been withheld therefrom ("retention funds") until the total of the "retention funds" released equals the value, as established by District, of the securities and/or CDs then on deposit. In the event that District determines that the value of the securities and/or CDs is less than the sum of the "retention funds" that would have been withheld previously, together with the amounts that would otherwise be retained from the next progress payment, District shall so notify Contractor, and Contractor shall have five (5) days from the date of such notice to deposit additional securities and/or CDs so that the amounts on deposit equal or exceed the total "retention funds" previously withheld and to be withheld under the Contract. During said five-day period, no progress payments shall be made. If Contractor deposits such additional securities and/or CDs, no funds shall be withheld from the next progress payment pursuant to the terms of this Supplemental Agreement. If Contractor fails to deposit such additional securities and/or CDs, funds shall be withheld pursuant to the Contract.
- D. District may, at any time, sell or otherwise convert to cash such portions or all of the securities and/or CDs as in District's discretion may be necessary to cover any of the purposes set forth in the Contract relative to fulfillment of the Contract, and defaults by the Contractor, including but not limited to, termination of the Contractor's control over the work, stop notices filed pursuant to law and assessment of liquidated damages. The rights of District to the securities and/or CDs shall be superior to any other lien or claim of lien. In addition, any Escrow Agreements entered into by Contractor pursuant to this Supplemental Agreement must provide for the conversion to cash upon District's demand, as described in this Subsection.
- E. Contractor shall pay all costs and expenses, including reasonable attorneys' fees incurred by District, related to or arising out of this Supplemental Agreement or any Escrow Agreement, and Contractor shall also pay any expenses or penalties incurred in the conversion or sale of any securities and/or CDs.
- F. Except as otherwise provided, Contractor shall be the beneficial owner of the securities and/or CDs, and Contractor is entitled to any and all interest that may be paid thereon.

BOND NO. _____

FAITHFUL PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the Channel Islands Beach Community Services District, has awarded to

_____, (hereinafter designated as the "Principal"),
a Contract for construction of:

ADMINISTRATION AND OPERATION FACILITY

Contract No.: CI 401; and

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

NOW, THEREFORE, we, _____, as
Principal, and _____, as Surety, are held and firmly
bound unto the Channel Islands Beach Community Services District (hereinafter
called "Owner"), in the sum of _____

DOLLARS (\$_____) this amount being not less than one-
hundred percent (100%) of the total bid price of the Contract awarded by Owner to the
Principal, lawful money of the United States of America, for payment of which sum
well and truly to be made, we bind ourselves, our heirs, executors, administrators and
successors, jointly and severally, firmly by these presents. In addition to the total sum
of the Faithful Performance Bond provided above, Surety agrees to pay all reasonable
attorneys' fees incurred by Owner in any action to enforce Surety's obligations under
this Faithful Performance Bond.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby
bonded Principal, its heirs, executors, administrators, successors, or assigns, shall in
all things stand to and abide by and well and truly keep and perform all the
undertakings, terms, covenants, conditions and agreements in the said Contract and
any alteration thereof, made as therein provided, including, but not limited to, the
provisions regarding Contract duration and liquidated damages, all within the time and
in the manner therein designated in all respects according to their true intent and
meaning, then this obligation shall become null and void; otherwise it shall be and
remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract, the
above obligation shall hold good for a period of one (1) year after the completion of

the Work and its acceptance by Owner, during which time if Principal shall fail to make full, complete, and satisfactory repair and replacements and totally protect the Owner from loss or damage made evident during the period of one (1) year from the date of acceptance of the Work, and resulting from or caused by defective materials or faulty workmanship, the above obligation in penal sum thereof shall remain in full force and effect. Notwithstanding anything in this paragraph to the contrary, the obligation of Surety hereunder shall continue so long as any obligation of Principal remains.

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

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety named therein, on the _____ day of _____, 2023, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(Name) _____
Principal
(Seal)
Name: _____
Title: _____
Signature: _____
(Must be Notarized – Attach Original Acknowledgment)

(Name) _____
Surety
(Seal)
Name: _____
Title: _____
Signature: _____
(Must be Notarized – Attach Original Acknowledgment)

BOND NO. _____

**PAYMENT BOND
(Labor and Materials)**

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the Channel Islands Beach Community Services District, has awarded to

_____, (hereinafter designated as the "Principal"),
a Contract for construction of:

ADMINISTRATION AND OPERATION FACILITY

Contract No.: CI 401; and

WHEREAS, said Principal is required under the terms of said Contract to furnish a bond for the payment of labor and materials, equipment or other supplies in connection with the performance of said Contract,

NOW, THEREFORE, we, _____, as
Principal, and _____, as Surety, are held and firmly
bound unto the Channel Islands beach Community Services District (hereinafter called
"Owner"), in the sum of _____

DOLLARS(\$ _____) this amount being not less than one-
hundred percent (100%) of the total bid price of the Contract awarded by Owner to the
Principal), lawful money of the United States of America, for payment of which sum
well and truly to be made, we bind ourselves, our heirs, executors, administrators and
successors, jointly and severally, firmly by these presents.

If said Principal, or any subcontractor of said Principal, fails to pay for any materials, equipment, or other supplies, or for rental of same, used in connection with the performance of Work contracted to be done, or for amounts due under applicable State law for any work or labor thereon, or for amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department pursuant to § 13020 of the Unemployment Insurance Code, said Surety will pay the same in the amount not exceeding the sum specified above, and, in the event suit is brought upon this bond, a reasonable attorney's fee to be fixed by the court. This bond is conditioned for the payment in full of the claims of all claimants and shall inure to the benefit of Owner and of any persons, companies or corporations, or their respective assigns, entitled to file claims under applicable State law, including, but not limited to, California Civil Code § 9100.

PROVIDED, that no alterations in the work to be done or the materials to be furnished, or changes in the time of completion, which may be made pursuant to the terms of said Contract, shall in any way release either said Principal or said Surety thereunder, and no extensions of time granted under the provision of said Contract shall release either said Principal or said Surety, and notice of any non-material alterations or extension of the Contract is hereby waived by said Surety. As used herein, the word "material" shall mean any change in excess of twenty percent (20%) of the Contract Price or Contract Time.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety named therein, on the _____ day of _____, 2023, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(Name) _____
Principal
(Seal)
Name: _____
Title: _____
Signature: _____
(Must be Notarized – Attach Original Acknowledgment)

(Name) _____
Surety
(Seal)
Name: _____
Title: _____
Signature: _____
(Must be Notarized – Attach Original Acknowledgment)

PART 3

CONDITIONS OF CONTRACT

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GENERAL CONDITIONS

DEFINITIONS

The following capitalized terms are used in the General Conditions or other Contract Documents. Their intent and meaning shall be as follows. Certain other capitalized terms are included in this IFB and are defined within the Section of the document to which they refer to.

Addenda/Addendum – means additional information not included in the original IFB which may contain additional specifications, provisions, standard forms or other information, especially pricing information.

ARCHITECT – District's Architect or his/her designee or District's appointed representative for the Project.

As-Builts – A copy of the Plans used by the Contractor to record changes to the Work as specified in the Contract Documents issued by District for the Project. As-Builts shall be used to create Record Drawings.

Bid – A form, or forms, completed in their entirety stating the Bidder's offer to both furnish all materials and to perform all Work required under the Contract. Bid may also be referred to as a Proposal.

Bidder – Any individual, firm, corporation, partnership, joint venture, or other combination thereof submitting a Bid for Work contemplated. A Bidder may act directly or through a duly authorized representative.

Bid Bond – The cash, certified check or Bidder's Surety bond executed by an admitted Surety insurer accompanying the Bid as a guaranty that the Bidder, if awarded a Contract, will enter into a Contract with District for the performance of the Work required under the Contracts Documents.

Board of Directors (Board) – The Board of Directors of the Channel Islands Beach Community Services District.

Bond – Bid Bond, Faithful Performance Bond, or Payment Bond or other instrument of security.

Business Days – District business days are Monday through Friday, 8 am to 4:30 pm or business hours as specified in related City, County or other agency permits required to perform Work.

Change Order – A written order by the District's ARCHITECT, made bilaterally by District and Contractor or unilaterally by District, which covers alterations, changes, additions, or deletions to the Contract Documents or the Work in any manner which are necessary for the proper completion of the Work and which may result in adjustments to the Contract price, period of performance, or both.

Claim – A written statement by the Contractor requesting additional time and/or money from District arising out of acts or omissions of District and/or differing conditions during the performance of the Contract which the Contractor could not have reasonably anticipated at the time of entering into the Contract, and which is submitted in response to District's rejection of, or failure to approve, Contractor's Request for Change, or otherwise issue a Change Order modifying the Contract, adjusting the Contract price and/or period of performance in a manner consistent with that which the Contractor believes is appropriate. The Claim shall be submitted in the manner and in the time consistent with the requirements set forth in detail herein.

Code – Codes of the State of California as well as any other federal or local law, statute, ordinance, rule or regulation.

Consultant – Any consultant retained by District or its (sub)consultant(s) that provides design or construction phase services for support of this Project.

Contract / Contract Documents – The following documents constitute a part of and comprise the Contract/Contract Documents: Notice Inviting Bids, Instructions to Bidders, Bid Form/Contractor's Bid, the Construction Agreement, any Change Orders or addenda, General Conditions, Supplemental Conditions, Project Plans and Specifications, District Standard Specifications and Standard Plans (for Water, Sewer, and Recycled Water Facilities), and/or Greenbook Standard Specifications for Public Works Construction.

Contractor – The individual, partnership, joint venture, corporation, or other combination thereof, identified as such in the Contract, and referred to throughout the Contract Documents as if singular in number and who directly Contracts with District. The term "Contractor" means the Contractor or its authorized representative.

Contract Price – The total amount of money for which the Contract is awarded, as modified by any Change Orders.

Days – Unless otherwise specifically stated, the term "days" will be understood to mean consecutive calendar days.

Drawings – See Plans.

District – Channel Islands Beach Community Services District

ENGINEER – District's Director of Engineering or his/her designee or District's appointed representative for the Project.

Extra Work – New or unforeseen work, or added work of a different character or function and for which no basis for payment is prescribed in the Contract Documents; or that involves revisions of the details of the Work in such manner as to render inequitable payment under items upon which the Contractor Bid in its Bid; or that work to be done under "stipulated prices" as given in the Schedule of Work Items in the Bid Form.

Faithful Performance Bond – A bond required from the Contractor at the time of execution of a contract which guarantees faithful performance of the Contract by the Contractor.

Field Order – Written notice by District to Contractor of immediate correction of the Work.

Final Acceptance – Action taken by District Board of Directors accepting the Work as fully completed as evidenced by Board authorization to ENGINEER/ ARCHITECT to file a Notice of Completion for the Project.

Final Completion – Action taken by ENGINEER/ ARCHITECT certifying that the Work is fully completed under the Contract Documents prior to District's Final Acceptance of the Work.

Final Inspection – ENGINEER / ARCHITECT will inspect Work for the purposes of ascertaining that the Work has been fully completed in accordance with the requirements of the Contract Documents.

General Conditions – Legal and contractual instructions to the Contractor setting forth both the Contractor and District responsibilities for business related activities pertaining to the contract. The term "General Conditions" used in the Specifications shall be interpreted to refer to the General Conditions of the Contract Documents.

General Manager – The individual designated by District as its Chief Executive Officer and agent.

Inspector – The individual(s) designated by the District as the field project representative with delegated authority to enforce the requirements of the Contract Documents, subject to the approval of the General Manager.

Invitation to Bid – The following documents constitute the Invitation to Bid: Also referred to as Contract Documents including the Notice Inviting Bids, Instructions to Bidders, Bid Form/Contractor's Bid, the Construction Agreement, any Change Orders or addenda, General Conditions, Supplemental General Conditions, Project Plans and Specifications, District Standard Specifications and Standard Plans (for Water, Sewer, and Recycled Water Facilities), and/or Greenbook Standard Specifications for Public Works Construction.

Law – Any federal, state or local law, statute, ordinance, rule, regulation or code.

Liquidated Damages – The amount the Contractor shall pay to District, as determined by rates and amounts as fixed and agreed in the Contract Documents, due to the Contractor's failure to complete the Work as scheduled or to submit and/or update the schedule within the time specified, or for non-compliance with other specified requirements.

Notice Inviting Bids – A public notice fixing the date and location for the receipt of Bids that is part of the IFB/Contract Documents.

Notice to Proceed – A written notice given by District to the Contractor fixing the date on which the time for performance under the Contract will commence.

Or Equal – Any product, equipment, material, supply, or service which is proposed by the Contractor for use in the Work, which is equal to or better than, and is as suitable as the product, material, equipment, supply or service specified in the Contract Documents as to function, performance, reliability, quality, and general configuration.

Owner – Channel Islands Beach Community Services District

Payment Bond – A bond required from a Contractor to secure payment to Subcontractors, laborers, mechanics and Suppliers employed on the Work of the Contract.

Plans – The part of the Contract Documents consisting of the illustrative plans, profiles, typical and general cross-sections, working drawings, or exact reproductions thereof, which show the location, character, dimensions and details of the Work to be done. Refers to all plans relating to the Project including Project Plans and Specifications which are prepared specifically for the Project and the District's Standard Specifications and Standard Plans for Water Sewer, Recycled Water Facilities.

Plans and Specifications – Refers to **all** plans and specifications relating to the Project including Project Plans and Specifications which are prepared specifically for the Project and the District's Standard Specifications and Standard Plans for Water, Sewer, Recycled Water Facilities, and/or Greenbook Standard Specifications for Public Works Construction.

Project(s) – The entire scope of Work covered by all Contract Documents.

Project Plans and Specifications – Refers to plans, specifications and technical requirements prepared specifically for the Project that are **either different than, more stringent than,** or are **not** addressed in, the District's Standard Specifications and Standard Plans for Water, Sewer, and Recycled Facilities, and/or Greenbook Standard Specifications for Public Works Construction.

Proposal – A standard form supplied by District, which when completed in its entirety and executed, shall constitute a Bid from Contractor.

Record Drawings – Construction drawings from completed past projects maintained by District as a record of how facilities were actually constructed. These are generally created from the original Plans, addendum and Change Order drawings, and the Contractor's As-Built copy of the construction plans.

Schedule of Work Items – A list of Bid item(s) included in the Bid Form submitted by Contractor including the approximate quantities, item descriptions, total price per item, and total amount of Bid.

Specifications – Elements of the Contract Documents which describe in writing the commercial and technical requirements and technical specifications necessary to construct the Project. Refers to all specifications related to the Project including the Project Plans and Specifications, Standard Specifications and Standard Plans for Water, Sewer, and Recycled Water Facilities, and/or Greenbook Standard Specifications for Public Works Construction.

Subcontractor – One who is licensed pursuant to California Business and Professions Code, Section 7000 et. seq., and who Contracts directly with the prime Contractor or with another Subcontractor to perform some part of the Work. A Subcontractor does not have any direct contract with District related to the Work.

Supplemental Agreements – Written agreements between District and the Contractor, covering schedules, drawings, instructions, alterations, amendments and extensions to the Contract including addenda and Change Orders.

Supplier – An individual, organization, or firm who is not required for the purposes of the Work to be licensed pursuant to California Business and Professions Code as a Contractor or Subcontractor, within the meanings of those terms as defined herein above, who provides equipment and/or materials for the Work to the Contractor or a Subcontractor, including that fabricated to a special design, but who does not perform labor at the site except for labor or labor supervision required by some manufacturers as part of their equipment installation for warranty or other purposes or for operation of rented equipment, and only to the extent such labor or labor supervision is exempted from licensing requirements under the California Business and Professions Code, including but not limited to Section 7040 et seq. The term "Supplier" also includes fabricator, manufacturer, or vendor.

Surety or Sureties – The bondsmen or party or parties who guarantee the fulfillment of the Contract, or a portion of the Contract including payments issued by Contractor, by bond and whose signatures are affixed to the bond.

Terms – The terms "Approved", "Directed", "Satisfactory", "Accepted", "Acceptable", "Proper", "Required", "Necessary", and "Or Equal" mean as approved, directed, satisfactory, accepted, acceptable, proper, required, necessary, and Or Equal, in the opinion of the ARCHITECT.

Unit Price – The amount stated in the Contractor's Bid for a single unit of an element of the Work.

Work – All the Work specified in the Contract Documents necessary to complete the requirements of the Contract, including the furnishing of all labor and materials. Also, the completed construction or parts thereof required to be provided under the Contract Documents, including all materials, equipment, and supplies incorporated or to be incorporated in the construction.

Work Days – Work Days include the District's Business Days and excludes Saturday, Sunday, and National Holidays.

SECTION 1. CONTRACT

1.1 CONTRACT PROVISIONS

1.1.1 The Contract Documents, as defined above, form the Contract between the District and the Contractor. The Contract represents the entire integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. These General Conditions are a part of the Contract Documents. The Contract may be amended or modified only as set forth in the Contract Documents. The Contract Documents shall not be construed to create a contractual relationship of any kind between the District and any other Contractor or subcontractor or Supplier of any tier other than the District and Contractor.

1.1.2 Contractor acknowledges that it has read every clause in the Contract Documents, has examined the location where the Work is to be done; has made all inquiries and investigations necessary to enable it to understand thoroughly the intent of all parts of the Contract Documents, and the nature of the Work; and agrees that it will not make any claim for compensation, extension of time or other allowance of any sort, based upon or arising out of any alleged misunderstanding by it of any part of the Contract Documents.

1.1.3 Contractor shall, for the price Bid, furnish all supervision, labor, materials, transportation and equipment necessary to execute the Work in every respect in a thorough, skillful, workmanlike manner in accordance with the Contract Documents and to the satisfaction of the District. All work shall, during its progress and until its completion, conform to the lines, elevations and grades shown on said plans and profiles.

1.1.4 Whenever a reference is made to any portion of this Contract or any other applicable law or ordinance, the reference applies to all existing and future amendments and additions.

1.1.5 The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intent of the Contract Documents is to include all work necessary for the completion of the Contract. The Contractor shall perform all work in conformance to the Contract Documents unless otherwise directed in writing by the ARCHITECT per the General Conditions, Section 5.3 – Change Orders.

1.2 ORDER OF PRECEDENCE

If there is a conflict between any of the documents referenced in or required under this Contract, the order of precedence in controlling the Work shall be:

1. Permits from outside agencies required by law and applicable codes or laws
2. Change Orders
3. Addenda
4. Construction Agreement
5. Supplemental Conditions
6. Project Plans and Specifications (Project Manual)
7. General Conditions
8. District's Standard Specifications and Standard Drawings (for Water, Sewer, and Recycled Water Facilities)

9. Greenbook Standard Specifications for Public Works Construction (most recent edition and supplements adopted as of the date of the advertisement of the bid)

Any combination of the Contract and other of above mentioned documents may be provided to Contractor as Contract Documents.

1.3 PLANS AND SPECIFICATIONS

1.3.1 All sections of the Specifications shall be read and interpreted as constituting a whole and whatever is specified in one section shall be construed as applying to all sections.

1.3.2 The division of the Specifications into a number of sections, paragraphs, or articles is for convenience only, and no other construction or interpretations shall be made. In this respect, no section of the Specifications is written for an individualized trade, occupation or profession.

1.3.3 The Plans, together with the Specifications, will govern the Work to be done. Anything mentioned in these Specifications and not shown on the Plans, or shown on the Plans and not mentioned in these Specifications, shall be of like effect as though shown or mentioned in both. The Contractor shall perform all activities at no extra cost to the District that are reasonably inferable from the Contract Documents as being necessary to produce and/or achieve the intended results.

1.3.4 The District may furnish from time to time such plans, detail, profiles and information as may be considered necessary for the Contractor's guidance or clarification in addition to those provided in the Contract Documents and shall become a portion of the Plans and Specifications. In cases where the Work or any portion thereof is to be performed in accordance with drawings, specifications or lists of data submitted by the Contractor and approved by the District, such approved drawings, submittals, etc., shall become portions of the Plans and Specifications regarding the specific matters to which such approval applies. The Contractor shall be solely responsible for the correctness of the measurements and other essential information submitted by it and for the correlation of the various portions and features of the Work which are or may be affected by such measurements and information.

1.3.5 Any change required by the District in the drawings, submittals, etc., submitted for approval by the Contractor, shall be considered as necessary in order to comply with the requirements of the Plans and Specifications, and shall not be the basis of any claim for extra compensation over and above the Bid price for the Work, except where changes involving Extra Work are expressly authorized and ordered in accordance with the section of the Contract Documents relating to Change Orders.

1.3.6 A copy of the Plans and Specifications shall be kept upon the Work site at all times during its progress and access shall at all times be accorded the ARCHITECT.

1.4 OWNERSHIP OF PLANS, SPECIFICATIONS, SHOP DRAWINGS. The Contract Documents including shop drawings and submittals were prepared for the Work of this Contract only and are the sole property of the District. No part of the Contract Documents shall be used by the Contractor for any other construction or for any other purpose except with the written consent of the District. Any unauthorized use of the Contract Documents is at the sole risk and liability of the user.

1.5 INSURANCE. The Contractor shall purchase and maintain insurance, in amounts equal to the requirements in the form and manner provided for in Section 11 of the Construction Agreement.

1.6 BONDS. The Contractor shall purchase and maintain Bonds, in amounts equal to the requirements in the form and manner provided for in Section 10 of the Construction Agreement and Sections 21, 22, and 23 of the Instructions to Bidders.

SECTION 2. DISTRICT

2.1 ADMINISTRATION OF THE CONTRACT

2.1.1 The District will administer the Contract, unless notice is given to the Contractor that a Construction Manager or like entity has been retained to administer the Contract.

2.1.2 The ARCHITECT shall serve as the agent of District and will observe the accomplishment of the Work in accordance with the provisions of the Contract. The ARCHITECT will decide any and all questions which may arise as to the interpretations of the Contract Documents, as to the quality and acceptability of materials furnished and Work performed, as to the manner of performance, and as to the rate of progress of the Work. All questions as to the acceptable performance of the Contract on the part of the Contractor shall be decided by the ARCHITECT.

2.1.3 All instructions, rulings, and decisions of the ARCHITECT shall be in writing, and shall be final and binding on the Contractor unless formal written objection is made as specified herein.

2.1.4 It is expressly agreed that the ARCHITECT shall not have the power to waive any of the obligations of the Contract Documents for the furnishing by the Contractor of good and suitable material, and for performing the Work as herein described. Failure or omission on the part of the ARCHITECT to reject defective or inferior work or materials, or the Architect's release of the Contractor from obligations to remedy the defective or inferior work, shall not imply acceptance of the Work. Upon discovery of said defective work, the Contractor shall immediately tear out, remove, and properly replace the defective work without additional compensation. Neither shall such failure or omission, nor any acceptance by the ARCHITECT, or by the Board be construed as relieving the responsibilities of the Contractor or its sureties, for a sum of money as may be needed to remove and replace, or to repair, any or all work or materials which is found to be defective or inferior. In such instance, in lieu of the recovery of said sum of money, the ARCHITECT may permit the Contractor to perform, at the Contractor's own expense, the work of removing and replacing or repairing work or materials found to be defective or inferior.

2.1.5 If, in the opinion of the ARCHITECT, Work is not being done in accordance with any applicable codes or laws or any portion of the Contract Documents, written notice as provided in Section 18 of the Construction Agreement shall be given to the Contractor or its authorized agent. Written notice to any foreman or agent in charge of any portion of the Work in the absence of the Contractor shall be considered as notice to the Contractor.

2.1.6 If in the judgment of the ARCHITECT, it is undesirable or impracticable to replace any defective or nonconforming Work, the compensation to be paid to the Contractor shall be reduced by Change Order by such amount as in the judgment of the District shall deem equitable.

2.2 **ACCESS TO SITE.** The ARCHITECT and other District officers, employees and agents, shall at all times have reasonable access to the jobsite and the Work. The Contractor shall be responsible for the safety of the District's representatives while at the job site. The ARCHITECT and other District officers, employees, and agents shall at all times have reasonable access to all places of manufacture where materials are being manufactured, produced, or fabricated for use under this Contract.

2.3 **ACCESS TO RECORDS.** The ARCHITECT and other District officers, employees, and agents, shall have reasonable access during normal business hours to Contractor's records such as payrolls, vouchers, purchase orders, etc. as the District may deem appropriate to monitor compliance with the Contract Documents.

2.4 OBSERVATION OF THE WORK

2.4.1 Inspectors employed by or on behalf of the District shall be authorized to observe all work done and all materials furnished. Such observation may extend to all or any part of the Work and to the preparation, fabrication or manufacture of the materials to be used. The Inspector is not authorized to revoke, alter or waive any requirements of the Contract Documents. The Inspector is authorized to call to the attention of the Contractor any failure of the Work or materials to conform to the Contract Documents. Inspector shall have the authority to reject materials or suspend the Work until any questions at issue can be referred to and decided by the ARCHITECT.

2.4.2 The Inspector shall, in no case, act as foreman or perform other duties for the Contractor, nor interfere with the management of the Work by the latter. Any advice that the Inspector may give the Contractor shall not be construed as binding to the ARCHITECT or in any way as releasing the Contractor from fulfilling all the terms of the Contract.

2.4.3 ARCHITECT'S observation of a method of procedure, process or system of operations of the Contractor, or failure of the ARCHITECT to warn the Contractor that the method or methods of construction adopted by it are hazardous to persons or to property, shall not relieve the Contractor of its obligations hereunder, including the obligations of indemnification of the District, nor give rise to any claims against the District.

2.5 RIGHT TO STOP WORK. If the Contractor fails to correct Work which is not in accordance with the Contract Documents or for any cause whatsoever, the District may order the Contractor to stop the Work, or any portion of the Work, until the cause for such order has been eliminated; however, the District's right to exercise this provision shall not be for the benefit of the Contractor or any other person or entity. If the District stops the Work because of conduct by the Contractor, its agents, representatives or subcontractors, no compensation in time or money shall be owed to the Contractor for such stoppage.

2.6 RIGHT TO CARRY OUT THE WORK. If the Contractor defaults or neglects to carry out Work in accordance with the Contract Documents and fails within ten (10) days or within the time specified, whichever is less, after receipt of written notice from the District to commence and continue correction of such default or neglect with diligence and promptness, the District may by any means acceptable to it, without prejudice to other remedies the District may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost or estimated cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor and/or its Surety shall pay the difference to the District.

SECTION 3. CONTRACTOR RESPONSIBILITIES

3.1 SUPERVISION

3.1.1 The Contractor shall supervise and direct the Work, using its best skill and attention, and shall determine, subject to applicable law, the means and methods to be implemented. The Contractor is at all times responsible for the Work site until Final Acceptance of the Project. The Contractor shall at all times during the performance of the Contract prosecute the Work with such labor and equipment as, in the opinion of the ARCHITECT, are appropriate to complete the different portions of the Work in the order required and within the specified time, and to secure a satisfactory quality of Work.

3.1.2 Representation on Work site. The Contractor shall at all times, while the Work is in progress, be represented at the Work site in person, or by superintendents, foremen, managers, or other duly designated and authorized representatives or agents. The work of such

representatives shall be limited to supervisory duties only. The Contractor shall not designate a subcontractor as its representative. In the event the Contractor's representative's authority is limited in any way, the Contractor shall notify the District within ten (10) days after entering into the Contract of such limitation.

3.1.3 Contractor's Representative. When a Contractor cannot be in person on the Work site during its progress, it shall designate in writing to the ARCHITECT the name of its authorized representative in charge of the Work. When a Contractor consists of a multiple entity such as, but not limited to, two or more persons, partnerships, corporations, firms or other entities, such Contractor shall designate in writing to the ARCHITECT the name of the authorized representative in charge of the Work and the Work site.

3.2 MATERIALS

3.2.1 All materials shall be new and of the specified quality and fully equal to samples, where samples are required or requested. The Contractor shall furnish to the ARCHITECT for review or test, whenever requested and free of charge, samples of all materials proposed to be used in the Work. It shall also submit any required detailed drawings of articles or equipment for District approval. Rejected materials must be immediately removed from the Work site and shall not be brought again upon the Work site or used in the Work.

3.2.2 Except for District-selected equipment items and items where "no substitution" is clearly specified; materials, articles, devices, products, fixtures, form, type of construction, or process are indicated or specified for the purpose of establishing a standard of quality and facilitating the description of the material or process desired by District. This procedure is not to be construed as eliminating from competition other products of equal or better quality by other manufacturers where fully suitable in design, and shall be deemed to be followed by the words "Or Equal". Such requests shall be made in writing by the Contractor to the District stating in detail how the proposed product differs in composition and performance from the designated product and shall be accompanied by complete data on which the District may make a determination on the merits of the proposed substitution.

In accordance with Public Contract Code Section 3400, Contractor may, in such cases, submit requests substantiating the substitution of "equal" items within thirty-five (35) days after the award of the Contract unless otherwise stated in the Supplemental Conditions or Project Plans and Specifications. If the District rejects the substitution of an "Or Equal" item, the Contractor shall provide the specified item without extra cost to the District.

3.2.3 Contractor shall be responsible for the materials including proper storage and handling from the time it receives materials until Final Acceptance of the Work and Contractor shall replace or repair, at its own cost in a manner satisfactory to ARCHITECT, any of the materials which are lost or damaged after the Contractor's receipt of same.

3.2.4 Materials furnished by District. In cases where the District furnishes all or a portion of the equipment or materials to be used in the Work ("materials"), the Contractor shall accept delivery of such materials as may be provided. If the Contractor is required to haul such materials under this Contract to the Work site, it shall pick them up promptly after notification by the ARCHITECT and shall pay at its own cost any demurrage or other charges which have accrued due to its failure to pick up the materials promptly.

3.2.5 Any District furnished materials which remain unused at the completion of the Work shall be delivered by the Contractor to the District storage yard designated by the ARCHITECT.

3.2.6 All compensation to be received by the Contractor for handling and protecting District furnished material is included in the Contract Price, and no extra compensation will be paid to the Contractor for complying with the provisions of this section.

SECTION 4. LEGAL RESPONSIBILITIES

4.1 **COMPLIANCE WITH THE LAW.** The Contractor shall, at its own cost and expense, observe and keep fully informed regarding all existing and future federal, state, city, county, local agency or special District laws and regulations which may in any manner affect those engaged or employed on the Project, or the materials to be used or furnished, or which may in any respect govern, control or otherwise affect the Project or the conduct of the Work or any part thereof. The Contractor shall, at its own cost and expense, furnish all materials and facilities required to comply with such laws and regulations. The Contractor shall furnish copies of all valid licenses and certifications required of Suppliers, subcontractors, or employees for the Work upon the request of the ARCHITECT.

4.2 **PERMITS AND LICENSES.** The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work.

4.3 LABORERS AND SUBCONTRACTORS

4.3.1 **SKILLED WORKERS.** Only skilled and properly licensed and/or certified workers shall be employed on work requiring special qualification. When required in writing by the District, the Contractor or any subcontractor shall discharge any person who is, in the opinion of the District, incompetent, unfaithful, disorderly or otherwise not qualified, and shall not again employ such discharged person on the Work except with the consent of the District. This includes, but is not limited to the discharge or discipline of any employee of the Contractor or its subcontractors or agents who harass or otherwise engage in inappropriate behavior towards District personnel or the public or other workers. Such discharge shall not be the basis of any claim for compensation or damages from the Contractor to the District.

4.3.2 **DAVIS-BACON ACT.** Contractor will pay and will require all subcontractors to pay all employees on said Project a salary or wage at least equal to the prevailing rate of per diem wages as determined by the Secretary of Labor in accordance with the Davis-Bacon Act for each craft or type of worker needed to perform the Contract. The provisions of the Davis-Bacon Act shall apply only if the Contract is in excess of One Thousand Dollars (\$1,000.00) or when twenty-five percent (25%) or more of the Contract is funded by federal assistance. If the aforesaid conditions are met, a copy of the provisions of the Davis-Bacon Act to be complied with are incorporated herein as a part of this Contract and referred to by reference.

4.3.3 **GENERAL PREVAILING RATE.** District has ascertained from the State of California Director of Industrial Relations, the general prevailing rate of per diem wages and the general prevailing rate for legal holiday and overtime work in the locality in which the work is to be performed for each craft or type of work needed to execute this Contract, and copies of the same are on file in the Office of the ENGINEER / ARCHITECT of District. The Contractor agrees that no less than said prevailing rates shall be paid to workers employed on this public works contract as required by Labor Code Section 1774 of the State of California.

4.3.4 **DEPARTMENT OF INDUSTRIAL REGULATIONS.** Contractor must comply with the requirements set forth in California Senate Bill (SB) 854 (Ch. 28, 2014). SB 854's requirements include, but are not limited to, the following:

4.3.4.1 No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial

Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

4.3.4.2 No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

4.3.4.3 This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

4.3.4.4 The Contractor must post job site notices prescribed by regulation.

4.3.4.5 The Contractor must submit a certified payroll records at least monthly to the Labor Commissioner in a format prescribed by the Labor Commissioner.

4.3.5 FORFEITURE FOR VIOLATION. Contractor shall, as penalty to the District, forfeit Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid (either by it or any subcontractor under it), less than the prevailing rate of per diem wages as set by the Director of Industrial Relations, in accordance with Section 1770 of the Labor Code for the work provided for in this Contract, all in accordance with Section 1775 of the Labor Code of the State of California.

4.3.6 APPRENTICES. Section 1777.5 of the Labor Code of the State of California, regarding the employment of apprentices is applicable to this Contract if the prime contract involves Thirty Thousand Dollars (\$30,000.00) or more.

4.3.7 WORKDAY. In the performance of this Contract, not more than eight (8) hours shall constitute a day's work, and Contractor shall not require more than eight (8) hours of labor in a day from any person employed by him hereunder except as provided in Section 4.3.2 and 4.3.3 above. Contractor shall conform to Article 3, Chapter 1, Part 7 (Sections 1810 et seq. and including Section 1815) of the Labor Code of the State of California and shall forfeit to the District as a penalty, the sum of Twenty-Five Dollars (\$25.00) for each worker employed in the execution of this Contract by Contractor or any subcontractor for each calendar day during which any worker is required or permitted to labor more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) week in violation of said Article. Contractor shall keep an accurate record showing the name and actual hours worked each calendar day and each calendar week by each worker employed by Contractor in connection with the Project.

4.3.8 EMPLOYER PAYMENTS. Per diem wages shall be deemed to include, per Labor Code Section 1773.1, travel and subsistence among other employer payments.

4.3.9 RECORD OF WAGES; INSPECTION. Contractor agrees to maintain accurate payroll records showing the name, address, social security number, work classification, straight-time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by it in connection with the Project and agrees to require that each of its subcontractors does the same. The applicable Contractor or subcontractor or its agent having authority over such matters shall certify all payroll records as accurate. Contractor further agrees that its payroll records and those of its subcontractors shall be available to the employee or his/her representative, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards, and shall comply with all of the provisions of Labor Code Section 1776, in general.

4.3.10 NON-DISCRIMINATION IN EMPLOYMENT. Projects under this Contract will obligate the Contractor and Subcontractors not to discriminate in employment practices. Bidders must, if requested, submit a compliance report concerning their employment practices and policies in order

to maintain their eligibility to receive the award of Contract. The Contractor must be prepared to comply in all respects with the requirements regarding nondiscrimination including but not limited to California Labor Code Section 1735.

4.3.11 SUBCONTRACTORS

4.3.11.1 The Contractor shall perform not less than the percentage of the Work specified by the Contract Documents using the Contractor's own employees. At all times throughout the course of the Project, all subcontractors shall be licensed as required by California law. Contractor is responsible for the performance of all work done by each Subcontractor. The District reserves the right to require discharge or replacement of a Subcontractor that is not qualified to perform the work or violates any provision of the Contract Documents. The contract between the Contractor and Subcontractor shall include a copy of Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815. The Contractor shall comply with the Subletting and Subcontracting Fair Practices Act (Public Contract Code § 4100 et seq.).

4.3.11.2 The Contractor agrees to be fully responsible to the District for the acts and omissions of any Subcontractor, and for the acts and omissions of persons directly or indirectly employed by the Contractor. Nothing contained in the Contract Documents shall create any contractual relation between any Subcontractor and the District.

4.3.11.3 The Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Contract Documents, assumes toward the District. Each subcontract agreement shall preserve and protect the rights of the District under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with its subcontractors.

4.3.12 CONTRACTING AND ASSIGNMENT. Subcontractors not specifically listed in the Bid proposal will not be recognized as such and will not be allowed to work on the Project unless the value of said Work is less than one-half of one percent ($\frac{1}{2}\%$) of the total Contract Price. All persons engaged in the Work of construction will be considered as employees of the Contractor, and not as independent Contractors. No assignment of any portion of the Work or of any obligation or duty under the Contract is permitted without the express prior written consent of District, and as otherwise authorized by the Contract Documents.

4.4 JOINT AND SEVERAL LIABILITY. If the Contractor is a joint venture or partnership, each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of the Contractor that are assumed under or arise out of the Contract. Each of such venturers or partners waives notice of the breach or non-performance of any undertaking or obligation of the Contractor contained in, resulting from or assumed under the Contract, and the failure to give any such notice shall not affect or impair such venturer's or partner's joint and several liability hereunder.

4.5 PATENTS. The Contractor shall assume all costs arising from the use of any patented article, material, device, equipment, product design or process used or furnished by the Contractor in connection with, or incorporated in, the Work to be done. The Contractor shall be responsible for and indemnify and defend and hold harmless District, its Subcontractors, the ARCHITECT, the Consultant, if any, and each of their directors, officers, Architects, employees and agents from all damages, costs and expenses (including attorney's fees, expert witness fees, court costs, and other costs and expenses of, litigation) that may, at any time arise or be set up by reason of any infringement or alleged infringement of any patent rights as a consequence of the installation or use of any such article, material, device, equipment or process in or about any Work under the Contract Documents. The Contractor's bond for faithful performance shall be deemed to apply expressly to this provision of these General Conditions.

4.6 PERSONAL LIABILITY. No director, officer, Architect, employee, or agent of District, its Consultant, or its ARCHITECT shall be personally responsible for any liability arising under or by virtue of the Contract.

4.7 TERMINATION.

4.7.1 This Contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given: (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

4.7.2 This Contract may be terminated in whole or in part in writing by the District for its convenience, provided that the Contractor is given (1) not less than ten (10) calendar days' notice (delivered by certified mail, return receipt requested) of the intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

4.7.3 If termination for default or convenience is effected by the District, an equitable adjustment in the price provided for in this Contract shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the Contractor at the time of termination may be adjusted to cover any additional costs to the District because of the Contractor's default. If the Contractor effects termination for default, the equitable adjustment shall include a reasonable profit for services or other work performed, but no adjustment will be allowed for anticipated profits. The equitable adjustment for any termination shall provide for payment to the Contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the Contractor relating to commitments that had become firm prior to the termination.

4.7.4 Upon receipt of a termination action under Sections 4.7.1 or 4.7.2 above, the Contractor shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the District all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Contractor in performing this Contract whether completed or in process.

4.7.5 Upon termination under Sections 4.7.1 or 4.7.2 above, the District may take over the work and may award another party an agreement to complete the work under this Contract.

4.8 PARTIAL INVALIDITY. In the event any article, section, sub article, Sections, sentence, clause, or phrase (collectively referred to hereinafter as "Contract Elements" or singularly as "Contract element") contained in the Contract Documents shall be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, such determination, declaration, or adjudication shall in no manner affect the other Contract Elements, which shall remain in full force and effect as if the Contract element declared, determined, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, was not originally contained in the Contract Documents.

4.9 WAIVER OF RIGHTS. Except as otherwise specifically provided in the Contract Documents, no action or failure to act by District, Consultant, ARCHITECT, Contractor or its Subcontractor shall constitute a waiver of any right or duty afforded any of them under the Contract Documents, nor shall any such actions or failure to act constitute an approval of or acquiescence in any breach thereunder.

4.10 TAXES. The Contractor shall pay all sales, consumer, use and other taxes.

4.11 WARRANTY OF TITLE. No materials, supplies, or equipment for the Work under this Contract shall be purchased subject to a chattel mortgage or under a conditional sale contract or other

agreement by which an interest therein or any part thereof is retained by the seller or Supplier. The Contractor warrants clear and good title to all materials, supplies, and equipment installed and incorporated in the Work and agrees upon completion of the Work to deliver the premises together with all improvements and appurtenances constructed or placed thereon by Contractor to District free from any claims liens, encumbrances or charges and further agrees that neither he nor any person, firm or corporation furnishing any material or labor for any work covered by the Contract shall have any right to a lien upon the premises or any improvement or appurtenance thereon, provided that this shall not preclude the Contractor from installing metering devices or other equipment of utility companies or of municipalities, the title of which is commonly retained by the utility company or the municipality. Nothing contained in this article, however, shall defeat or impair the right of such persons furnishing materials or labor under any bond given by the Contractor for its protection, or any right under any law permitting such persons to look to funds due the Contractor in the hands of the District. The provisions of this section shall be inserted in all subcontracts and materials contracts, and notices of its provisions shall be given to all persons furnishing materials for the Work when no formal contract is entered into for such materials.

4.12 LANDS AND RIGHTS-OF-WAY. The lands and rights-of-way for the facility to be constructed will be provided by District. The Contractor shall make its own arrangements and pay all expenses for additional area required outside the limits of District's land and rights-of-way.

Work in public right-of-way shall be done in accordance with the requirements of the permit issued by the public agency in whose right-of-way the Work is located in addition to conforming to the Contract Documents. If a project-specific permit is not required, the Work shall conform to the standards of the public agency that has jurisdiction over the area where work is performed in addition to conforming to the Contract Documents.

SECTION 5. SCOPE OF WORK

5.1 GENERAL. Contractor shall complete the Work in accordance with the Contract Documents and by the completion date set within the Contract Documents at the Contract Price fixed in the Contract. Contractor at Contractor's sole cost and expense shall perform all labor and services and furnish all the materials, tools, and appliances necessary or proper for performing and completing the Work in accordance with the Contract Documents. All the labor, services and materials shall be performed and furnished strictly pursuant to, and in conformity with the Contract Documents, and the directions of the ARCHITECT as given from time to time during the progress of the work under the terms of the Contract, and also in accordance with the Contract Documents and the submittals to be furnished from time to time as provided herein.

5.2 INTERPRETATION OF CONTRACT DOCUMENTS. Should it appear to Contractor that the Work to be performed or that the Contract Documents are not sufficiently detailed or explained, or should any questions or doubts arise as to the true meaning of any part of the Contract Documents, or shall an error, conflict, ambiguity or mistake be apparent or discovered in the Contract Documents, including the quantity estimates, the Contractor shall make a written request to the District immediately or no later than five (5) days upon discovery of need for correction, clarification or interpretation of the point(s) in question. Upon receipt of such request, the ARCHITECT shall provide the Contractor a written interpretation correcting, clarifying or interpreting the point(s) in question, which interpretation shall be final and become a part of the Contract.

Should any interpretation, in the opinion of the Contractor, exceed the scope of the Contract Documents, written notice shall be given to the District within seven (7) calendar days of the receipt of the District's interpretation and prior to proceeding with the Work in question unless directed otherwise by the District. The District may amend its original interpretation, authorize Extra Work as a Change Order and authorize an extension of time, if applicable, in accordance with SECTION 5.3, Change Orders herein or the District may direct the Contractor to proceed with the original interpretation.

If the Contractor proceeds with the work without receiving an interpretation from the District, the District shall be relieved of any liability and Contractor shall be responsible for all resulting damage and defects.

Any Work or material not herein specified or shown on the Contract Documents, but which by fair implication in the judgment of the ARCHITECT, should be included therein, shall be accomplished or furnished by the Contractor as part of the Contract requirements.

5.3 CHANGE ORDERS

5.3.1 GENERAL

5.3.1.1 The ARCHITECT on the ARCHITECT'S own initiative (District Initiated Change Order) or in response to a written request from the Contractor (Contractor Initiated Change Order) or by unilateral direction (Unilateral Change Order) may by written Change Order require additions to, deletions of or modifications of the requirements of the Work. For example, Change Orders may modify the design, line, grade, form, location, dimensions, plan, component, equipment or quantity of the Work.

5.3.1.2 Change Orders that diminish the quantity or amount of work to be done, shall entitle the District to a reasonable credit and shall not constitute the basis for a claim for damages or anticipated profits by the Contractor on the diminished work; provided that, if a change renders useless any work already done or materials already furnished or used in the Work, the ARCHITECT, shall make reasonable allowance therefore, which allowance shall be binding upon both parties.

5.3.1.3 A Change Order shall specify the adjustment in Contract time, if any, for the changed Work. If Extra Work cannot be completed by the completion date, the Contractor shall be entitled to an adjustment in Contract time according to proof provided by the Contractor to the ARCHITECT including, but not limited to, a detailed schedule analysis, including the appropriate and required schedule fragnets, evidencing the justification of and need for the adjustment.

5.3.1.4 A Change Order shall specify the adjustment of the Contract Price, if any, for the changed Work.

5.3.1.5 DISTRICT INITIATED CHANGE ORDERS. The ARCHITECT may require additions to, deletions of, or modifications to the requirements of the Work that may involve an adjustment in the Contract Price or the Contract Time via a Change Order issued by the District. The District shall provide the Contractor with prompt notice of its desire to issue said Change Order and shall consult with the Contractor in an attempt to mutually agree upon the estimated cost and time impacts, if any, as a result of said change. If District and Contractor fail to reach an agreement, the District shall be entitled to issue a Unilateral Change Order pursuant to Section 5.3.1.12.

5.3.1.6 The ARCHITECT may authorize minor variations from the requirements of the Contract Documents that do not involve an adjustment in the Contract Price or the Contract time and are consistent with the overall intent of the Contract Documents. These variations may be accomplished by a Field Order and will require the Contractor to promptly perform the work involved. If the Contractor believes that a Field Order justifies an increase in the Contract Price or an extension of the Contract time the Contractor shall request a Change Order pursuant to Section 5.3.1.9.

5.3.1.7 Contractor shall not proceed with any changed work unless and until the ARCHITECT issues a Change Order, unless expressly instructed in writing to proceed with the Extra Work pending resolution of the Change Order.

5.3.1.8 During construction and prior to performing any of the Work at the jobsite, the Contractor shall verify the dimensions and quantities specified by the Contract Documents, and shall immediately notify the ARCHITECT of all discrepancies that are discovered. If the ARCHITECT determines that instructions to address a discrepancy are necessary, the instructions will be given by Field Order or Change Order.

5.3.1.9 CONTRACTOR INITIATED CHANGE ORDERS. If the Contractor determines that an event, circumstance or condition gives rise to a change in the Contract Price or the Contract Time, Contractor shall submit to the ARCHITECT a written request for change order within fourteen (14) calendar days of the date of the event or fourteen (14) calendar days from the date the Contractor first discovered (or should have discovered in the exercise of reasonable prudence) that the event, circumstance or condition would give rise to a change in the Contract Price or Contract Time. If Contractor fails to provide said written notice within fourteen (14) calendar days, Contractor agrees that it waives its right to collect any and all costs incurred as a result of said event, circumstance or condition, and further agrees that it waives the right to seek any extension of the Contract Time as a result of the event, circumstance or condition. Contractor further agrees that the failure to provide said timely notice (14 calendar days) of an alleged change shall preclude Contractor from submitting or pursuing any and all claims or protests arising from said event, circumstance or condition.

5.3.1.10 The Contractor may request a Change Order pursuant to Section 5.3.1.9 because of the availability of an improved technology or design that would meet or exceed the requirements of the Contract Documents.

5.3.1.11 Contractor shall not proceed with any changed work unless and until the ARCHITECT issues a Change Order, unless expressly instructed in writing to proceed with the Extra Work pending resolution of the Change Order.

5.3.1.12 UNILATERAL CHANGE ORDERS. If at any time the District and the Contractor cannot reach agreement as to a Change Order, the District may, at its sole discretion, issue a Unilateral Change Order to Contractor directing contractor to perform the ordered Extra Work and furnish the labor, materials and equipment required for its completion. Contractor agrees that upon issuance of a Unilateral Change Order that it shall diligently prosecute the required Work to completion. The District shall in its sole discretion determine a fair and reasonable adjustment to the Contract Price and Contract Time. If Contractor disagrees with the time or price adjustment set forth in the Unilateral Change Order, it shall pursue a Protest pursuant to Section 5.4.

5.3.1.13 Work performed pursuant to a Change Order is subject to all of the provisions of the Contract Documents and the Contractor's bonds and insurance shall be bound with reference thereto as under the original Contract. If required, the Contractor shall provide the ARCHITECT with new bonds and certificates of insurance and endorsements reflecting the Change Order. The cost to the Contractor or the credit to the District for revised bonds and insurance premiums shall be included in the revised Contract Price.

5.3.1.14 The Contractor shall pursuant to the requirements of Section 5.3.1.9, and before the following conditions are disturbed, notify the District of any differing site conditions including but not limited to: (1) material that the Contractor believes may be hazardous waste, as defined in Section 25117 of the Health and Safety code, that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law; (2) subsurface or latent physical conditions at the site differing from those indicated; or (3) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work provided for in the Contract Documents.

The District shall promptly investigate the conditions and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work, the District shall issue a Change Order in accordance with this Section 5.

5.3.2 PROCESS FOR ISSUING CHANGE ORDERS

5.3.2.1 The ARCHITECT may issue a Change Order designating the changed Work, adjustment to the completion time, if any, and adjustment to the Contractor's payment or credit, if any. Within three (3) work days of the receipt of the Change Order, the Contractor shall either (1) sign the Change Order indicating the Contractor's acceptance of the terms of the Change Order, or (2) return the Change Order without signing it and propose modifications. If the Contractor returns the Change Order without signing it, the ARCHITECT may issue a revised Change Order, or reissue the original Change Order or issue a Unilateral Change Order pursuant to Section 5.3.1.12 and direct the Contractor to perform the ordered Work subject to the Contractor's rights of protest and dispute resolution.

5.3.2.2 Alternatively, the ARCHITECT may submit a Change Order designating the changed work and requesting an estimate of the cost or credit and schedule for the work. Within ten (10) business days, the Contractor shall prepare and submit to the ARCHITECT a written estimate of cost and schedule for the work. The ARCHITECT may thereafter issue a Change Order as provided in 5.3.1.5 above.

5.3.2.3 Adjustment in the price paid for a Change Order due the Contractor shall be determined by one or more of the following methods in the following order of precedence:

1. Unit Prices contained in the Contract Documents.
2. Mutually agreed lump-sum or Unit Prices, based upon current prevailing fair prices for equipment, materials, labor, overhead, and profit. If requested by the ARCHITECT, the Contractor shall furnish an itemized breakdown of the quantities and prices used in computing proposed lump-sum and Unit Prices for the Extra Work.
3. Mutually agreed prices for labor, materials, and equipment actually used based on the following (time and materials):
 - (a) Cost of labor plus fifteen percent (15%) for workers directly engaged in the performance of the Work. Cost of labor shall include actual wages paid including employer payments to or on behalf of the workers for health and welfare, pension, vacation, and similar purposes plus payments imposed on payroll amounts by applicable laws and regulations, plus subsistence and travel (other employer payments to employees.)
 - (b) Cost of material plus fifteen percent (15%). Cost of material shall include sales tax, freight, and delivery charges. The District reserves the right to furnish such material as it deems advisable and the Contractor shall not be paid the fifteen percent (15%) markup on such materials.
 - (c) Cost of equipment plus fifteen percent (15%) for tools and equipment actually engaged in the performance of the Work. Equipment rates shall be the lesser of the actual rental rates or those listed for such equipment in the California Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates, which is in effect on the date the Work is performed, regardless of ownership and any rental or other agreement, if such may exist, for use of such equipment entered into by the Contractor. If it is deemed necessary by the ARCHITECT to use equipment not listed in that publication, a suitable rental rate for such equipment will be established by the ARCHITECT. The Contractor shall furnish any cost data that might assist the ARCHITECT in the establishment of such rental rate.

No rental charge shall be made for use of tools or equipment having a replacement cost of five hundred dollars (\$500) or less. No payment will be made for equipment on standby or idle time. Payment for equipment will only be made for actual time of use as verified by the ARCHITECT. The equipment rental rates shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals. The cost of labor for operators of equipment shall be separately paid for as provided herein. Small tools are part of the Contractor's markup.

(d) Subcontractor invoices to the Contractor plus five percent (5%). Subcontractor invoices shall be based upon the above described cost of labor plus fifteen percent (15%), cost of material plus fifteen percent (15%), and tool and equipment rental rates plus fifteen percent (15%). The five percent (5%) markup to the Subcontractor's invoice shall be applied only one time for each separate Extra Work transaction, regardless of the number of tiers of Subcontractors performing the Extra Work.

(e) The Contractor shall submit to the ARCHITECT for verification, on a daily basis, work sheets showing an itemized breakdown of labor, materials, tools, and equipment used in Extra Work. No labor, materials, or equipment will be determined to be actually used unless it has been verified daily by the ARCHITECT. Payment shall be made solely for labor, materials or equipment actually used.

(f) No separate payment shall be made for any item not set forth specifically above, including without limitation, Contractor's overhead, profit, general administrative expense, supervision, bonds and insurance premiums, or damages claimed for delay in prosecuting the remainder of the Work; as such items are deemed included in the percentage markups described previously. The total payment made as provided above shall constitute full compensation for the changed Work.

5.3.3 UNCONTROLLABLE CIRCUMSTANCES/EXCUSABLE DELAYS

5.3.3.1 Upon Contractor's written request and submission of substantiating documentation of a delay caused by an Uncontrollable Circumstance (as defined in this Section 5.3.3 below), the ARCHITECT shall extend the time fixed in Section 4 of the Construction Agreement for completion of the Project by the number of days Contractor has thus been delayed, if District finds that the delay is justified. Contractor shall submit the written request to District for such time extension pursuant to Section 5.3.1.9 above. District's decision will be conclusive on the parties to this Contract. Failure to file such request within the time allowed shall be deemed a waiver of the claim by Contractor.

Documentation and determination of delays shall be handled in the same manner as Change Orders, Protests and Claims as set forth in these General Conditions. Uncontrollable Circumstances means any act, event or condition that (1) is beyond the reasonable control of the Contractor that justifies not timely performing an obligation or complying with any condition required under the Contract Documents and (2) materially expands the scope of, interferes with, or delays the Contractor's performance obligations under the Contract Documents, but only if such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of the Contract Documents on the part of the Contractor.

Examples of acts, events or conditions that qualify as Uncontrollable Circumstances are naturally occurring events (except inclement weather normal for the area where the Work is being performed) such as earthquakes, fires, tornadoes, hurricanes and other acts of God; terrorism, sabotage, and other acts of a declared public enemy; and labor disputes, except labor disputes involving employees of the Contractor. Acts, events, and conditions that are not considered Uncontrollable Circumstances include but are not limited to Contractor's inability to obtain timely materials or equipment; work related injuries, safety violations; errors, neglect or

omission by the Contractor or its Subcontractors in performance of the Work, inclement weather conditions normal for the Work area; any mechanical failure of equipment; or any electrical power outages except as a direct result of an independent uncontrollable circumstance.

5.3.3.2 No requests by Contractor for additional compensation or damages for delays will be allowed unless Contractor satisfies District that such delays were unavoidable and not the result of any action or inaction of Contractor and that Contractor took available measures to mitigate such damages. Extensions of time and extra compensation as a result of differing site conditions will be determined in accordance with Section 5.3.2 of the General Conditions. The District's decision will be conclusive on all parties to this Contract.

5.4. PROTESTS

5.4.1 If the Contractor considers any Work required of it to be outside the requirements of the Contract, or if it considers any instruction, meaning, requirement, ruling or decision of the District or its representative to be unauthorized pursuant to the Contract, it shall within seven (7) calendar days after such demand is made, or instruction given, or receipt of a decision, file a written protest with the District stating clearly and in detail its objections and reasons therefore. The Contractor shall not proceed with any protested work unless and until the ARCHITECT gives written notice directing the Contractor to proceed with the Work, once directed to proceed with the Work, the Contractor shall do so without delay. ARCHITECT shall have right to request information necessary to determine protest.

5.4.2 If a written protest is not issued within seven (7) calendar days, said protest shall be time barred and the Contractor's failure to provide such notice or the installation of any such Work without authorization shall be construed as relieving the District of any claim either for added costs or for extensions of time.

5.4.3 The District will review the Contractor's timely written protest and provide a decision within thirty (30) days, but if a decision is not issued within thirty (30) days, the protest will be deemed denied. If after reviewing the District's decision or the passage of thirty (30) days without receiving a decision, the Contractor shall have seven (7) days to notify the ARCHITECT, in writing, that the Contractor disagrees with the decision and that a claim will be submitted pursuant to Section 5.5 below.

5.4.4 The Contractor's claim shall be in writing and include all documentation necessary to substantiate the claim as set forth in Section 5.4.4.1 below. Resolution of the claim shall proceed in accordance with Section 5.5. The failure of the Contractor to either fail to file the notice of claim or, thereafter, a claim, in a timely manner is a waiver of the protest and claim.

5.4.4.1 Written documentation necessary to substantiate the claim shall include at a minimum, the following:

1. Statement of claim and the basis for it.
2. List of documentation relating to claim, including specifications, plans, reports, schedules, Field Orders, requests for clarification, etc.
3. Chronology of events and correspondence.
4. Cost analysis, including all backup financial records supporting the costs analysis and any extended overhead claim analysis.
5. Detailed critical path schedule analysis and backup source documents supporting a delay claim.

Information submitted shall be sufficient to justify the claim.

5.4.5 Claims submitted pursuant to this Section shall include the following certification statement. Failure to include and sign the certification statement shall result in the Contractor waiving all rights to the subject claim. The Contractor shall submit under penalty of perjury with each claim its and each Subcontractor's written certification that:

1. The claim is made in good faith.
2. Supporting data are accurate and complete to the best of the Contractor's knowledge and belief.
3. The amount requested accurately reflects the Contract adjustment for which the Contractor believes the District is liable.
4. The Contractor understands that if a false claim is submitted, it will be considered fraud and the Contractor may be subject to criminal prosecution and any other available relief pursuant to Governmental Code section 12650, et seq.

5.5 PROCEDURES FOR RESOLVING CLAIMS (PCC SECTION 9204)

- A The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.
- B Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.
- C For purposes of this section:
1. "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
 - a) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
 - b) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
 - c) Payment of an amount that is disputed by the public entity.
 2. "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.
 3.
 - a) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.
 - b) "Public entity" shall not include the following:
 - i. The Department of Water Resources as to any project under the jurisdiction of that department.

- ii. The Department of Transportation as to any project under the jurisdiction of that department.
 - iii. The Department of Parks and Recreation as to any project under the jurisdiction of that department.
 - iv. The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.
 - v. The Military Department as to any project under the jurisdiction of that department.
 - vi. The Department of General Services as to all other projects.
 - vii. The High-Speed Rail Authority.
4. "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.
5. "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.
- D 1. a) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.
- b) The claimant shall furnish reasonable documentation to support the claim.
- c) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, 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 sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.
- d) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.
2. a) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- b) 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 public entity shall provide the claimant 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 public entity issues its written statement. Any disputed portion of the claim,

as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. 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. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

- c) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.
 - d) Unless otherwise agreed to by the public entity and the contractor 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.
 - e) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.
- 3. Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.
 - 4. Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.
 - 5. If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his/her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.
- E The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.
 - F A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of

this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

- G This section applies to contracts entered into on or after January 1, 2017.
- H Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.
- I This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

(Added by Stats. 2016, Ch. 810, Sec. 1. (AB 626) Effective January 1, 2017. Repealed as of January 1, 2020, by its own provisions.)

SECTION 6. PROSECUTION AND PROGRESS OF THE WORK

6.1 PROGRESS OF WORK

6.1.1 Unless otherwise specified, the Contractor shall commence the Work upon the issuance of the Notice to Proceed or the date specified within the Notice to Proceed (the "Notice to Proceed Date") and shall diligently prosecute the Work to its completion. A Notice of Completion shall be recorded for the Work, but the District's failure to do so, timely or otherwise, shall not be raised as a defense to the untimely assertion of any rights by Contractor, its Subcontractors or Suppliers of any tier.

6.1.2 The continuous prosecution of the Work by the Contractor shall be subject only to the delays defined in this Contract. The start of Work shall include attendance at preconstruction conferences, preparation and submittal of submittals, equipment lists, and schedule of values, schedules, requests for substitutions and other similar activities. Submittals shall be prepared in accordance with the Contract Documents and shall be made in the time limits indicated. Except as specifically authorized by the District, no Work shall commence on site before the Notice to Proceed Date or after the Notice to Proceed Date but before all applicable Contract requirements have been satisfied.

Notwithstanding this Section 6.1.2, under no circumstances shall the Contractor proceed to work under any verbal authorization or issuance of Notice to Proceed by District where the Contractor is not in receipt of the Contract Documents full executed by Contractor and District authorizing the Project, including but not limited to the Construction Agreement.

6.1.3 The Work shall be brought to completion, as determined by the District, in the manner provided in the Contract Documents and in the number of calendar days set forth in the Section 4 of the Construction Agreement.

6.1.4 Failure to reach completion as determined by the District within the Contract time and in the manner required by the Contract Documents shall subject the Contractor to liquidated damages as stipulated in Section 6 of the Construction Agreement unless extensions of time are granted in accordance with the Contract Documents.

6.1.5 The Contractor shall at all times keep on the premises sufficient material and employ sufficient supervision and workers to prosecute the Work at a rate necessary to reach completion of the Work as required within the Contract Documents. Work shall not start, nor shall the Work be left in an incomplete state for an indeterminate period of time, while equipment and materials are in transit.

6.1.6 It shall be the responsibility of the Contractor to maintain its schedule so as not to delay the progress of the Work or the schedules of other contractors and workers who may be employed by the District on any Work in the vicinity of the Work to be done pursuant to this Contract, and it shall conduct its operations so as not to interfere with the Work of such contractors or workers. The Contractor is required by virtue of this Contract to cooperate in every way possible with other contractors or workers in order to complete the Work within the Contract time. No additional compensation will be paid to Contractor for such cooperation, except as otherwise provided. If the Contractor delays the progress of the Work or the progress of other Contractors or workers, it shall be the responsibility of the Contractor to take some or all of the steps outlined below to improve its progress.

6.1.7 If, in the opinion of the District, the Contractor falls behind with the Work or current update of the Contract schedule and is not entitled to an extension of time, the Contractor shall take some or all of the steps outlined below to improve its progress at no additional charge to the District, and shall submit operation plans to demonstrate the manner in which the desired rate of progress may be regained.

6.1.7.1 Increase construction personnel in such quantities and crafts as will substantially eliminate the backlog of Work and allow the Contractor to complete the Work within the Contract time.

6.1.7.2 Increase, when permitted, the number of working hours per shift, shifts per working day, working days per week or the amount of construction equipment or any combination of the foregoing, sufficient to substantially eliminate the backlog of Work.

6.1.7.3 Reschedule activities to achieve maximum practical concurrence of accomplishment of activities; and/or

6.1.7.4 Expedite delivery of materials and equipment.

6.1.8 Should the Contractor at any time during the progress of the Work, refuse, neglect or be unable for avoidable reasons to supply sufficient material, supervision or workers to prosecute the Work at a rate necessary to complete the Work within the Contract time or in accordance with the currently accepted updated construction schedule, the District shall have the right to terminate the Contract as provided in Section 4.7 of the General Conditions. If the Contractor does not comply with a notice to correct default from the District within the time specified in the notice, the District shall have the right to provide the materials and workers to finish the Work and/or terminate the Contract. The expenses incurred by the District to complete such Work shall be deducted from any monies due or which may become due under the Contract and/or the construction fund for the Work. In the event the expenses incurred exceed the amounts due to the Contractor of the construction fund for the Work, the Contractor or its Surety shall reimburse the District for any such shortage in funds.

6.2 USE PRIOR TO FINAL COMPLETION

6.2.1 District shall have the right to use all or a portion of the Work at no additional cost to District, even if Substantial Completion of the Work, as more particularly described in Section 6.3 – Substantial Completion, has not occurred and even if the Work has not been finally accepted.

6.2.2 If District elects to take possession of and to use any completed or partially completed portions of the Work prior to Substantial Completion of the Work, the ARCHITECT shall document in writing to the Contractor the scope of Work it wishes to take possession of and an inspection shall be made by the Contractor and ARCHITECT of said scope of Work. Based on such inspection, the ARCHITECT will attempt to list all incomplete and/or deficient items of Work observed, and provide the Contractor with such a list. However, the absence of an item from the

list shall not relieve the Contractor of responsibility to perform all of the Work in accordance with the Contract Documents, and any and all areas so occupied will be subject to Final Inspection after the Contractor achieves Substantial Completion. If the use of these portions of the Work by District delays the progress of the Work or causes additional expense to the Contractor, the Contractor shall file a written request for extension of time and/or Extra Work as specified in Section 5.3.1.9.

6.2.3 The warranty period for portions of the Work placed into service prior to Final Acceptance of the Work shall be one (1) year commencing on the date of the District's written notification to the Contractor that all incomplete and/or deficient items of Work observed by the ARCHITECT as described in 6.2.2 above, have been completed and/or corrected by the Contractor. However, if during Final Inspection any incomplete and/or deficient items are observed in any portions of Work placed into service prior to Final Completion, and such incomplete and/or deficient items are not the result of or caused by District's occupancy, the guarantee period for any such portions of Work shall not be deemed to have commenced at any time prior, and shall commence on the date of Final Acceptance once any such incomplete and/or deficient Work is completed and/or corrected in connection therewith.

6.3 SUBSTANTIAL COMPLETION

6.3.1 Substantial Completion of the Work means the Work has progressed to the point that District can beneficially occupy or utilize the Work as a whole for the purpose for which it is intended, and the Work complies with applicable codes and regulations, including if required, issuance of certificates of occupancy, or certificate of suitability for use from the appropriate governmental agencies, as determined by the ARCHITECT at ARCHITECT'S sole discretion.

6.3.2 When the Contractor considers that Substantial Completion has been achieved, the Contractor shall notify the ARCHITECT, formally, in writing [Notice of Substantial Completion of the Work] that the Work is substantially complete to the required stage and is ready for inspection. The Contractor shall include with its Notice of Substantial Completion of the Work a list of minor items, (including the Contractor's punchlist) to be completed or corrected that would not affect beneficial occupancy or suitability for use.

6.3.3 After receipt of the Contractor's Notice of Substantial Completion of Work, the ARCHITECT and Contractor, and any other representative as the ARCHITECT deems appropriate, shall make an inspection of the Work to determine whether the Work has been completed in accordance with the Contract Documents and to review the Contractor's punchlist.

6.3.3.1 If, in the ARCHITECT'S sole opinion, the Work has not achieved Substantial Completion, the parties shall cease the inspection and all costs incurred by District as a result of the premature inspection shall be deducted from the payments due the Contractor. Contractor shall thereafter perform all remaining Work to reach Substantial Completion, and re-submit its Notice of Substantial Completion of Work. The inspection of the Work will recommence as set forth above.

6.3.3.2 If the Work has achieved Substantial Completion, a punchlist shall be prepared by the ARCHITECT and shall include those items listed by the Contractor to be completed or corrected as well as those items observed during the inspection. Failure to include any items on the punchlist shall not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents, nor shall the punchlist amend the Contract Documents. All deficiencies and/or items identified on the punchlist must be corrected within thirty (30) days of said initial inspection conducted at the Substantial Completion phase, unless otherwise specified in writing by the ARCHITECT.

6.4 FINAL INSPECTION, FINAL COMPLETION AND FINAL ACCEPTANCE

6.4.1 FINAL INSPECTION. The Contractor shall notify the ARCHITECT in writing when all punchlist items have been completed, all Work is completed in accordance with the Contract Documents and all clean-up has been done. Clean-up shall be completed when all waste, materials, excess materials, tools, and equipment such as scaffolding, temporary structures, and unneeded facilities such as fencing and sanitary facilities are removed from the Project. The ARCHITECT will then make Final Inspection for the purposes of ascertaining that the Work has been fully completed in accordance with the requirements of the Contract Documents.

6.4.2 FINAL COMPLETION. After the ARCHITECT has made the Final Inspection and is satisfied that the Work has been completed in accordance with the Contract Documents, including all punch list items, and is satisfied that all submittals have been made and accepted, including but not limited to all materials required by the Contract Documents and all As-Builts, record drawings by the Contractor, if required by the Contract, and any other required record documents have been completed and accepted, all Change Orders have been executed, all final quantities agreed to, and all other requirements of the Contract Documents, except for possible future warranty and guarantee Work have been accomplished, the ARCHITECT shall certify, in writing, the full completion of the Work and the date thereon.

6.4.3 FINAL ACCEPTANCE. Final Acceptance of the Work shall occur upon the District's Board of Directors' approval of the Final Completion of the Work and upon recordation of a Notice of Completion with the County Recorder.

SECTION 7. PAYMENT FOR WORK

7.1 PROGRESS PAYMENTS

7.1.1 Each month Contractor shall be paid a sum (less retention) equal to the value of the Work (based on the Schedule of Values) performed up to the last day of the previous calendar month, less the aggregate of the previous payments. The monthly payments shall be made on the basis of monthly progress estimates that shall be submitted by the Contractor and approved by the ARCHITECT. Quantities used in computing partial payments shall be considered as estimates only and shall be subject to revision in subsequent estimates. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall operate to release the Contractor or any Surety from damages arising from such work or from the enforcement of each and every provision of this Contract and the District shall have the right subsequently to correct any error made in any estimate for payment. Materials delivered but not incorporated or installed in the Work will not be included in progress payments unless allowed by Supplemental Conditions or Project Plans and Specifications.

7.1.2 If a progress payment received from the Contractor is undisputed and properly submitted, payment shall be made within thirty (30) days after receipt of progress payment, and if not so paid, Public Contract Code section 20104.50 may apply. If, however, the progress payment is determined not to be proper or correct, the District may, at its option, correct the progress payment and pay the amended amount or return the progress payment no later than seven (7) days after receipt, accompanied by a document setting forth in writing the reasons it is not proper.

7.1.3 A deduction of five percent (5%) will be made and held as retention from each progress payment; however, if Contractor has, in the judgment of the District, satisfactorily completed ninety-five percent (95%) of the work as determined from the Construction schedule, the General Manager may recommend a reduction of the withholding rate to an amount not less than 125 percent of the work yet to be completed, as determined by the General Manager, if the reduction has been approved, in writing, by the surety on the performance bond and by the surety on the payment bond.

7.1.4 Notwithstanding any other provision in this Contract, as provided in Public Contract Code section 22300 and subject to the requirements thereof, Contractor may substitute securities for monies withheld by the District to ensure proper performance under this Contract. The substitution of securities or the deposit of the amount retained shall be at the sole expense of and request of Contractor.

7.1.5 The Contractor shall pay each Subcontractor and/or Supplier in the time periods required by law.

7.2 APPLICATIONS FOR PAYMENT

7.2.1 In Contracts with a duration of sixty (60) days or longer, on or before the seventh (7th) day of each calendar month, the Contractor shall submit to the ARCHITECT a progress payment for the value of work done and materials used to the last day of the previous calendar month. Progress payments shall be made in the format provided by the District.

7.2.2 Unless modified in the Supplemental Conditions or Project Plans and Specifications, payment for materials delivered, but not yet incorporated into the Work shall be paid as follows: materials accepted to the Work site or to an acceptable location by District shall be paid at the actual cost of materials. Labor for installation of such materials will be paid upon installation of materials.

7.2.3 Contractor warrants that upon submittal of the progress payment that all work for which previous progress payments have been made and payments received from the District shall, to the best of the Contractor's knowledge, information and belief, be free and clear of claims, security interests or encumbrances in favor of the Contractor, Subcontractors, Suppliers or other persons, or entities making a claim by reason of having provided labor, materials and equipment related to the Work and that all work for which payment is demanded has been performed in accordance with the Contract and that the amount claimed is due. With each progress payment, Contractor shall certify that the As-Built drawings have been updated and jointly reviewed with the District for the month that payment is requested.

7.2.4 Contractor agrees to furnish, if and when required by District, receipts, vouchers, releases and/or waivers of claims for labor, material, equipment and services performed by Contractor and any and all subcontractors performing Work or furnishing materials under this Contract or any subcontract with Contractor, all in a form satisfactory to District, and it is agreed that no payment shall be made except at District's option until and unless such receipts, vouchers or releases and/or waivers, or any and all of them, have been furnished. Any progress payment made prior to acceptance of the Work by District shall not be construed as evidence of acceptance of any part of Contractor's Work.

7.3 FINAL ACCEPTANCE AND PAYMENT. Within five (5) calendar days following the Board of Director's Final Acceptance of the Work, the District shall file a Notice of Completion with the County Recorder's office. Thirty (30) days after the filing of the Notice of Completion, and subject to the Contractor's evidence of compliance with Section 7.5 below, the District will pay or release to the Contractor all retention funds due him under the provisions of the Contract Documents.

7.4 STOP NOTICES

7.4.1 For each properly filed and unreleased stop notice, the District shall withhold from current progress payments an amount equal to one-hundred-twenty-five percent (125%) of each stop notice amount.

7.4.2 Upon request by the Contractor, payments may be made jointly to the Contractor and a stop notice claimant. Any such payment shall be deemed to be a payment to the Contractor.

7.5 RELEASE OF CLAIMS. Before the District pays or releases to the Contractor his/her retention for the work, the Contractor shall submit unconditional lien releases from all Subcontractors and/or Suppliers who have submitted a preliminary notice or stop notice. The release shall state that the Contractor has satisfied all claims and indebtedness of every nature in any way connected with the work, including (but not limiting the generality of the foregoing) all payrolls, amounts due to subcontractors', accounts for labor performed and materials furnished, incidental services, liens, and judgments. If any lien or claim remains unsatisfied after all retention has been released or payments made to the Contractor, the Contractor shall refund to the District all monies that the latter may be compelled to pay in discharging such a lien or claim, including all costs and a reasonable attorney's fee.

7.6 RIGHT TO AUDIT. District shall have the right to audit, during the Contractor's normal business hours at the office of the Contractor, any of the Contractor's books and records to the extent they are relevant or calculated to lead to relevant evidence relating to any claim submitted by the Contractor or the Contractor's performance under the Contract. This right shall include, without limitation, the right to examine the books, records, documents, Bid records, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs, including claimed unabsorbed overhead costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which the claim has been submitted. The Contractor further agrees that the right to audit encompasses all subcontracts and is binding upon Subcontractors. Additionally, the Contractor shall make available within ten (10) days to the District's auditing, all requested schedules, plans, accounting records and documents and other financial data, and upon request, shall submit true copies of requested records to the District.

7.7 ASSIGNMENT OF ANTI-TRUST CLAIMS. Contractor agrees to assign District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (U.S.C Sec. 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 Contract. This assignment becomes effective at the time the District tenders final payment to the Contractor, without further acknowledgment by the parties. The Contractor shall have the rights set forth in Section 4553 and 4554 of the Government Code.

7.8 BANKRUPTCY. The Contractor shall immediately notify the District of its own or of any of its subcontractor's filing for bankruptcy protection and provide the District with a copy of the Bankruptcy Case Number and title of the Court in which the petition for bankruptcy was filed. Filing for bankruptcy protection shall be a default of this Contract and grounds for termination as provided by Section 4.7, Termination of the General Conditions.

SECTION 8. MISCELLANEOUS

8.1 GOVERNING LAW. The Contract Documents have been negotiated between District and the Contractor and shall be subject to and interpreted under the laws of the State of California.

By entering into the Contract, the Contractor consents and submits to the jurisdiction of the Courts of the State of California, County of Ventura, over any action at law, suit in equity, and/or other proceeding that may arise out of the Contract Documents.

SUPPLEMENTAL CONDITIONS

PART 4

STANDARD PLANS AND SPECIFICATIONS

District's Standard Plans
Incorporated by Reference

APPENDIX A

ADMINISTRATION AND OPERATION FACILITY

Project Manual