

RESOLUTION NO. SD16-013
OF THE BOARD OF DIRECTORS OF
NEVADA COUNTY SANITATION DISTRICT NO. 1

**AWARD OF CONTRACT FOR THE PENN VALLEY DUAL SEWER FORCE
MAIN PROJECT – CONTRACT NO. 877140 AND AMEND THE FISCAL YEAR
2016/17 SANITATION DISTRICT NO. 1 BUDGET – DISTRICT IV (4/5
AFFIRMATIVE VOTE REQUIRED)**

WHEREAS, the Nevada County Sanitation District (NCSD) No. 1 Board of Directors by Resolution SD16-004 instructed the Purchasing Division to advertise for bids for the Penn Valley Dual Sewer Force Main Project; and

WHEREAS, bids were opened on July 7, 2016 with the low bid being \$4,924,810.00; and

WHEREAS, NCSD No. 1 has identified a significant cost savings opportunity for zone specific projects that will be included in this project and are identified as Add/Alternates A, B, C, D and F; and

WHEREAS, NCSD No.1 has received a small community wastewater grant in the amount of \$6,000,000 and a Community Development Block Grant (CDBG) grant in the amount of \$1,300,000 which provide adequate funds to complete the base project; and

WHEREAS, Lake Wildwood Zone 1 and Penn Valley Zone 6 have sufficient fund balance to support zone specific projects; and

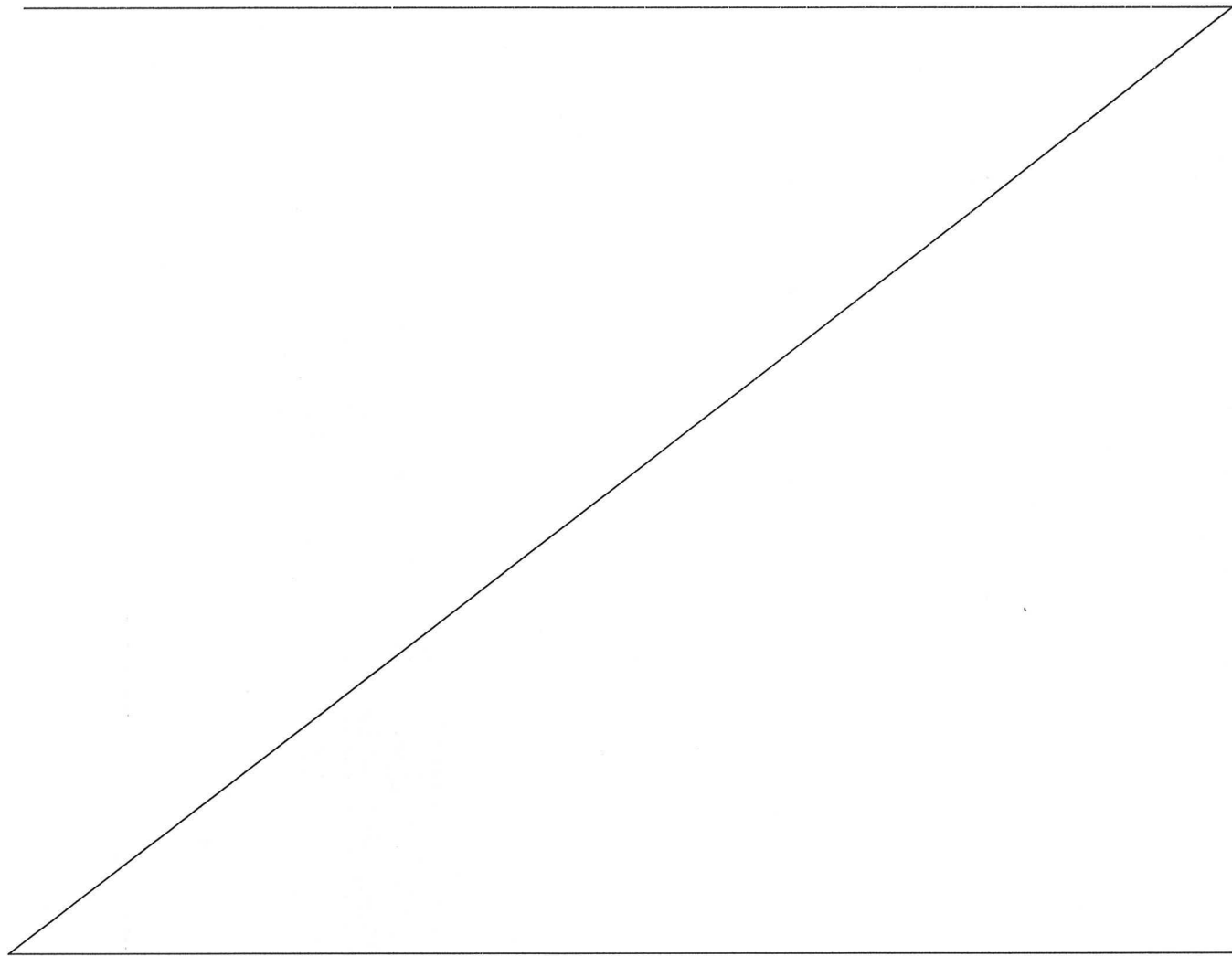
WHEREAS, a budget amendment has been included to provide available budget in the Penn Valley 4771, Penn Valley Capital 4772, and Lake Wildwood 4728 funds to complete this project; and

WHEREAS, work is scheduled to begin in August/September 2016 and be completed within 267 working days as allowed for in the contract.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Nevada County Sanitation District No. 1 Board of Directors:

1. Awards the Contract to the low bidder, Koch & Koch, Inc., in the amount of \$5,850,885.00, plus a 10 percent of base bid contingency of \$492,481.00 for a maximum amount not to exceed a grand total of \$6,343,366.00, for the Penn Valley Dual Sewer Force Main Project.
2. Authorizes the Chair of the Board of Directors to execute on behalf of Nevada County Sanitation District No. 1 a Standard Long Form Public Works Contract between Nevada County Sanitation District No. 1 and Koch & Koch upon receipt of the Labor and Materials Bond, Performance Bond and Certificate of Insurance by the Director of Public Works and approval and acceptance of the Certificate of Insurance by the Risk Manager.
3. Directs the Auditor-Controller to release fund balance from fund 4771 and fund 4728 and to amend the Fiscal Year 2016/17 Sanitation District No. 1 budget as follows:

4728-91005-709-2000 540710	\$686,375
4771-91005-709-2000 540710	\$239,700
4772-91005-709-2000 540710	\$636,149



PASSED AND ADOPTED at a special meeting of the Board of Directors of the Nevada County Sanitation District No. 1, held on the 16th day of August, 2016, by the following vote:

Ayes: Directors Nathan H. Beason, Edward Scofield, Dan Miller, Hank Weston and Richard Anderson.

Noes: None.

Absent: None.

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER
Clerk of the Board of Directors

By:  _____



Dan Miller, Chair

8/16/2016 cc: NCSD#1*
AC*(hold)

9/6/2016 cc: NCSD#1(1)
AC*(release)

NEVADA COUNTY SANITATION DISTRICT NO. 1

STATE OF CALIFORNIA

CONTRACT

THIS CONTRACT, made this 16th day of August, 2016, by and between the NEVADA COUNTY SANITATION DISTRICT NO. 1, hereinafter referred to as District and Koch and Koch, Inc. hereinafter referred to as Contractor.

WITNESSETH: That the District and Contractor, for the consideration hereinafter mentioned, agree as follows:

ARTICLE I: DEFINITIONS

Wherever used in these general conditions or in the other contract documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

Act of God

"Act of God" means an earthquake or flood, or other cataclysmic phenomenon of nature. A rain, windstorm, high water or other natural phenomenon of unusual intensity for the specific locality of the work, which might reasonably have been anticipated from historical records of the general locality of the work, shall not be construed as an Act of God.

Addenda

Written or graphic instruments issued prior to the opening of bids which clarify, correct or change the bidding documents.

Application for Payment

The form accepted by District which is to be used by Contractor in requesting progress or final payments and which is to include such supporting documentation as is required by the contract documents.

Calendar Days

Consecutive days of the month including Saturdays, Sundays and holidays. A calendar day shall be the 24 hours running from midnight to the next midnight.

Change Order

A document, which is signed by Contractor and District and authorizes an addition, deletion or revision in the work, or an adjustment in the contract price or the contract time, issued on or after the effective date of the contract.

Contract Documents

The written agreement covering the performance of the work and the furnishing of labor, materials and equipment in construction of the work. The agreement shall be construed to include the:

1. Invitation to Bid
2. Instruction to Bidders
3. Contractor's Bid (including documentation accompanying the Bid and any post-

- bid documentation submitted prior to the Notice of Award
4. Contract
5. Addenda which pertain to the Contract
6. The Bonds
7. Any supplementary conditions or any and all written agreements amending or extending the work, time or price contemplated
8. The Plans and Specifications and Drawings as identified in the Contract
9. Certificates of Insurance

Contract Price

Either the total lump sum bid of the Contractor or the total of the unit price bids of the Contractor extended based upon the estimated quantities set forth in the bid, or combinations thereof, plus or minus any adjustments made in accordance with the contract.

Contractor

The person or persons, co-partnership, joint ventures or corporation who have entered into a contract with District as party or parties of the second part and/or their legal representatives.

Contractor's Plant and Equipment

Everything, except labor, brought onto the site by the Contractor in order to carry out the work, but not to be incorporated in the work.

Day

A calendar day as defined above.

Defective

An adjective which when modifying the word "work" refers to work that is unsatisfactory, faulty or deficient, or does not conform to the contract documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the contract documents, or has been damaged (unless responsibility for the protection thereof has been assumed by District).

Directed

"Directed", "designated", "permitted", "required", "accepted", and words of like import, wherever and in whatever manner used means as directed, designated, permitted, required, and accepted by District.

Director

"Director" shall mean the Director of the department overseeing the project.

District

The Nevada County Sanitation District No. 1 and any person or persons to whom the power belonging to District shall be duly designated including but not limited to an engineer or architect. Only those persons designated in writing by the County Administrator or Director of the department overseeing the project shall have authority to act on behalf of District.

Drawings

The drawings which show the character and scope of the work to be performed and which have been prepared or approved by District and are referred to in the contract documents.

Effective Date of the Contract

The date indicated in the Contract on which it becomes effective, but if no such date is indicated it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.

Engineer

The person specifically designated in writing by District to function as staff adviser and/or consultant to District on engineering matters relating to this contract. Only those persons designated by District, in writing, shall have authority to act for District in the administration of this contract. Said written designation shall be signed by the County Administrator or Director of the department overseeing the project.

Equal

A device, material, equipment, technique or method that conforms to the intent of that specified or indicated on the Drawing.

Field Order

A written order issued by District which orders minor changes in the work but which does not involve a change in the contract price or the contract time.

Final Completion, Date of

The date when all final punch list items are corrected, the final inspection has been completed and when the governing body and/or funding agency formally accepts the project as complete. This date will be used to establish the start date of the one-year warranty period for the contract.

Laboratory

The designated testing laboratory authorized by District to test materials and work involved in the contract.

Lien

Any claim by a person entitled to file a stop notice pursuant to the provisions of California Civil Code Sections 3179, et seq.

Milestone

A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

Notice of Award

The written notice by District to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, District will sign and deliver the Contract.

Notice to Proceed

A written notice given by District to Contractor fixing the date on which the contract time will commence to run and on which Contractor shall start to perform Contractor's obligations under the Contract Documents.

Partial Completion

Placing a portion of the work in service for the purpose for which it is intended (or a related purpose) before reaching completion of all the work.

Person

Includes firms, companies and corporations.

Project

The total construction which is required by the Contract Documents which may be all of the work or a part as indicated in the Contract Documents.

Schedule of Values

A list of divisions of the total scope of work under the contract made by the Contractor and approved by the District for purposes of progress payments.

Shall

"Shall" or "will", whenever used, is mandatory.

Shop Drawings or Submittals

All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for Contractor to illustrate some portion of the work and all product data illustrations, brochures, standard schedules, performance charts, instructions, diagrams, samples, and other information prepared by a supplier and submitted by Contractor to illustrate material or equipment for some portion of the work.

Specifications

Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the work and certain administrative details applicable thereto.

Standard Specifications

Specifications which are authored and authorized by a particular industry or agency which may be incorporated by reference. Where so incorporated, they are incorporated for use of technical data and specifications only. If there is a conflict between the standard specifications and express terms of this contract, the provisions set forth in the contract shall prevail.

Subcontractor

An individual, firm or corporation having a direct contract with Contractor or with any other subcontractor for the performance of a part of the work at the site.

Substantial Completion

The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Construction Manager, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be safely and conveniently utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

Substitute

A device, material, equipment, technique or method of construction that differs from that intended or indicated on the Drawings.

Sufficient:

"Sufficient", "necessary", "proper", "acceptable", "satisfactory", "desirable", and words of like import, wherever and in whatever manner used, with or without reference to the District, means sufficient, necessary, proper, acceptable, satisfactory and desirable in the judgment of the District.

Supplementary Conditions

An addition to the Contract Documents which supplements the main Contract.

Underground Facilities

All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

Unit Price Work

Work to be paid for on the basis of unit prices.

Work

The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

Working Day

A working day is any day except Saturdays, Sundays, or legal holidays and days on which the Contractor is specifically required by special provisions, by any labor contract, or by law, to suspend construction operations. Also excepted is any day on which the Contractor is prevented by inclement weather conditions resulting therefrom, or other phenomena of nature from proceeding with at least seventy-five percent (75%) of the normal labor and equipment force for at least five (5) hours toward completion of the current controlling item on the accepted project schedule. Should the conditions prevent the work from beginning at the usual starting time, or prevent the Contractor from proceeding with seventy-five percent (75%) of the normal labor and equipment force for a period of at least five (5) hours, and the crew is dismissed as a result thereof, Contractor will not be charged for a working day whether or not conditions change so that the major portion of the day could be considered to be suitable for work on the controlling item.

Working Hours

Regular working hours shall be from 7 a.m. to 3:30 p.m. Monday through Friday excluding legal holidays. District approval is required in writing prior to performing work outside regular working hours.

ARTICLE II: SCOPE OF WORK

Contractor, at Contractor's own proper costs and expense, shall do all the work and furnish all the materials necessary to construct and/or reconstruct and complete in good workmanlike and substantial manner and to the satisfaction of the District, the following:

The work to be performed includes the following as furthered described in the bid schedules and Section 01010 of the Technical Specifications:

Base Bid:

- Penn Valley Lift Station
- 6" Dual Force Main
- Improvements to the Lake Wildwood WWTP Influent Sewer
- Connection to Existing Penn Valley Collection System, Insert Valve and Plug Existing Force Main to Penn Valley WWTP

Additive Alternate A:

- Lift Station Odor Control Unit

Additive Alternate B:

- Lake Wildwood Odor Control Unit

Additive Alternate C:

- Lake Wildwood Grit Removal Unit

Additive Alternate D:

- Penn Valley Collection System Improvements

Additive Alternate F:

- Lake Wildwood Piping Improvements

Please see attached Bid Doc referenced here under "Scope of Work" page 49 for full name of project.

Work shall be paid for according to **UNIT COST** and **LUMP SUM** prices as shown on the bid forms.

Work shall be constructed in accordance with this Contract, the Invitation to Bid, the Instruction to Bidders, the Plans and Specifications and Drawings, and all other contract documents attached hereto and which are incorporated herein by reference and made a part of this Contract as if set forth in full.

ARTICLE III: CONTRACT TIME

Contractor will start work to be performed under this Contract within **7 calendar days** after the Contractor is instructed in writing by District to proceed with the work. Said work shall be diligently prosecuted to completion. All the work shall be ready for substantial completion with **246 working days** from the date of the Notice to Proceed. All the work shall be ready for final completion and acceptance within **267 working days** from the date of the Notice to Proceed. When any period of time is referred to in the contract documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

ARTICLE IV: CHANGE OF CONTRACT TIME

Change by Change Order

The contract time may only be changed by change order. A request for an extension or shortening of the contract time shall be based on written notice delivered by the party making the request to District promptly, but no later than 15 calendar days, after the occurrence of the event giving rise to the request and stating the general nature of the request. Notice of the extent of the request with supporting data shall be delivered to District and shall be accompanied by the written statement that the adjustment requested is the entire adjustment to which the requesting party has reason to believe it is entitled as a result of the occurrence of said event. No request for an adjustment in the contract time will be valid if not submitted in accordance with the requirements of this paragraph.

Contract Time May Be Extended

The contract time will be extended in an amount equal to time lost due to delays beyond the control of Contractor if the request is made therefor as provided in this Article. Such delays shall include, but not be limited to, acts of neglect by District or others performing additional work, or to fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

Delay and Price Change

All time limits stated in the contract documents are of the essence. There shall be no adjustment of contract price due to delays which are not caused by the District, including but not limited to delays for fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God and the acts of any other person or entity. The provisions of this Article shall not exclude recovery for damages for delay which is caused by the District.

Delays in Completion of the Work

1. Notice of Delays

Whenever the Contractor foresees any delay in the prosecution of the work, and in any event immediately upon the occurrence of any delay which the Contractor regards as unavoidable, Contractor shall notify District in writing of the probability of the occurrence of such delay and its cause in order that District may take immediate steps to prevent, if possible, the occurrence or continuance of the delay or, if this cannot be done, may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and completion of the work are to be delayed thereby. It will be assumed that any and all delays which have occurred in the prosecution and completion of the work have been avoidable delays, except such delays as shall have been called to the attention of District at the time of their occurrence and found by District to have been unavoidable. The Contractor shall make no requests for extensions of time as to delay not called to the attention of District at the time of its occurrence.

2. Avoidable Delays

Avoidable delays in the prosecution or completion of the work shall include all delays which in the opinion of District would have been avoided by the exercise of care, prudence, foresight and diligence on the part of the Contractor or Contractor's subcontractors.

3. Unavoidable Delays

Unavoidable delays in the prosecution or completion of the work shall include all delays which, in the opinion of District, result from causes beyond the control of the Contractor and which could not have been avoided by the exercise of care, prudence, foresight and diligence on the part of the Contractor or the subcontractors and/or any suppliers. Delay in completion due to contract modifications ordered by District and unforeseeable delays in the completion of work or interference by other contractors employed by District will be considered unavoidable delays insofar as they interfere with the Contractor's completion of the work.

Extension of Time

1. Avoidable Delays

In case the work is not completed in the time specified, including such extensions of time as may have been granted for unavoidable delays or by change order, the Contractor will be assessed damages for delay in accordance with the liquidated damages provision.

2. Unavoidable Delays

For delays which District considers to be unavoidable, the Contractor shall, pursuant to Contractor's application, be allowed an extension of time beyond the time herein set forth, proportional to such delay or delays, in which to complete the contract. During such extension of time, damages for delay will not be charged to the Contractor.

Liquidated Damages

District and Contractor recognize that time is of the essence and that District will suffer financial loss if the work is not completed within the time specified above, plus any extensions thereof allowed in accordance with this contract. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by District if the work is not completed on time. Accordingly, instead of requiring any such proof, and due to impracticality and difficulty of ascertaining exact damages caused by delay, District and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay District **\$3,500** for each calendar day that expires after the time specified above for substantial completion and **\$1,700** for each calendar day that expires after the time specified above for final completion. Such damages shall only be payable by Contractor to District if the delay is a result of the failure of Contractor to timely perform on its part and not occasioned by the District or any State or Federal agency. In case of joint responsibility for delay in the final completion of the work, where two or more separate contracts are in force at the same time and cover work at the same site, liquidated damages assessed against any one Contractor will be based upon the individual responsibility of that Contractor for the delay as determined by, and in the judgment of, District. District shall have the right to deduct the liquidated damages from any money in its hands, otherwise due, or to become due, to Contractor, or to sue for and recover compensation for damages for nonperformance of this contract within the time stipulated. It is acknowledged that the subject contract is a public project which is subject to the provisions of the Public Contracts Code. Accordingly, District has determined and the Contractor acknowledges that the liquidated damages as established herein are governed by the provisions of Government Code Section 53069.85 and are predicated upon the reasonable damages accruing to District stemming from any delay in the completion of this project.

ARTICLE V: CONTRACT PRICE

District shall pay Contractor for performance of the work in accordance with the Contract Documents in current funds as follows:

Five million, eight hundred fifty thousand, eight hundred eighty-five Dollars (\$ \$5,850,885.00).

ARTICLE VI: CHANGE OF CONTRACT PRICE

Contract Price

The contract price constitutes the total compensation (subject to authorized adjustments) payable to Contractor for performing the work. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at Contractor's expense without change in the contract price.

Change by Change Order

The contract price may only be changed by a written change order. Any request for an increase or decrease in the contract price shall be based on written notice delivered by the party making the request to the other party prior to the commencement of any extra work. Said request shall state the exact nature of the request.

Data regarding any change shall be delivered by Contractor prior to commencing extra work and shall be accompanied by Contractor's written statement that the amount requested covers all amounts (direct, indirect and consequential) to which the Contractor is entitled as a result of the extra work to be done. If said request is granted, District will issue a written change order therefor. No request for an adjustment in the contract price will be valid if not submitted in advance and in accordance with this paragraph.

Determination of Change in Contract Price

The value of any work covered by a change order or of any request for an increase or decrease in the contract price shall be determined in one of the following ways:

1. Where the work involved is covered by unit prices contained in the contract documents, by application of unit prices to the quantities of the items involved (subject to the provisions regarding unit price work set forth below).
2. By mutual agreement, and if there is no mutual agreement, no. 3 directly below shall apply.
3. On the basis of the cost of the work determined as provided below plus a Contractor's fee for overhead and profit as provided below.

Cost of the Work

The term "cost of the work" means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the extra work required or permitted under a change order. Except as otherwise may be agreed to in writing by District, such costs shall be in amounts no higher than those prevailing in the locality of the project and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the work under schedules of job classifications agreed upon by District and Contractor. Payroll costs for employees not employed full time on the work shall be apportioned on the basis of their time spent on the work. Payroll costs shall include salaries and wages plus the cost of fringe benefits which shall include social security contributions,

unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing work after regular working hours, on Saturday, Sunday or legal holidays shall be included in the above to the extent authorized by District in writing.

2. Cost of all materials and equipment furnished and incorporated in the work, including costs of transportation and storage thereof, and suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless District deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to District. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to District, and Contractor shall make provisions so that they may be obtained. Equipment rates shall be based on the latest version of CalTrans' Labor Surcharge and Equipment Rental Rates document.
3. Payments made by Contractor to the subcontractors for work performed by subcontractors. If required by District, Contractor shall obtain competitive bids from subcontractors acceptable to Contractor and shall deliver such bids to District who will then determine which bids will be accepted. If a subcontract provides that the subcontractor is to be paid on the basis of cost of the work plus a fee, the subcontractor's cost of the work shall be determined in the same manner as Contractor's cost of the work. All subcontracts shall be subject to the other provisions of the contract documents insofar as applicable.
4. Costs of special consultants (including engineers, architects, testing laboratories, surveyors, and accountants) employed for services specifically, and only related to the work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the work, and cost, less market value of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by District, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the work.
 - d. Sales, consumer, use or similar taxes related to the work, and for which Contractor is liable, imposed by laws and regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses), not compensated by insurance or otherwise, to the work or otherwise sustained by contractor in connection with the performance and furnishing of the work (except losses and damages within the deductible amounts of property insurance established by District), provided they

have resulted from causes other than the negligence of Contractor, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of District. No such losses, damages and expenses shall be included in the cost of the work for the purpose of determining Contractor's fee. If, however, any such loss or damage requires reconstruction and Contractor is placed in charge thereof, Contractor shall be paid for services a fee proportionate to that stated below under Contractor's fee.

- g. The cost of utilities, fuel and sanitary facilities at the site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the work.
- i. Cost of premiums for additional bonds and insurance required because of changes in the work and premiums for property insurance coverage within the limits of the deductible amounts established by District in this contract.

Not Included in Cost of the Work

The term "cost of the work" shall not include any of the following:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the site or in Contractor's principal or a branch office for general administration of the work and not specifically included in the agreed upon schedule of job classifications referred to in this contract or specifically covered above under costs of special consultants, all of which are to be considered administrative costs covered by the Contractor's fee.
2. Expenses of Contractor's principal and branch offices other than Contractor's office at the site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the work and charges against Contractor for delinquent payments.
4. Cost of premiums for all bonds and for all insurance whether or not Contractor is required by the contract documents to purchase and maintain the same (except for the cost of premiums specifically covered above).
5. Costs due to the negligence of Contractor, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective work, disposal of materials or equipment wrongly supplied and making good any damage to property.
6. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included herein.

Contractor's Fee

The Contractor's fee allowed to Contractor for overhead and profit shall be determined by a fee based on the following percentages of the various portions of the cost of the work:

- a. For all allowable costs of the work incurred under the paragraphs dealing with payrolled employees and costs of materials and equipment, the Contractor's fee

shall be fifteen percent;

- b. For all allowable costs of the work incurred under the paragraph dealing with work done by subcontractors, the Contractor's fee shall be five percent; and if a subcontract is on the basis of cost of the work plus a fee, the maximum allowable to Contractor on account of overhead and profit of all subcontractors shall be fifteen percent, for a total add-on of twenty percent.
- c. No fee shall be payable on the basis of costs itemized under paragraphs dealing with special consultants, supplemental costs and/or costs not included in cost of the work.
- d. The amount of credit to be allowed by Contractor to District for any such change which results in a net decrease in cost will be the amount of the reasonable cost that would have been incurred to perform the Work plus a deduction in Contractor's fee by an amount equal to ten percent of the net decrease; and
- e. When both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with paragraphs 2(a) through 2(d) above.
- f. Bonds and insurance shall be 1 percent of the Change Order value for both additive and credit changes that are above the original Contract value and 0 percent of the Change order value for both additive and credit changes that are below the original Contract value.
- g. Small tools and consumables shall be 1 percent of Change Order value for both additive and credit changes.

Cost Breakdown

Whenever the cost of any work is to be determined as set forth herein, Contractor will submit, in form acceptable to District, an itemized cost breakdown together with supporting data.

Cash Allowances

It is understood that Contractor has included in the contract price all allowances so named in the contract documents and shall cause the work so covered to be done by such subcontractors or suppliers and for such sums within the limit of the allowances as may be acceptable to District. Contractor agrees that:

1. The allowances include the cost to the Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and
2. Contractor's cost for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the contract price and not in the allowances. No demand for additional payment on account of any thereof will be valid.

Prior to final payment, an appropriate change order will be issued to reflect actual amounts due Contractor on account of work covered by allowances, and the contract price shall be correspondingly adjusted.

Unit Price Work

Where the contract documents provide that all or part of the work is to be unit price work, initially the contract price will be deemed to include for all unit price work an amount equal to the sum of the established unit prices for each separately identified item of unit price work times the estimated quantity of each item as indicated in the contract documents. The estimated quantities of items of unit price work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial contract price. Determinations of the actual quantities and classifications of unit price work performed by Contractor will be made by District. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item. Except for items shown on the bid sheet or in the specifications as "contingency" items where no additional amounts will be allowable, where the quantity of any item of unit price work performed by Contractor differs more than 25 percent from the estimated quantity of such item indicated in the contract documents and there is no corresponding adjustment with respect to any other item of work, and if either party believes that it has incurred additional expense or reduced cost as a result thereof, either party may make a claim for an increase or decrease in the contract price if the parties are unable to agree as to the amount of any such increase or decrease.

Final Pay Quantities

When the estimated quantities for a specific portion of the work are designated on the plans as final pay quantities, said estimated quantities shall be the final quantities for which payment for such specific portion of the work will be made, unless the dimensions of said portions of the work shown on the plans are revised by the Engineer. If such dimensions are revised, and such revisions result in an increase or decrease in the quantities of such work, the final quantities for payment will be revised in the amount represented by the changes in the dimensions. The estimated quantities for such specific portion of the work shall be considered as approximate only and no guarantee is made that the quantities which can be determined by computations, based on the details and dimensions shown on the plans, will equal the estimated quantities. No allowance will be made in the event that the quantities based on computations do not equal the estimated quantities.

When portions of an item have been designated on the plans as final pay quantities, portions not so designated will be measured and paid for in accordance with the applicable provisions of these specifications and the special provisions.

In case of a discrepancy between the quantities shown on the plans as final pay quantities and the quantity of the same item shown in the Engineer's Estimate, payment will be based on the final pay quantities shown on the plans.

ARTICLE VII: PAYMENTS TO CONTRACTOR

Schedule of Values

The schedule of values established for the work will serve as the basis for progress payments and will be incorporated into a form of application for payment acceptable to District. Progress payments on account of unit price work will be based on the number of units completed.

Payment Applications

Payment applications to the District shall be detailed and shall contain full documentation of all work performed and all reimbursable expenses incurred. Where the scope of work on the contract is divided into various tasks, invoices shall detail the related expenditures accordingly. Labor expenditures need documentation to support time, subsistence, travel and field expenses. No

expense will be reimbursed without adequate documentation. This documentation will include, but not be limited to, receipts for material purchases, rental equipment and subcontractor work.

Progress Payment

Once each month, District shall cause an estimate to be made covering the work completed as of the date of the estimate. No materials shall be paid for until incorporated into the work. If, however, District reaches an agreement with Contractor to pay for materials and equipment not yet incorporated into the work due to some special circumstances, then Contractor shall show that the materials or equipment were delivered and are suitably stored at the site or at another location agreed to in writing. In that event, the payment shall be based on a bill of sale, invoice or other documentation submitted by Contractor and warranting that District has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances (which are hereinafter referred to as "liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect District's interest therein, all of which will be satisfactory to District. The amount of retention with respect to progress payments will be five percent (5%).

Amounts of Progress Payments

Prior to completion, progress payments will be in an amount equal to:

1. Ninety five percent (95%) of the work completed, and
2. Where applicable pursuant to the above, ninety-five percent (95%) of materials and equipment not incorporated in the work but delivered and suitably stored, less in each case the aggregate of payments previously made.
3. Thirty-five days after recording of the Notice of Completion but not later than 60 days after completion of the work as defined in Public Contract Code section 7107, and upon Contractor providing all required documentation, District will pay an amount sufficient to increase total payments to Contractor to one hundred percent (100%) of the contract price, less such amounts as District shall determine in accordance with this contract. District reserves the right to retain such funds as it shall determine in accordance with the contract documents to complete the work.
4. The Contractor may elect to receive 100% of payments due under this contract from time to time, without retention of any portion of the payment by the public agency, by depositing securities of equivalent value with District in accordance with the provisions of Section 22300 of the California Public Contract Code; except that no such substitution shall be allowed where federal money is funding the project and federal regulations or policies would prohibit such substitution of securities for the retention. Securities eligible for investment shall include those listed in Section 16430 of the California Government Code, or bank or savings and loan certificates of deposits. Such securities, if deposited by the bidder, shall be valued by District whose decision on the valuation of the securities shall be final. The bidder shall be the beneficial owner of any securities substituted for money withheld and shall receive any interest thereon.

Contractor's Warranty of Title

Contractor warrants and guarantees that title to all work, materials and equipment covered by any application for payment, whether incorporated in the project or not, will pass to District no later than the time of payment free and clear of all liens.

Payment of Progress Payment

Contractor will submit each progress pay estimate to District. Upon receipt back from Contractor of a signed copy of the pay estimate and acceptance by District, District shall process the pay estimate for payment. The amount approved by District will become due thirty (30) days after the date of signature by the District of the progress pay estimate. Said payment shall be made by District to Contractor unless District has knowledge of claims or liens filed in connection with the work.

Pursuant to Public Contract Code Section 20104.50, if the District fails to make any progress payment within thirty (30) days after receipt of an undisputed and properly submitted payment request it shall pay interest to Contractor at the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure. "Progress payment" for purposes of this paragraph includes all payments due Contractor except that portion of the final payment designated by the contract as retention earnings.

Also, pursuant to Public Contract Code Section 20104.50, each payment request shall be reviewed by District as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request. Any payment request determined not to be a proper payment request suitable for payment shall be returned to Contractor as soon as practicable, but not later than seven (7) days after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper. The number of days available to District to make a payment without incurring interest pursuant to Public Contract Code Section 20104.50 shall be reduced by the number of days by which District exceeds the seven (7) day return requirement. A payment request shall be considered properly executed if funds are available for payment of the payment request, and payment is not delayed due to an audit inquiry by the financial officer of the District.

District's Recommendation of Payment

By District's recommending any payment, Contractor cannot conclude that District represents that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the work in the contract documents or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by District or District to withhold payment to Contractor.

District May Refuse to Make Payment

District may refuse to make payment of the full amount or any part if, in District's opinion, it would be incorrect to make such payment. District may also refuse to make any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in District's opinion to protect District from loss because:

1. The work is defective, non-compliant, or completed work has been damaged requiring correction or replacement,
2. The contract price has been reduced by written amendment or change order,
3. Contractor has been required to correct defective work or complete work, or
4. Of District's actual knowledge of the occurrence of any of the events enumerated in paragraphs relating to suspension of work and termination.

District may refuse to make payment of the full amount because claims have been made against District on account of Contractor's performance or furnishing of the work or liens have been filed in connection with the work or there are other items entitling District to a set-off against the amount

recommended, but District must give Contractor immediate written notice stating the reasons for such action.

Substantial Completion and Final Inspection

When Contractor considers the entire work ready for its intended use, Contractor shall notify District in writing that the entire work is substantially complete. Within a reasonable time thereafter, District and Contractor shall make an inspection of the work to determine the status of completion. If District does not consider the work complete, District will notify Contractor in writing giving the reasons therefor. If District considers the work incomplete, District will prepare and deliver a list of items to be completed or corrected before final payment. Contractor shall immediately take such measures as are necessary to complete or correct the listed items.

Acceptance and Final Application for Payment

After Contractor has completed all such measures to remedy deficiencies to the satisfaction of District and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked-up record documents, property owner's releases and other documents, all as required by the contract documents, and after District has indicated that the work is acceptable, Contractor may make application for final payment. The final application for payment shall be accompanied by all documentation called for in the contract documents, together with complete and legally effective receipts, releases or waivers (satisfactory to District) from all subcontractors or material suppliers and an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the work for which District or District's property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any subcontractor or supplier fails to furnish a release or receipt in full, or if a stop notice has been filed, Contractor may furnish a bond or other collateral satisfactory to District to indemnify District against any lien.

Final Payment

If, on the basis of District's review of the final application for payment and accompanying documentation, all as required by the contract documents, District is satisfied that Contractor's obligations under the contract documents have been fulfilled, District will, within seven (7) days after receipt of the final application for payment, process the application for payment. Otherwise, District will return the application to Contractor, indicating in writing the reasons for refusing to make final payment, in which case Contractor shall make the necessary corrections and resubmit the application. Thirty-five days after presentation to District of the application and accompanying documentation, in appropriate form and substance, but no later than 60 days after completion of the project as defined in Public Contract Code Section 7107, or thirty-five (35) days after recording of a Notice of Completion, whichever date is later, the full retention will become due and will be paid by District to Contractor.

Delay in Completion through No Fault of Contractor

If, through no fault of Contractor, final completion of the work is significantly delayed and if District so confirms, District shall, upon receipt of Contractor's final application for payment, and without terminating the Contract, make payment of the balance due for that portion of the work fully completed and accepted. If the remaining balance to be held by District for work not fully completed or corrected is less than the retainage stipulated in the contract, and if the appropriate bonds have been furnished, the written consent of the surety to the payment of the balance due for that portion of the work fully completed and accepted shall be submitted by Contractor to District with the application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

Contractor's Continuing Obligation

Contractor's obligation to perform and complete the work in accordance with the contract documents shall be absolute. Neither the issuance of a certificate of substantial completion, nor any payment by District to Contractor under the contract documents, nor any use or occupancy of the work or any part thereof by District, nor any act of acceptance by District nor any failure to do so, nor any review and approval of a shop drawing or sample submission, nor the issuance of a notice of acceptability, nor any correction of defective work by District will constitute an acceptance of work not in accordance with the contract documents or a release of Contractor's obligation to perform the work in accordance with the contract documents.

Waiver of Claims

The making and acceptance of final payment will constitute:

1. A waiver of all claims by District against Contractor, except claims arising from unsettled liens, or from defective work appearing after final inspection or from failure to comply with the contract documents or the terms of any special guarantees specified therein, or from any outstanding claims; however, it will not constitute a waiver by District of any rights in respect of Contractor's continuing obligations under the contract documents; and
2. A waiver of all claims by Contractor against District other than those previously made in writing and still unsettled.

Books of Account and Audit Provision

Contractor shall maintain on a current basis complete books and records relating to this contract. Such records shall include, but not be limited to, documents supporting all bids, all income and all expenditures. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work on this contract. In addition, Contractor shall maintain detailed payroll records including all subsistence, travel and field expenses, and canceled checks, receipts and invoices for all items. These documents and records shall be retained for at least five years from the completion of this contract. Contractor will permit District to audit all books, accounts or records relating to this contract or all books, accounts or records of any business entities controlled by Contractor who participated in this contract in any way. Any audit may be conducted on Contractor's premises or, at District's option, Contractor shall provide all books and records within a maximum of fifteen (15) days upon receipt of written notice from District. Contractor shall refund any moneys erroneously charged. If District ascertains that it has been billed erroneously by Contractor for an amount equaling 5% or more of the original bid, Contractor shall be liable for the costs of the audit in addition to any other penalty to be imposed.

ARTICLE VIII: PRELIMINARY MATTERS

Delivery of Certificates of Insurance

Before any work at the site is started, Contractor shall deliver to District certificates (and other evidence of insurance requested by District) which Contractor is required to purchase and maintain in accordance with the insurance provisions herein.

Delivery of Bonds

When Contractor delivers the executed Agreements to District, Contractor shall also deliver to District the bonds required herein. Notwithstanding the language in bonds authorizing attorneys' fees to be awarded if suit is brought upon the bond, no attorneys' fees shall be payable for any other suit brought under this contract.

Pre-construction Conference

Within **7 calendar days** after issuance of the notice to proceed, but before contractor starts the work at the site, a conference attended by Contractor and District and others as appropriate will be held to discuss schedules, procedures for handling shop drawings and other submittals and for processing applications for payment, and to establish a working understanding among the parties as to the work.

Delivery of Schedules

Within **7 calendar days** after issuance of written notice to proceed, Contractor shall submit to District for review:

1. An estimated progress schedule indicating the starting and completion dates of the various stages of the work;
2. A preliminary schedule of shop drawing submissions;
3. A preliminary schedule of product deliveries;
4. A preliminary schedule of values for all of the work which will include quantities and prices of items aggregating the contract price and will subdivide the work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of work which will be confirmed in writing by Contractor at the time of submission.

Finalizing Schedules

At least **10 calendar days** before submission of the first application for payment a conference attended by Contractor, District and others as appropriate will be held to finalize schedules. The finalized progress schedule will be acceptable to District as providing an orderly progression of the work to completion within the contract time, but such acceptance will or neither imposes on District responsibility for the progress or scheduling of the work nor relieves Contractor from full responsibility therefor. The finalized schedule of shop drawing submissions will be acceptable to District as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to District as to form and substance.

Before Starting Construction

Contractor shall provide District with at least 72 hours written notice of the date on which it intends to commence work. Before undertaking each and every part of the work, Contractor shall carefully study and compare the contract documents and check and verify pertinent figures shown thereon and all applicable field measurements. Contractor shall promptly report in writing to District any conflict, error or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from District before proceeding with any work affected thereby; however, Contractor shall not be liable to District for failure to report any conflict, error or discrepancy in the contract documents, unless Contractor had actual knowledge thereof or should reasonably have known thereof.

Contractor's Representations

In order to induce District to enter into this agreement, Contractor makes the following representations:

1. Contractor has familiarized himself or herself with the nature and extent of the contract documents, work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the work.
2. Contractor has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance

- of the work which were relied upon by District in the preparation of the drawings and specifications and which have been identified in the contract document.
3. Contractor has made or caused to be made examinations, investigations, and tests and studies of such reports and related data necessary for the performance of the work at the contract price, within the contract time and in accordance with the other terms and conditions of the contract documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by Contractor for such purposes.
 4. Contractor has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the contract documents.
 5. Contractor has given District written notice of all conflicts, errors or discrepancies that have been discovered in the contract documents and the written resolution thereof by District is acceptable to Contractor.

ARTICLE IX: CHANGES IN THE WORK

District May Order Changes

Without invalidating this contract and without notice to any surety, District may, at any time or from time to time, order additions, deletions or revisions in the work; these will be authorized by change order. Upon receipt of any such document, Contractor shall promptly forward any request for change in the contract price and, if instructed to do so, proceed with the work involved which will be performed under the applicable conditions of the contract documents (except as otherwise specifically provided).

Failure to Agree to a Price or Time Change; Claims

If District and Contractor are unable to agree as to the extent, if any, of an increase or decrease in the contract price or an extension or shortening of the contract time that should be allowed, a claim may be made therefor but the work shall proceed if District so instructs.

No Change in Time or Price for Work Not Required

Contractor shall not be entitled to an increase in the contract price or an extension of the contract time with respect to any work performed that is not required by the contract documents as amended, modified and supplemented except in the case of an emergency as set forth herein and except in the case of uncovering work for inspection or testing as set forth in this contract.

Changes in Time or Price

District and Contractor shall execute appropriate change orders (or written amendments) covering:

1. Changes in the work which are ordered by District or are agreed to by the parties;
2. Changes in the contract price or contract time which are agreed to by the parties; and
3. Changes in the contract price or contract time which embody the substance of any written decision rendered by District in response to a request therefor.

Notice to Sureties

If notice of any change affecting the general scope of the work or the provisions of the contract documents (including, but not limited to, contract price or contract time) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be Contractor's responsibility, and the amount of each applicable bond will be adjusted accordingly. Failure to give such notice shall not release the surety from its obligations to District.

ARTICLE X: CONTRACT DOCUMENTS

Intent

The contract documents comprise the entire agreement between District and Contractor concerning the work. The contract documents are complementary; what is called for by one is as binding as if called for by all. The contract documents will be construed in accordance with California law.

Contract Interpretation

It is the intent of the contract documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the contract documents. Any work, materials or equipment that may reasonably be inferred from the contract documents as being required to produce the intended results will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of bids, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the contract documents) shall be effective to change the duties and responsibilities of District or Contractor, or any of their consultants, agents or employees from those set forth in the contract documents, nor shall it be effective to assign to District, or any of District's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the work or any duty or authority to undertake responsibility contrary to the provisions of this contract. Clarifications and interpretations of the contract documents shall be issued by District.

Conflicts, Errors and Discrepancies

If during the performance of the work, Contractor finds a conflict, error or discrepancy in the contract documents, Contractor shall so report to District in writing at once and before proceeding with the work affected thereby shall obtain a written interpretation or clarification from District.

Amending Contract Documents

The contract documents may be amended to provide for additions, deletions and revisions in the work or to modify the terms and conditions thereof by change order. Contract price and contract time may only be changed by change order.

Supplementary Contract Documents

In addition to the above, the requirements of the contract documents may be supplemented and minor variations and deviations in the work may be authorized in one or more of the following ways:

1. A field order,
2. District's favorable review of a shop drawing or sample, or
3. District's written interpretation or clarification.

Reuse of Documents

Neither contractor nor any subcontractor or supplier or other person or organization performing or furnishing any of the work under a direct or indirect contract with District shall have or acquire any title to or ownership rights in any of the drawings, specifications or other documents (or copies of any thereof) prepared by or bearing the seal of District; and they shall not reuse any of them on

extensions of the project or any other project without written consent of District and specific written verification or adaptation by District.

Contract Documents

The contract documents comprise the entire agreement between the parties and may be amended only by writing signed by both parties or by written change order. The contract documents shall include this contract, any general and special conditions, plans and specifications, bidding documents and addenda thereto, and all bids submitted by Contractor. In the case of ambiguity or conflict, the documents shall be given the following priority:

1. Special provisions or conditions
2. Standard Public Works Contract
3. Project plans & specifications
4. Standard plans
5. Standard specifications
6. All other documents incorporated by reference.

ARTICLE XI: THE PROJECT SITE

Availability of Lands

District shall furnish, as indicated in the contract documents, the lands upon which the work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of Contractor. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by District, unless otherwise provided in the contract documents. If Contractor believes that any delay in District's furnishing these lands, rights-of-way or easements entitles Contractor to an extension of the contract time, Contractor may make a claim therefor as provided for herein. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

Physical Conditions

If the contract documents identify those reports of explorations and tests of subsurface conditions at the site that have been utilized by District in preparation of the contract documents, Contractor may rely upon the accuracy of the factual data contained in such reports but not upon interpretations or opinions contained therein or for the completeness or representativeness thereof for Contractor's purposes. If construction drawings of physical conditions in or relating to existing surface and subsurface structures (except underground facilities discussed below) at or contiguous to the site have been utilized by District in preparation of the contract documents, Contractor may rely upon the accuracy of the factual data contained in such drawings but not the completeness thereof for Contractor's purposes. If Contractor believes that any factual data on which Contractor is entitled to rely is inaccurate, or any physical condition uncovered or revealed at the site differs materially from that indicated, reflected or referred to in the contract documents, Contractor shall, promptly after becoming aware thereof and before performing any work in connection therewith (except in an emergency as permitted herein), notify District in writing about the inaccuracy or difference. Failure to notify District promptly shall relieve District of any liability for any and all claims resulting from such inaccuracy or difference.

District's Review

District will review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise Contractor in writing of District's findings and conclusions.

Possible Document Change

If District concludes that there is a material error in the contract documents or that because of newly discovered conditions a change in the contract documents is required, a change order will be issued in writing as provided to reflect and document the consequences of the inaccuracy or difference.

Possible Price and Time Adjustments

In each case of inaccuracy or difference, an increase or decrease in the contract price or an extension or shortening of the contract time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy or difference. If District and Contractor are unable to agree as to the amount or length thereof, a claim may be made therefor as provided in the contract documents.

Physical Conditions - Underground Facilities

The information and data shown or indicated in the contract documents with respect to existing underground facilities at or contiguous to the site is based on information and data furnished to District by the owners of such underground facilities or by others. Generally service connections are not indicated on drawings. Unless it is otherwise expressly provided:

1. District shall not be responsible for the accuracy or completeness of any such information or data; and,
2. Contractor shall have full responsibility for reviewing and checking all such information and data, for locating all underground facilities shown or indicated in the contract documents, for coordination of the work with the owners of such underground facilities during construction, for the safety and protection thereof, and repairing any damage thereto resulting from the work, the cost of all of which will be considered as having been included in the contract price.
3. If an underground facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the contract documents and which Contractor could not reasonably have been expected to be aware of, Contractor shall, promptly after becoming aware thereof and before performing any work affected thereby (except in an emergency as permitted by this contract), identify the owner of such underground facility and give written notice thereof to that owner and to District. District will review the underground facility to determine the extent to which the contract documents should be modified to reflect and document the consequences of the existence of the underground facility, and the contract documents will be amended or supplemented to the extent necessary. During such time, Contractor shall be responsible for the safety and protection of such underground facility as provided herein. Contractor shall be allowed an increase in the contract price or an extension of the contract time, or both, to the extent that they are attributable to the existence of any underground facility that was not shown or indicated in the contract documents and which Contractor could not reasonably have been expected to be aware of and will not be assessed liquidated damages pursuant to Government Code Section 4215. If the parties are unable to agree as to the amount or length thereof, Contractor may make a claim therefor as provided in these contract documents.
4. Water, sewer, gas, and communication service connections are reasonably expected for each residence along the pipeline alignment.

Preservation of Property

Due care shall be exercised to avoid injury to existing District facilities, highway improvements or facilities, utility facilities, adjacent property, and roadside trees, shrubs, and other plants that are not to be removed. Roadside trees, shrubs, and other plants that are not to be removed, and pole lines, fences, signs, markers and monuments, buildings and structures, conduits, pipelines under or

above ground, sewer and water lines, all highway facilities and any other improvements or facilities within or adjacent to the project shall be protected from injury or damage, and if ordered by District, the Contractor shall provide and install suitable safeguards, approved by District, to protect such objects from injury or damage. If such objects are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored at the Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor entered upon the work, or as good as required by the specifications accompanying the contract, if any such objects are a part of the work being performed under the contract. District may make or cause to be made such temporary repairs as are necessary to restore to service any damaged facility. The cost of such repairs shall be borne by the Contractor and may be deducted from any moneys due or to become due to the Contractor under the contract. Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in protecting or repairing property, shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

Reference Points

District shall establish one or more horizontal and vertical reference points for construction which in District's judgment are necessary to enable Contractor to proceed with the work or as provided in the contract documents.

Power

The Contractor shall provide, at no additional cost to the District, all construction power used at the project site and shall make all arrangements with the electrical utility and with the District for power takeoff points, voltage and phasing requirements, transformers, and metering and shall pay all costs and fees arising therefrom. It shall be the Contractor's responsibility to provide all special connections required for the work.

Water

The Contractor shall provide the water needed for the work, including potable water, construction water, and water for testing purposes.

Sanitary Facilities

The Contractor shall make arrangements for use of adequate toilet facilities at or near the site of work. Such facilities shall be subject to the acceptance of the District as to location and type. The Contractor shall maintain the sanitary facilities in acceptable condition from the beginning of the work until completion and shall remove the facilities and disinfect the premises.

Contractor's Office

The Contractor shall maintain on the project site a suitable office or other protected area in which shall be kept project copies of the contract documents, project progress records, etc. which shall be accessible to District during normal working hours.

ARTICLE XII: LABOR, MATERIAL AND PERFORMANCE BONDS

Bonds to be Provided:

The Contractor shall furnish two bonds each in the amount of one hundred (100%) percent of the contract price, one as security for the faithful performance of the work, and the other as security for the faithful payment and satisfaction of all persons furnishing materials and performing labor for the project. The bonds shall be issued by a corporation duly and legally licensed to transact surety business in the State of California. The labor and materials bond shall remain in force throughout the period required to complete the work and for 35 days after the recording of the Notice of

Completion. The performance bond shall remain in force for a period of 365 days after final acceptance of the work to cover any defects in workmanship, materials, or equipment which develop in that time. The bonds must be executed by a duly licensed surety company and accompanied by a certified copy of the authority to act. The scope of the bonds or the forms thereof shall in no way affect or alter the liabilities of the Contractor to District. Bonds shall be executed on the forms included in the contract documents.

Insolvency or Termination of Right to Do Business

If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in California, Contractor shall within five days thereafter substitute another bond and surety, both of which must be acceptable to District. If an acceptable substitute is not furnished within five days, District may terminate Contractor.

ARTICLE XIII: CONTRACTOR LIABILITY AND INSURANCE

Liability of Contractor

The Contractor shall be liable for all damages and injury which shall be caused to District or any other owners of property on or in the vicinity of the work or which shall occur to any person or persons or property whatsoever arising out of the performance of this contract. Contractor agrees to hold District harmless and indemnify District for any such losses.

Contractor's Liability Insurance

Contractor shall purchase and maintain commercial general liability and other insurance as is appropriate for the work being performed and furnished and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance and furnishing of the work and Contractor's other obligations under the contract documents, whether it is to be performed or furnished by Contractor, by any subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the work, or by anyone for whose acts any of them may be liable:

1. Claims under workers' disability benefits and other similar employee benefit acts;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
4. Claims for damages insured by personal injury liability coverage which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (b) by any other person for any other reason;
5. Claims for damages, other than to the work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom;
6. Claims arising out of operation of laws or regulations for damages because of bodily injury or death of any person or for damage to property; and
7. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

To the extent that Contractor's work, or work under Contractor's direction, may require blasting, explosive conditions, or underground operations, the comprehensive general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property.

The insurance required by this paragraph shall be "per occurrence" coverage and shall include the specific coverages and be written for not less than the limits of liability and coverages provided

herein, or required by law, whichever is greater. The commercial general liability insurance shall include completed operations insurance. All such insurance shall remain in effect until final payment and at all times thereafter when Contractor may be correcting, removing or replacing defective work. In addition, Contractor shall maintain such completed operations insurance for at least one year after final payment and furnish District with evidence of continuation of such insurance at final payment. If Contractor's insurance is canceled prior to completion of the project and the Contractor does not furnish a new Certificate of Insurance prior to cancellation, District may obtain the required insurance and deduct the premium from contract moneys due the Contractor.

At the option of Contractor, evidence of coverage and limits may be furnished by an umbrella liability policy certificate in addition to certificates for worker's compensation and employer's liability, and comprehensive automobile and general liability policies.

Contractual Liability Insurance

The commercial general liability insurance required above will include contractual liability insurance applicable to Contractor's obligations hereunder.

Owner's Liability Insurance

Contractor shall purchase and maintain Owner's liability insurance. This insurance shall be issued in the name of District and shall protect and defend District and its agents against all claims arising as a result of the operations of Contractor. The coverage and limits of liability shall be co-extensive with those specified for the Contractor's liability insurance. The Owner's liability insurance may be provided by naming District and its agents as an additional insured on the Contractor's liability insurance.

Schedule of Required Insurance

1. Worker's Compensation Insurance: Statutory amount and employer's liability of **\$2,000,000.**
2. Contractor's Commercial General Liability Insurance (bodily injury, property damage and including contractual liability insurance, completed operations and products liability insurance): **\$2,000,000.**
3. Comprehensive Business or Commercial Automobile Liability Coverage (bodily injury liability, property damage liability, uninsured motorist protection and including non-owned and hired automobile liability): **\$2,000,000.**

The values above are per occurrence. The aggregate amount shall be twice the per occurrence amount. Nevada County and District shall be named as additional insured on all insurance policies. Contractor shall provide proof of insurance required in this contract evidenced by certificates of insurance and endorsements.

Notice Requirement

All the policies of insurance (or the certificates or other evidence thereof) required to be purchased and maintained by the Contractor shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least ten (10) days prior written notice has been given to District by registered mail.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be fully disclosed by Contractor and approved by District prior to commencement of work. At District's option, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects District, its officials and employees, or

Contractor shall provide a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

Risk of Loss

Liability for loss or damage to equipment, materials, workmanship or services occurring on or off the site shall be the responsibility of the Contractor. Liability for completed work shall not be assumed by District until both the work has been completed and District has accepted the work as complete. District will not be responsible for purchasing and maintaining any property insurance to protect the interests of Contractor, subcontractors or others in the work. The risk of loss will be borne by Contractor, subcontractor or others suffering any such loss and if any of them wishes property insurance coverage in addition to insurance required herein, each may purchase and maintain it at the purchaser's own expense.

Waiver of Rights

Contractor waives all rights against District and its agents for all losses and damages caused by any of the perils covered by the policies of insurance provided for above and any other property insurance applicable to the work, and all other parties named as insureds in such policies for losses and damages so caused. Each subcontract between Contractor and a subcontractor will contain similar waiver provisions by the subcontractor in favor of District and its agents and all other parties named as insureds. None of the above waivers shall extend to the rights that any of the insured parties may have to the proceeds of insurance held by District as trustee or otherwise payable under any policy so issued.

No Right of Recovery

District and Contractor intend that any policies provided as set forth herein shall protect all of the parties insured and provide primary coverage for all losses and damages caused by the perils covered thereby. Any insurance or self-insurance maintained by District shall be in excess of Contractor's insurance and shall not contribute to it.

Receipt and Application of Proceeds

Any insured loss under the policies of insurance required herein will be adjusted with District and made payable to District as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause. District shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged work shall be repaired or replaced, the moneys so received applied on account thereof and the work and the cost thereof covered by an appropriate change order or written amendment.

District's Duties as Trustee

District as trustee shall have power to adjust and settle any loss with the insurers.

Acceptance of Insurance

If District has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by Contractor on the basis of its not complying with the contract documents, District shall notify Contractor in writing thereof and Contractor shall immediately provide proof of the proper coverage. Contractor shall provide to District such additional information in respect of insurance provided by it as District may reasonably request. District may at its option waive any type of insurance required herein which District in its discretion deems to be inapplicable to the type of project being constructed. Any such waiver shall be in writing by the County Administrator.

Verification of Coverage

Contractor shall furnish District with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by District and are to be received and approved by District before work commences.

Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

ARTICLE XIV: MATERIALS AND EQUIPMENT

Material and Equipment

Unless otherwise specified, Contractor shall furnish and assume full responsibility and risk of loss for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the work.

Quality of Materials and Equipment

All materials and equipment shall be of good quality and new, except as otherwise provided in the contract documents. If required by District, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. Contractor may be required to show that materials and/or equipment will be available in sufficient quantity or time so as to assure top quality performance of the contract. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable supplier except as otherwise provided in the contract documents; but no provision of any such instructions will be effective to assign to District, or any of District's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the work or any duty or authority to undertake responsibility contrary to the provisions of this contract.

Storage of Materials and Equipment

Materials and equipment shall be stored where specified by District and so as to insure the preservation of their quality and fitness for the work. Stored equipment and materials shall be located so as to facilitate inspection. The Contractor shall be responsible for all damages that occur to materials and equipment until the completion and final acceptance of the work by the District.

Substitute Items

Whenever materials or equipment are specified or described in the contract documents by using the name of a proprietary item or the name of a particular supplier the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers may be accepted by District if sufficient information is submitted in advance by Contractor to allow District to determine that the material or equipment proposed is equivalent or equal to that named.

The procedure for review by District will include the following: requirements for review of substitute items of material and equipment or modification or alteration of the design of any material or equipment or portion of the work will not be accepted by District from anyone other than Contractor.

If Contractor wishes to furnish or use a substitute item of material or equipment or modification or alteration of the design of any material or equipment or portion of the work, Contractor shall make written application to District for acceptance thereof, certifying that the proposed substitute or modification or alteration will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice Contractor's achievement of completion on time, whether or not acceptance of the substitute or design modification or alteration for use in the work will require a change in any of the contract documents (or in the provisions of any other direct contract with District for work on the project) to adapt the design to the proposed substitute or design modification or alteration and whether or not incorporation or use of the substitute in connection with the work is subject to payment of any license fee or royalty. All variations of the proposed substitute or design modification or alteration from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated, where necessary. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute or design modification or alteration, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by District in evaluating the proposed substitute or design modification or alteration. District may require Contractor to furnish at Contractor's expense additional data about the proposed substitute or design modification or alteration. District will be allowed a reasonable time within which to evaluate each proposed substitute or design modification or alteration. District will be the sole judge of acceptability, and no substitute or design modification or alteration will be ordered, installed or utilized without District's prior written acceptance which will be evidenced by either a change order or an accepted shop drawing. District may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute or design modification or alteration. Contractor shall pay all costs for redesign required by the implementation of the proposed substitute.

Operating and Maintenance Instructions and Manufacturer's Warranties

Before receiving payment for more than 60 percent of the purchase value of any equipment and prior to installation of said equipment, the Contractor shall deliver to District acceptable manufacturer's operating and maintenance instructions covering each item of equipment assembly provided under this contract and each and every warranty provided by the manufacturer. Manufacturers' standard brochures or manuals will be modified to reflect only that model or series of equipment installed on this project. All extraneous material will be crossed out or otherwise altered as acceptable to District.

The operating and maintenance instructions shall include, as a minimum, the following data for each item of mechanical, electrical, and instrumentation equipment:

1. An itemized list of all data provided.
2. Name and location of the manufacturer, the manufacturer's local representative, the nearest supplier and spare parts warehouse.
3. Accepted submittal information applicable to operation and maintenance.
4. Recommended installation, adjustment, start up, calibration, and troubleshooting procedures.
5. Recommended lubrication and an estimate of yearly quantity needed.
6. Recommended step-by-step procedures for all modes of operation.
7. Complete internal and connection wiring diagrams.
8. Recommended preventive maintenance procedures and schedule.
9. Complete parts lists, by generic title and identification number, with exploded view of each assembly.
10. Recommended spare parts.
11. Disassembly, overhaul, and re-assembly instructions.

12. Complete, as applicable, operating and maintenance instructions, transmittal forms and summary sheets.
13. Nameplate data for all equipment supplied, including make, model and serial numbers, type and motor data together with designation and location of equipment.

Before final acceptance of the project, the Contractor shall bind all of the above in an appropriately labeled binder. Each completed binder shall contain only that material which can be held in a non-expanded position. A complete table of contents listing all items and their location in the set shall be included in each binder. For ready reference, the Contractor shall compile a complete list of manufacturer's local representatives for each item provided. In addition to withholding payment where Contractor fails to provide District with manufacturer's warranties, Contractor shall also be deemed to have personally warranted the equipment to the same extent as the manufacturer's warranty on the equipment.

All materials shall also be provided electronically in color in Adobe PDF file format on CD ROM disks or compatible electronic (thumb) drive media.

Patent Fees and Royalties

Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the work or the incorporation in the work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the contract documents for use in the performance of the work and if to the actual knowledge of District its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by District in the contract documents. Contractor shall indemnify and hold harmless District and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorneys' fees and court and arbitration costs) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the work or resulting from the incorporation in the work of any invention, design, process, product or device not specified in the contract documents, and shall defend all such claims in connection with any alleged infringement of such rights.

Contractor's Equipment

The Contractor shall identify each piece of Contractor's equipment, other than hand tools, by means of an identifying number plainly stenciled or stamped on the equipment at a conspicuous location, and shall furnish to District a list giving the description of each piece of equipment and its identifying number. In addition, the make, model number and empty gross weight of each unit of compacting equipment shall be plainly stamped or stenciled in a conspicuous place on the unit. The gross weight shall be either the manufacturer's rated weight or the scale weight.

The make, model, serial number and manufacturer's rated capacity for each scale shall be clearly stamped or stenciled on the load receiving element and its indicator or indicators. All meters shall be similarly identified, rated and marked. Upon request of District, the Contractor shall furnish a statement by the manufacturer, designating sectional and weighbridge capacities of portable vehicle scales.

ARTICLE XV: PLANS AND SPECIFICATIONS

Interpretation of Plans, Specifications and Drawings

The plans, specifications and the drawings are intended to be explanatory of each other. Any work indicated on the drawings and not in the plans or specifications, or vice versa, shall be executed as if indicated in both. Where not specifically stated otherwise, all work and materials necessary for each unit of construction, including special construction for any specific brand or shape of material

called for even though only briefly mentioned or indicated, shall be furnished and installed fully and completely as a part of the Contract. As the figured dimensions shown on the drawings and in the specifications of the contract may not in every case agree with scale dimensions, the figured dimensions shall be followed in preference to the scaled dimensions. Should it appear that the work to be done, or any of the matters relative thereto are not sufficiently detailed or explained in the contract documents, the Contractor shall apply to District for such further explanations as may be necessary, and shall conform thereto as part of the contract so far as may be consistent with the terms thereof. In the event of any doubt or question arising respecting the true meanings of the plans, specifications or drawings, the decision of District shall be final and conclusive.

Where for convenience the specifications are arranged by job classification or divided into various sections, it is to be understood this separation is for the convenience of all parties involved and is not to be considered as the limits of the work required of any separate trade. The terms and conditions of such limitations are wholly between Contractor and its subcontractors during both the bidding and construction phase; i.e., all work shown, specified, implied or necessary for the completion of each trade's work, as well as for the proper completion of the project as a whole shall be coordinated by Contractor and the subcontractors during bidding and construction and shall be provided in this contract.

Ownership

All plans and specifications shall remain the property of District and shall be returned to District before the final certificate will be issued.

Handicapped Access

Where applicable, it is the District's intent for all features on the plans and specifications to conform to applicable regulations for the accommodation of physically handicapped persons in buildings and facilities used by the public.

ARTICLE XVI: SHOP DRAWINGS AND SAMPLES

Requirements of this section shall be supplemented by Technical Specification Section 01300.

Shop Drawings

After checking and verifying all field measurements and after complying with applicable procedures herein, Contractor shall submit to District for review and acceptance in accordance with the accepted schedule of shop drawing submissions or other appropriate action if so indicated herein, the number of copies specified of all shop drawings, which will bear a stamp or specific written indication that Contractor has satisfied Contractor's responsibilities under the contract documents with respect to the review of the submission. All submissions will be identified as District may require. Such drawings shall be approved by District before any work involving the drawings is performed. The data shown on the shop drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable District to review the information as required. Three sets of paper copies of the final approved submittals shall be included with the maintenance and operations manual.

Samples

Contractor shall also submit to District for review and acceptance with such promptness as to cause no delay in work, all samples required by the contract documents or as requested by District. All samples will have been checked by and accompanied by a specific written indication that Contractor has satisfied Contractor's responsibilities under the contract documents with respect to the review of the submission and will be identified clearly as to material, supplier, pertinent data such as catalog numbers and the use for which intended.

Contractor's Review

Before submission of each shop drawing or sample, Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each shop drawing or sample with other shop drawings and samples and with the requirements of the work and the contract documents.

Notice of Variation

At the time of each submission, Contractor shall give District specific written notice of each variation that the shop drawings or samples may have from the requirements of the contract documents, and, in addition, shall cause a specific notation to be made on each shop drawing submitted to Engineer for review and acceptance of each such variation.

District's Review

District will review and accept with reasonable promptness shop drawings and samples, but District's review and acceptance will be only for conformance with the design concept of the project and for compliance with the information given in the contract documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the contract documents) or to safety precautions or programs incident thereto. The review and acceptance of a separate item as such will not indicate acceptance of the assembly in which the item functions. Within a reasonable time after receipt of drawings or samples, District will return marked up copies indicating one of the following four actions:

1. If review and checking indicates no exceptions, copies will be returned marked "NO EXCEPTIONS TAKEN" and work may begin immediately on incorporating the material and equipment covered by the submittal into the work.
2. If review and checking indicates limited corrections are required, copies will be returned marked "MAKE CORRECTIONS NOTED" and work may begin immediately on incorporating the material and equipment covered by the submittal into the work.
3. If review and checking indicates insufficient or incorrect data has been submitted, copies will be returned marked "AMEND AND RESUBMIT". No work may begin on incorporating the material and equipment covered by this submittal into the work until the submittal is revised, resubmitted, and returned marked either "NO EXCEPTIONS TAKEN" or "MAKE CORRECTIONS NOTED".
4. If review and checking indicates the material and equipment submittal is unacceptable, copies will be returned marked "REJECTED". No work may begin on incorporating the material and equipment covered by this submittal into the work until a new submittal is made and returned marked either "NO EXCEPTIONS TAKEN" or "MAKE CORRECTIONS NOTED".

Contractor shall direct specific attention in writing to revisions other than the corrections called for by District on previous submittals. The Contractor may authorize material or equipment supplier to deal directly with District with regard to such submittals; however, ultimate responsibility for the accuracy and completeness of the information contained in the submittal shall remain with the Contractor. Normally, a separate transmittal form shall be used for each specific item or class of material or equipment for which a submittal is required. Submittals on various items using a single transmittal form will be permitted only when the items taken together constitute a manufacturer's "package" or are so functionally related that expediency indicates checking or review of the group or "package" as a whole.

Contractor's Responsibility for Variation

District's review of shop drawings or samples shall not relieve Contractor from responsibility for any variation from the requirements of the contract documents unless Contractor has in writing called District's attention to each such variation at the time of submission and District has given written acceptance of each such variation by a specific written notation thereof incorporated in or accompanying the shop drawing or sample review nor will any review by District relieve Contractor from responsibility for errors or omissions in the shop drawings or from responsibility for having complied with the provisions above.

Work Performed Prior to Shop Drawing or Sample Review

Where a shop drawing or sample is required by the specifications, any related work performed prior to District's review of the pertinent submission will be the sole expense and responsibility of Contractor.

ARTICLE XVII: SUBCONTRACTORS, SUPPLIERS AND OTHERS

Objectionable Parties

Contractor shall not employ any subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom District may have reasonable objection. Contractor shall not be required to employ any subcontractor, supplier or other person or organization to furnish or perform any of the work against whom Contractor has reasonable objection. If the contract documents require the identity of certain subcontractors, suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) to be submitted to District in advance for acceptance by District and if Contractor has submitted a list thereof in accordance with the contract documents, District's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the contract documents) of any such subcontractor, supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case Contractor shall submit an acceptable substitute, the contract price will be increased by the difference in the cost occasioned by such substitution and an appropriate change order will be issued. No acceptance by District of any such subcontractor, supplier, or other person or organization shall constitute a waiver of any right of District to reject defective work. The Contractor may not change any subcontractors listed on its bid without written approval from District after a determination that the requirements of Public Contracts Code Section 4107 have been met.

Responsibility for Subcontractors

Contractor shall be fully responsible to District for all acts and omissions of the subcontractors, suppliers and other persons and organizations performing or furnishing any of the work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the contract documents shall create any contractual relationship between District and any such subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of District to pay or to see to the payment of any moneys due any such subcontractor, supplier or other person or organization except as may otherwise be required by laws and regulations. District may furnish to any subcontractor or other person or organization, to the extent practical, evidence of amounts paid the Contractor on account of specific work done.

Division of Work

The divisions and sections of the specifications and the identifications of any drawings shall not control Contractor in dividing the work among subcontractors or suppliers or delineating the work to be performed by any specific trade.

Subcontracts

All work performed for Contractor by a subcontractor will be pursuant to an appropriate agreement between contractor and the subcontractor which specifically binds the subcontractor to the applicable terms and conditions of the contract documents for the benefit of District and contains waiver provisions as required herein. Contractor shall pay each subcontractor a just share of any insurance moneys received by Contractor on account of losses under policies issued pursuant to this Contract.

ARTICLE XVIII: PERFORMANCE OF THE WORK

Supervision

Contractor shall supervise and direct the work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the contract documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. Contractor shall be responsible to see that the finished work complies accurately with the contract documents.

Superintendence

Contractor shall keep on the work at all times during its progress a competent resident superintendent, acceptable to District, who shall not be replaced without written approval from the District. The superintendent will be Contractor's representative at the site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to Contractor. When work is not in progress and during periods when work is suspended, arrangements acceptable to District shall be made for emergencies. If the superintendent is not present, District shall give direction to the next in command and said direction shall be binding.

Personnel

Contractor shall provide competent, suitably qualified personnel to survey and lay out the work and perform construction as required by the contract documents. Contractor shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the work or property at the site or adjacent thereto, and except as otherwise indicated in the contract documents, all work at the site shall be performed during regular working hours, and Contractor will not permit overtime work or the performance of work on Saturday, Sunday or any legal holiday without District's written consent given after prior written notice to District.

Order of Work

If a sequence or procedure is specified in the special provisions or plans for the project, Contractor shall be required to follow the sequence or procedure specified. The price for compliance with a specified sequence or procedure will be considered as part of the bid price and no extra amounts will be allowed therefor.

Safety and Protection

Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. Contractor shall take all reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

1. All employees on the work and other persons and organizations who may be affected thereby;
2. All the work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of underground facilities and utility owners when prosecution of the work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to herein caused, directly or indirectly, in whole or in part, by Contractor, any subcontractor, supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, shall be remedied by Contractor. Contractor's duties and responsibilities for the safety and protection of the work shall continue until such time as all the work is completed and District has issued a notice to District and Contractor that the work is acceptable.

The Contractor shall at all times so conduct the work as to insure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the work, and to insure the protection of persons and property. No road or street shall be closed to the public except with the permission of District and other governmental authority. Fire hydrants on or adjacent to the work shall be kept accessible to firefighting equipment at all times. Temporary provisions shall be made by the Contractor to insure the use of sidewalks and private and public driveways, and the proper functioning of all gutters, sewer inlets, drainage ditches and culverts, irrigation ditches and natural water courses.

The Contractor shall leave a night emergency telephone number or numbers with the local law enforcement office, so that contact may be made easily at all times in case of trouble or emergencies. The names and telephone numbers of at least two medical doctors practicing in the vicinity and the telephone number of the local ambulance shall be prominently displayed adjacent to all telephones.

Any lighting fixtures shall be installed, mounted and directed in a manner precluding glare to approaching traffic.

Detours

Where detours are necessary, Contractor shall construct and remove detours as provided in the special provisions, or as shown on the plans, or as directed by District. The failure or refusal of Contractor to construct and maintain detours at the required time shall be sufficient cause for closing down the work until remedied. The cost of the detours shall be considered a part of the contract price or as included in other items of work as noted in the special provisions and no extra amounts shall be paid therefor.

Safety Representative

Contractor shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to District.

Vehicle Code

Pursuant to the authority contained in Vehicle Code Section 591, District has determined that within such areas as are within the limits of the project and are open to public traffic, the following requirements of the Vehicle Code will apply. The lighting requirements in Section 25803; the brake requirements in Chapter 3, Division 12; the splash apron requirements in Section 27600; and, when operated on completed or existing treated base, surfacing, pavement or structures, except as otherwise provided in Section 7-1.02, "Weight Limitations," the weight limitation requirements contained in Division 15.

Attention is directed to the statement in said Section 591 that this section shall not relieve Contractor or any person from the duty of exercising due care. The Contractor shall take all necessary precautions for safe operation of its equipment and the protection of the public from injury and damage from such equipment.

Any other requirements set forth in Divisions 11, 12, 13, 14 and 15 of the Vehicle Code which District, pursuant to the authority contained in Vehicle Code Section 591, will require compliance with, will be set forth in the special provisions.

Trench Safety

Attention is directed to the provisions of Section 6705 of the Labor Code of the State of California.

Excavation for any trench 5 feet or more in depth shall not begin until the Contractor has submitted to District the Contractor's detailed plan for worker protection from the hazards of caving ground during the excavation of such trench. Such plan shall be submitted at least 5 days before the Contractor intends to begin excavation for the trench and shall show the details of the design of shoring, bracing, sloping, or other provisions to be made for worker protection during such excavation. The plan shall not use shoring, sloping or a protective system less effective than that required by the Construction Safety Orders of the Division of Industrial Safety and if such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared and signed by an engineer who is registered as a Civil or Structural Engineer in the State of California.

In addition, the Contractor shall obtain, pay for, and comply with all provisions of the permit required by Section 6500 of the California Occupational Safety and Health Act of 1973.

Notice Prior to Trenching

Where trenching is required, Contractor shall, pursuant to Public Contracts Code Section 7104, promptly, and before the following conditions are disturbed, notify District, in writing of any:

- (1) Material that contractor believes may be material that is 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.
- (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

Upon receipt of such notice, District shall, as required by Public Contract Code Section 7104, promptly investigate the conditions. If District finds the conditions do materially so differ, or do involve hazardous waste, and would require a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, District shall issue a change order under the procedures described in this Contract. In the event that a dispute arises between District and Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a

decrease or increase in the cost or time required for performance, Contractor will not be excused from the scheduled completion date but shall proceed with all work to be performed. Contractor shall retain its rights to file a claim as set forth herein.

Alcoholic Beverages

Absolutely no alcoholic beverages shall be permitted on the job site.

Emergencies

In emergencies affecting the safety or protection of persons or the work or property at the site or adjacent thereto, Contractor, without special instruction or authorization from District, is obligated to act to prevent threatened damage, injury or loss. Contractor shall give District prompt written notice as soon as possible thereafter. If District determines that a change in the contract documents is required because of the action taken in response to an emergency, a change order will be issued to document the consequences of the changes or variations.

Warranty and Guarantee

Unless the plans and/or specifications require a longer period for any warranted item, Contractor warrants all of the work completed under this contract by Contractor for a period of one year from the date of final completion. Said warranty includes the guarantee that all work is completed in accordance with the contract documents and that the work is not defective in any way and is fit for its intended use. Work not conforming to the plans and specifications shall be considered defective. If within the warranty period any work is found to be defective, Contractor shall promptly, without cost to District and in accordance with District's written instruction, either correct such defective work or remove it from the site and replace it with non-defective work. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, District may have the defective work corrected or removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by Contractor. Nothing in this paragraph shall serve as a waiver of the statute of limitations for breach of contract or latent defects.

Environmental and Toxics Warranty

Contractor warrants that no asbestos-containing materials, no PCB-containing fixtures or equipment or other toxic or hazardous materials or equipment other than what is contained in standard building materials were installed on this project without District's express written consent. Contractor further warrants that no asbestos-containing materials, PCB-containing fixtures or equipment or other toxic or hazardous materials were discovered during construction of this project which were not disclosed to District in writing.

Contractor also warrants that its operations during the project were not in violation of any applicable federal, state or local environmental law or regulation dealing with hazardous materials or toxic substances, and no notice from any governmental body has been given to Contractor claiming any such violation or calling attention to the need for any work, repairs, construction, or installation or in connection with the project in order to comply with such laws with which Contractor has not complied. If there are any such notices with which Contractor has complied, Contractor shall provide District with copies thereof.

This warranty shall survive completion of the project, and Contractor shall indemnify District for any breach thereof.

Access to Work

District's representatives, testing agencies and governmental agencies with jurisdictional interests will have access to the work at reasonable times for their observation, inspecting and testing. Contractor shall provide proper and safe conditions for such access.

District May Stop the Work

If Contractor fails to conform with the contract documents, if the work is defective, if the work is being carried out in an unsafe manner, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the work in such a way that the completed work will conform to the contract documents, District may order Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated; however, this right of District to stop the work shall not give rise to any duty on the part of District to exercise this right for the benefit of Contractor or any other party.

Alternative Methods of Construction

Whenever the plans or specifications provide that more than one specified method of construction or more than one specified type of material or construction equipment may be used to perform portions of the work and leave the selection of the method of construction or the type of material or equipment to be used up to the Contractor, it is understood that District does not guarantee that every such method of construction or type of material or equipment can be used successfully throughout all or any part of any project. It shall be the Contractor's responsibility to select and use the alternative or alternatives which will satisfactorily perform the work under the conditions encountered. In the event some of the alternatives are not feasible or it is necessary to use more than one of the alternatives on any project, full compensation for any additional cost involved shall be considered as included in the contract price paid for the item of work involved and no additional compensation will be allowed therefor.

Correction or Removal of Defective Work

If required by District, Contractor shall promptly, as directed, either correct all defective work, whether or not fabricated, installed or completed, or, if the work has been rejected by District, remove it from the site and replace it with non-defective work. Contractor shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made thereby.

Acceptance of Defective Work

If, instead of requiring correction or removal and replacement of defective work, District prefers to accept it, District may do so. Contractor shall bear all direct, indirect and consequential costs attributable to District's evaluation of and determination to accept such defective work (such costs to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to final payment, a change order will be issued incorporating the necessary revisions in the contract documents with respect to the work; and District shall be entitled to an appropriate decrease in the contract price, and, if the parties are unable to agree as to the amount thereof, District may make a claim therefor as provided in this Contract. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to District. No acceptance of defective work shall occur without an express written acknowledgment by District that work described therein is defective and that District is electing to proceed under this clause. No acceptance of defective work may be inferred from any actions by District staff or its agents.

District May Correct Defective Work

If Contractor fails within a reasonable time after written notice of District to proceed to correct and to correct defective work or to remove and replace rejected work as required by District in accordance with the above, or if Contractor fails to perform the work in accordance with the contract documents, or if Contractor fails to comply with any other provision of the contract documents, District may, after seven days' written notice to Contractor, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph District shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, District may exclude Contractor from all or part of the site, take possession of all or part of the work, and suspend Contractor's services related thereto, take possession of

Contractor's tools, appliances, construction equipment and machinery at the site and incorporate in the work all materials and equipment stored at the site or for which District has paid Contractor but which are stored elsewhere. Contractor shall allow District, District's representatives, agents and employees such access to the site as may be necessary to enable District to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of District in exercising such rights and remedies will be charged against Contractor, and a change order will be issued incorporating the necessary revisions in the contract documents with respect to the work; and District shall be entitled to an appropriate decrease in the contract price, and, if the parties are unable to agree as to the amount thereof, District may make a claim therefor as provided in this Contract. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's defective work. Contractor shall not be allowed an extension of the contract time because of any delay in performance of the work attributable to the exercise by District of District's rights and remedies hereunder.

Adjusting Progress Schedule

Contractor shall submit to District for acceptance adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the general requirements applicable thereto.

Substitute Method of Construction

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the contract documents, Contractor may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to District, if Contractor submits sufficient information to allow District to determine that the substitute proposed is equivalent to that indicated or required by the contract documents. The procedure for review by District will be similar to that provided in the paragraph regarding substitution of materials or equipment. No extension of time or extra compensation will be paid to the Contractor by virtue of District's accepting a substitute method of construction.

Suggestions to Contractor

Any plan or method of work suggested by District to the Contractor but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor; and District shall assume no responsibility therefor and in no way be held liable for any defects in the work which may result from or be caused by use of such plan or method of work. Acceptance by the Contractor of any plan or method of work or change suggested by District shall not relieve the Contractor from any other requirements or provisions of the contract.

Permits

Unless otherwise provided for herein, Contractor shall obtain and pay for all construction permits and licenses necessary or incidental to the work. District shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the work, which are applicable at the time of opening of bids. District shall pay all charges of utility connections to the work.

District will submit the Drawings, Specifications and other required data to the Nevada County Building Official prior to bidding. Contractor shall obtain the building permit in their name. District will facilitate all required inspections with the County Building Department or designated personnel. The District pay the building permit and inspection fees, except Contractor shall pay all inspection costs associated with re-inspection where required.

Laws and Regulations

Contractor shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the work. Except where otherwise expressly required by applicable laws and regulations, District shall not be responsible for monitoring Contractor's compliance with any laws or regulations. If Contractor observes that the specifications or drawings are at variance with any laws or regulations, Contractor shall give District prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated herein. If Contractor performs any work knowing or having reason to know that it is contrary to such laws or regulations, and without such notice to District, Contractor shall bear all costs, damages, fines or penalties, arising therefrom.

Taxes

Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by Contractor in accordance with the laws and regulations of the place of the project which are applicable during the performance of the work.

Use of Premises

Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the project site and land and areas identified in and permitted by the contract documents and other land and areas permitted by laws and regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the work. Should any claim be made against District by any such owner or occupant because of the performance of the work, Contractor shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration or at law. Contractor shall, to the fullest extent permitted by laws and regulations, indemnify and hold District harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against District to the extent based on a claim arising out of Contractor's performance of the work.

Fences which cross, abut, or are on easements shall at all times be maintained by the Contractor in a condition which provides the functional purpose of the fence. Temporary fencing of the construction area will be permitted and temporary fencing shall provide the same functional purpose as existing fencing. Unless otherwise indicated, all improvements within easements shall be restored to conditions that existed prior to the start of work.

Before final acceptance of the work the Contractor shall obtain a written statement of release from each property owner that granted an easement for the work. Release statement shall indicate the property owner's acceptance of the site conditions as restored by the Contractor. The District may waive said written releases where a property owner refuses to sign same but only upon making a determination that there is no work to be completed with respect to said property.

Site Clean-Up

During the progress of the work, Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the work. At the completion of the work, Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by District. Contractor shall restore to original condition all property not designated for alteration by the contract documents.

The Contractor is advised that the final cleanup of the project shall be done with meticulous care and that the District expects all ductwork, cubicles, cabinets, motor control centers, control panels, rooms, and enclosures to be thoroughly vacuum cleaned and dust-free, prior to acceptance of the work.

Protection of Structures

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

Restoration of Structures

The Contractor shall remove such existing structures or monuments as may be necessary for the performance of the work and, if required, shall rebuild the structures or monuments thus removed in as good a condition as found. Contractor shall also repair all existing structures or monuments which may be damaged as a result of the work under this contract.

All curbs, gutters, driveways, sidewalks, and similar structures that are damaged by the installation of the work shall be reconstructed by the Contractor. Reconstruction shall be of the same kind of material with the same finish and in not less than the same dimensions as the original work. All concrete shall be as set forth in the specifications, or as required by District if not so specified. Repairs shall be made by removing and replacing the entire portions between joints or scores and not merely refinishing any damaged part. All work shall match the appearance of the existing improvements as nearly as possible.

All road and streets where the surface is removed, broken or damaged, or in which the ground has caved or settled due to work under this contract, shall be completely resurfaced and brought to the original grade and crown section unless otherwise indicated. Before resurfacing material is placed, edges of pavements shall be trimmed back far enough to provide lean, solid, vertical faces, and shall be free of any loose material. All cultivated areas, lawns, and other surface improvements which are damaged by actions of the Contractor shall be restored as nearly as possible to their original conditions.

Drainage

Existing drainage facilities shall be maintained throughout the contract time to provide the flow capacities available before commencing work. Drainage conduits shall not be broken, removed, or otherwise interfered with, without permission of the responsible agency.

Where construction requires blocking the flow, flows shall be bypassed as necessary. Stream crossings, blockages, and bypassing shall be accomplished in such a manner as to avoid degradation of downstream water quality. Particular attention shall be given to the avoidance of siltation.

Environmental Control

The Contractor shall not pollute the construction site or any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides or other harmful materials. The Contractor shall comply with all applicable Federal, State, District and municipal laws concerning pollution of waterways. Contractor shall submit a plan for preventing such occurrences if required by District. Special measures shall be taken to prevent chemicals, fuels, oils, greases, bituminous materials, waste washings, herbicides and insecticides, from spilling and entering public waters.

Where the Contractor is required to connect or otherwise work around existing lines carrying sewage or process wastes, Contractor shall perform the work to prevent the spill of sewage and insure the delivery of sewage to the treatment plants. Where the Contractor chooses to provide temporary pumping of sewage, Contractor shall first have the pumping facilities approved by District and shall provide 100 percent standby equipment on 24-hour basis.

The Contractor shall provide the means for preventing or lessening all dust nuisances and damages. Such means shall consist of applying water, dust palliative, or both all in accordance with local ordinances and regulations or as directed by District.

Record Documents

Contractor shall maintain in a safe place at the site one record copy of all drawings, plans, specifications, addenda, change orders, field orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents together with all approved samples and a counterpart of all accepted shop drawings will be available to District for reference. Upon completion of the work, these record documents, samples, and shop drawings will be delivered to District.

As-Built Drawings

The Contractor shall also maintain a neatly marked set of record drawings showing the final locations and layout of all mechanical, electrical, and instrument equipment; piping and conduit, structures, and other facilities. Drawings shall be kept current weekly, with all field instructions and change orders; mechanical, electrical, and instrumentation equipment accommodations; and construction adjustment. Drawings shall be subject to the inspection of the District at all times and progress payments may be withheld if drawings are not current. At the final inspection the Contractor shall submit to District all as-built drawings. Drawings shall be stamped "AS-BUILT", dated and signed by the Contractor. The work will not be formally accepted until as-built drawings are accepted by District.

Continuing the Work

Contractor shall carry on the work and adhere to the progress schedule during all disputes or disagreements with District. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted specifically herein or as Contractor and District may otherwise agree in writing.

Indemnification

To the fullest extent permitted by laws and regulations, Contractor shall indemnify, defend and hold harmless District and its consultants, agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expenses (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (including the work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of Contractor, any subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable. The Contractor's indemnification obligation shall apply whether or not the act giving rise to such claims, damages, losses and expenses is caused in part by a party indemnified hereunder or arises by or is imposed by law and regulations regardless of the negligence of any such party.

Statutory Limitations

In any and all claims against District or any of its consultants, agents or employees by any employee of Contractor, any subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of

them may be liable, the indemnification obligation above shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any such subcontractor or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

Related Work at Site

District may perform other work related to the project at the site by District's own forces, have other work performed by utility companies or let other direct contracts therefor which shall contain conditions similar to these. If the fact that such other work is to be performed was not noted in the contract documents, written notice thereof will be given to Contractor prior to starting any such other work; and, if Contractor believes that such performance will involve additional expense to Contractor or requires additional time and the parties are unable to agree as to the extent thereof, Contractor may make a claim therefor as provided for herein. Any difference or conflict arising between the Contractor and any other Contractor employed by District, or between the Contractor and the workers of District with regard to their work, shall be submitted to District and the Contractor shall abide by District's decision in the matter. If the work of the Contractor is delayed because of any facts or omissions of any other Contractor or of District, the Contractor shall on that account have no claim against District other than for an extension of time.

Access to Site

Contractor shall afford each utility company or district and other contractor who is a party to such a direct contract (or District, if District is performing the additional work with District's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect and coordinate the work with theirs. Contractor shall do all cutting, fitting and patching of the work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of District and the others whose work will be affected. The duties and responsibilities of Contractor under this paragraph are for the benefit of such utility companies or districts and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between District and such utility companies or districts and other contractors.

Acceptance of Work by Others

If any part of Contractor's work depends for proper execution or results upon the work of any such other contractor or utility company or district (or District or Nevada County), Contractor shall inspect and promptly report to District in writing any delays, defects or deficiencies in such work that render it unavailable or unsafe for such proper execution and results. Contractor's failure so to report will constitute an acceptance of the other work as fit and proper for integration with Contractor's work except for latent or non-apparent defects and deficiencies in the other work.

ARTICLE XIX: TESTS AND INSPECTIONS

Tests and Inspections Required by Laws or Regulations

If laws or regulations of any public body having jurisdiction require any work (or part thereof) to specifically be inspected, tested or approved, Contractor shall assume full responsibility therefor, pay all costs in connection therewith and furnish District the required certificates of inspection, testing, approval or compliance. Contractor shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with District's acceptance of a supplier of materials or equipment proposed to be incorporated in the work, or of materials or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the work. The cost of all inspections, tests and approvals in addition to the above which are required by

the contract documents shall be paid by District (unless otherwise specified). Contractor must utilize materials and equipment which are available for inspection at the plant or at the point of distribution in California in the case of foreign materials or equipment.

Other Inspections and Tests

All inspections, tests or acceptances other than those required by laws and regulations of any public body having jurisdiction shall be performed by organizations acceptable to District.

General Requirements

All materials, equipment, installation, and workmanship included in this contract, if so required by District, shall be tested and inspected to prove compliance with the contract requirements. Installed leakage tests and other piping tests shall be as specified in the technical provisions of these specifications.

No tests specified herein shall be applied until the item to be tested has been inspected and approval given for the application of such test. Contractor shall give District timely notice of readiness of the work for all required inspections, tests or approvals.

Tests and inspections shall include:

1. The delivery acceptance test and inspections.
2. The installed tests and inspections of items as installed.

Tests and inspections, unless otherwise specified or accepted, shall be in accordance with the recognized standards of the industry.

The form of evidence of satisfactory fulfillment of delivery acceptance test and of installed test and inspection requirements shall be, at the discretion of District, either by tests and inspections carried out in District's presence or by certificates or reports of tests and inspections carried out by approved persons or organizations. The Contractor shall provide and use forms which include all test information and are acceptable in content to District.

Certificates of Compliance

A Certificate of Compliance shall be furnished prior to the use of any materials for which the specifications or the special provisions require that such a certificate be furnished. In addition, when so authorized in the specifications or in the special provisions, the District may permit the use of certain materials or assemblies prior to sampling and testing if accompanied by a Certificate of Compliance. The certificate shall be signed by the manufacturer of the material or the manufacturer of assembled materials and shall state that the materials involved comply in all respects with the requirements of the specifications. A Certificate of Compliance shall be furnished with each lot of material delivered to the work and the lot so certified shall be clearly identified in the certificate.

All materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material in the work which conforms to the requirements of the plans and specifications and any such material not conforming to such requirements will be subject to rejection whether in place or not.

District reserves the right to refuse to permit the use of material on the basis of a Certificate of Compliance.

The form of the Certificate of Compliance and its disposition shall be as directed by District.

Delivery Acceptance Tests and Inspection

The delivery acceptance tests and inspection shall be at the Contractor's expense for any materials or equipment specified herein and shall include the following:

1. Test of items during the process of manufacture and/or on completion of manufacture, comprising material tests, hydraulic pressure tests, electric tests, performance and operating tests and inspections in accordance with the relevant standards of the industry and more particularly as detailed in individual clauses of these specifications to satisfy District that the items tested and inspected comply with the requirements of this contract. Tests required, other than those specified, will be in accordance with the contract specifications.
2. Inspection of all items delivered at the site in order that District may be satisfied that such items are of the specified quality and workmanship and are in good order and condition at the time of delivery.

Installed Tests and Inspection

All equipment shall be tested by the Contractor to the satisfaction of District before any facility is put into operation. Tests shall be as specified herein and shall be made to determine whether the equipment has been properly assembled, aligned, adjusted and connected. Any changes, adjustments or replacements required to make the equipment operate as specified shall be carried out by the Contractor as part of the work.

At least 30 days before the time allowed in the construction schedule for commencing testing and start up procedures, the Contractor shall submit to District, details of the procedures Contractor proposes to adopt for testing and startup of all mechanical and electrical equipment to be operated singly and together, excepting when such procedures have been covered in the specifications. Such tests shall be conducted using potable water where water is required for such testing. The water required for such tests shall be provided by the Contractor.

During the testing of equipment, the Contractor shall make available experienced factory trained representatives of the manufacturers of all the various pieces of equipment, or other qualified persons who shall instruct District's personnel in the operation and care thereof. Instruction shall include step-by-step troubleshooting procedures with all necessary test equipment. All manufacturers' instructions shall be provided in writing.

If, under test, any portion of the work shall fail to fulfill the contract requirements and is altered, renewed or replaced, tests on that portion when so altered, removed or replaced, together with all other portions of the work as are affected thereby, shall, if so required by District, be repeated within reasonable time and in accordance with the specified conditions, and the Contractor shall pay to District all reasonable expenses incurred by District as a result of the carrying out of such tests.

Where, in the case of an otherwise satisfactory installed test, any doubt, dispute or difference should arise between District and the Contractor regarding the test results or methods or equipment using in the carrying out by the Contractor of such test, then District may order the test to be repeated. If the repeat test, using such modified methods or equipment as District may require, substantially confirms the previous test then costs in connection with the repeat test will be paid by District, otherwise the costs shall be borne by the Contractor. Where the results of any installed test fail to comply with the contract requirements for such test then such repeat tests as

may be necessary to achieve the contract requirements shall be made by the Contractor at Contractor's own expense.

Quality Control

District will perform testing for the following as the District deems necessary and as described in the technical specifications.

The Contractor shall pay for re-testing of those samples which fail to meet acceptable standards.

The Contractor shall perform testing as indicated in the technical specifications. All Contractor performed testing shall be performed by a qualified testing laboratory.

Work Requiring Testing

If any work (including the work of others) that is required by the Contract Documents to be inspected, tested or accepted is covered without written concurrence of District, it must, if requested by District, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given District timely notice of Contractor's intention to cover the same and District has not acted with reasonable promptness in response to such notice.

Contractor's Obligation

Neither observations by District nor inspections, tests or approvals by others shall relieve Contractor from Contractor's obligations to perform the work in accordance with the contract documents.

Uncovering Work Covered Contrary to District's Request

If any work is covered contrary to the written instructions of District or Code or contract requirements, it must, if requested by District, be uncovered for District's observation and replaced at Contractor's expense.

Uncovering Work for Inspection or Testing

In addition to the provisions above regarding work requiring testing, if District considers it necessary or advisable that covered work be observed by District or inspected or tested by others, Contractor, at District's request, shall uncover, expose or otherwise make available for observation, inspection or testing as District may require, that portion of the work in question, furnishing all necessary labor, material and equipment. If it is found that such work is defective, Contractor shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and District shall be entitled to an appropriate decrease in the contract price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in this contract. If, however, such work is not found to be defective, Contractor shall be allowed an increase in the contract price or an extension of the contract time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, Contractor may make a claim therefor as provided for in this contract.

ARTICLE XX: SUSPENSION OF WORK AND TERMINATION

District May Suspend Work

District may, at any time and without cause, suspend the work or any portion thereof for a period of not more than ninety days by notice in writing to Contractor. As soon as possible, District will fix the date on which work will be resumed. Contractor shall resume the work on the date so fixed. If

Contractor believes that such suspension justifies an increase in the contract price or an extension of the contract time and District and Contractor are unable to agree to the amount or extent thereof, Contractor may make a claim therefor as provided herein.

District May Terminate

Except as limited by law or regulation, District may terminate upon the occurrence of any one or more of the following events:

1. If Contractor commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if Contractor takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;
2. If petition is filed against Contractor under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against Contractor under any other federal or state law in effect at the time relating to bankruptcy or insolvency;
3. If Contractor makes a general assignment for the benefit of creditors;
4. If a trustee, receiver, custodian or agent of Contractor is appointed under applicable law or under contract, whose appointment or authority to take charge of property of Contractor is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of Contractor's creditors;
5. If Contractor admits in writing an inability to pay its debts generally as they become due;
6. If Contractor persistently fails to perform the work in accordance with the contract documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established herein as revised from time to time or fails to make prompt payment to subcontractors or for materials or labor or persistently disregards laws, ordinances or instructions of the District);
7. If Contractor disregards laws or regulations of any public body having jurisdiction;
8. If Contractor disregards the authority of District or its agents; or
9. If Contractor otherwise violates in any substantial way any provisions of the contract documents;

District may, after giving Contractor (and the surety, if there be one) seven days' written notice and to the extent permitted by laws and regulations, terminate the services of Contractor, exclude Contractor from the site and take possession of the work and of all Contractor's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the work all materials and equipment stored at the site or for which District has paid Contractor but which are stored elsewhere, and finish the work as District may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the direct, indirect and consequential costs of completing the work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court costs) such excess will be paid to Contractor. If such costs exceed such unpaid balance, Contractor shall pay the difference to District. Such costs incurred by District will be approved as to reasonableness by District and incorporated in a change order, but when exercising any rights or remedies under this paragraph District shall not be required to obtain the lowest price for the work performed. Where Contractor's services have been so terminated by District, the termination will not affect any rights or remedies of District against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by District will not release Contractor from liability.

District May Abandon

Upon written notice to Contractor District may, without cause and without prejudice to any other right or remedy, elect to abandon the work and terminate the agreement. Contractor shall stop work as specified in said notice, terminate all subcontracts, deliver all materials already paid for and secure the site. In such case, Contractor shall be paid for all work executed and any actual expense sustained. No lost profit for work not yet undertaken shall be due to Contractor.

Contractor May Stop Work or Terminate

If, through no act or fault of Contractor, the work is suspended for a period of more than ninety days by District or under an order of court or other public authority, or District fails to act on any application for payment within thirty days after it is submitted, or District fails for thirty days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days' written notice to District, terminate the agreement and recover from District payment for all work executed and any expense sustained. In addition and in lieu of terminating the agreement, if District has failed to act on an application for payment or District has failed to make any payment as aforesaid, Contractor may upon seven days' written notice to District stop the work until payment of all amounts then due. The provisions of this paragraph shall not relieve Contractor of the obligations to carry on the work in accordance with the progress schedule and without delay during disputes and disagreements with District.

ARTICLE XXI: DISTRICT'S AGENT'S STATUS DURING CONSTRUCTION

District's Representative

District may appoint representatives during the construction period. The duties and responsibilities and the limitations of authority of such agents during construction are set forth herein and shall not be extended without written consent of District.

Agent's Authority

District may delegate authority to an employee or agent, including an engineer or an architect, to determine the amount, quality, acceptability and fitness of the several kinds of work, material and equipment which are to be paid for under the contract; to decide for the District all questions relative to the true construction, meaning and intent of the contract documents; to decide all questions relative to the classification and measurements of quantities and materials and the fulfillment of this contract, and to reject or condemn all work or material which does not conform to the terms of this contract. The representative's decision in all matters is the decision of District and shall be final and binding on Contractor.

Replacement of Representative

District reserves the right to terminate the employment of the representative at any time.

Visits to Site

Where a representative represents District, said representative will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract documents. However, Contractor must supervise the work and cannot rely on said representative or District as they will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. The representative's efforts will be directed toward providing for District a greater degree of confidence that the completed work will conform to the contract documents. On the basis of such visits and on-site observations, the representative will keep District informed of the progress and adequacy of the work.

Observation of Work

If District and the representative agree, the representative will observe the performance of the work. The duties, responsibilities and limitations of authority of the representative in observing the work will be as provided herein. If District designates another agent to represent District at the site who is not the representative's agent or employee, the duties, responsibilities and limitations of authority of such other person will be as provided in supplementary conditions.

Clarifications and Interpretations

The representative may be appointed to issue (with reasonable promptness) such written clarifications or interpretations of the requirements of the contract documents (in the form of drawings or otherwise) as the representative may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the contract documents. If Contractor believes that a written clarification or interpretation justifies an increase in the contract price or an extension of the contract time and the parties are unable to agree to the amount or extent thereof, Contractor may make a claim therefor as provided in the contract. Said claim shall be made to District unless a representative has been selected to provide such clarifications or interpretations.

Authorized Variations in Work

If a representative is appointed, such representative may authorize minor variations in the work from the requirements of the contract documents which do not involve an adjustment in the contract price or the contract time and are consistent with the overall intent of the contract documents. These may be accomplished by a field order and will be binding on District, and also on Contractor who shall perform the work involved promptly. If Contractor believes that a field order justifies an increase in the contract price or an extension of the contract time and District and Contractor are unable to agree as to the amount or extent thereof, Contractor may make a claim therefor as provided in this Contract.

Rejecting Defective Work

If a representative is appointed, such representative will have authority to disapprove or reject work which the representative believes to be defective, and will also have authority to require special inspection or testing of the work whether or not the work is fabricated, installed or completed. Any decision made by said representative in disapproving or rejecting work shall be binding on Contractor.

Determinations for Unit Prices

If a representative is appointed, such representative will determine the actual quantities and classifications of unit price work performed by Contractor. The representative will review with the Contractor the representative's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an application for payment or otherwise). The representative's written decisions thereon will be final and binding upon Contractor.

Claims and Disputes

For purposes of this paragraph, "claim" shall be defined as set forth in Public Contracts Code Section 20104(b)(2). Claims shall be presented in writing and include the documents necessary to substantiate the claim. Claims must be filed with the designated District representative no later than thirty (30) days after the occurrence of the event giving rise thereto or denial of the change order, whichever occurs last. The form of said claims shall be the same as is required by Government Code Sections 910 and 910.2.

If the claim is under \$50,000, District shall respond in writing to Contractor within 45 days of receipt of Contractor's claim or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the District may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to Public Contract Code Section 20104.2, upon mutual agreement of the District and Contractor. The District's written response to the claim, as further documented, shall be submitted to Contractor within 15 days after receipt of the further documentation or within a period of time no greater than that taken by Contractor in producing the additional information, whichever is greater.

For claims over \$50,000 and less than or equal to \$375,000, District shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the District may have against Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to Public Contract Code Section 20104.2, upon mutual agreement of District and Contractor. The District's written response to the claim, as further documented, shall be submitted to Contractor within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by Contractor in producing the additional information or requested documentation, whichever is greater.

If Contractor disputes District's written response, or District fails to respond within the time prescribed above, Contractor may so notify District, in writing, either within 15 days of receipt of District's response or within 15 days of District's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer with such District representatives as the County Administrator or the Board of Supervisors directs for settlement of the issues in dispute. Upon such demand, District shall schedule a meet and confer conference within 30 days for settlement of the dispute.

Following the meet and confer conference, if the claim or any portion remains in dispute, Contractor may file a claim with the Board of Supervisors pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. Pursuant to authority granted by Government Code Section 930.2, all claims filed with the Board of Supervisors pursuant to the Government Code shall be filed within 90 days of the denial of the original claim by the District representative. The running of the period of time within which a claim under the Government Code must be filed shall be tolled by any period of time utilized by the meet and confer conference. Any lawsuit which Contractor intends to bring with respect to any claim filed pursuant to the Government Code which claim has been denied by District must be commenced not later than six months after the recording of the notice of completion or not later than six months after the date final payment is deposited in the mail or personally delivered, whichever date comes first. If a civil action is filed, the mediation provisions set forth in Public Contract Code Section 20104.4 shall apply unless waived by mutual stipulation of District and Contractor or unless District elects to resolve the dispute pursuant to Public Contract Code Section 10240 et seq.

For every claim that Contractor makes, it shall provide the following documentation upon request of District as a condition precedent to consideration of the claim: Contractor's bidding calculations forms, cost estimates, time sheets, trend reports, job cost analysis records, labor records, as-built documents, any other records used by Contractor in arriving at its bid price, and any other documents or records kept by Contractor during the course of construction. In the event that claims are made, Contractor agrees that District shall have the right to conduct a complete audit of the books and records of Contractor relating to this project and any books and records relating to overhead, profit or general office expenses charged to this project.

Representative's Decision

Where a representative is appointed, the rendering of a decision by the representative with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment) will be a condition precedent to any exercise by District or Contractor of such rights or remedies as either may otherwise have under the contract documents or by laws or regulations in respect of any such claim, dispute or other matter.

Limitations on Representative's Responsibilities

Neither the District's representative's authority to act nor any decision made by the representative in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the representative or District to Contractor, any subcontractor, any supplier, or any other person or organization performing any of the work, or to any surety for any of them.

Construction Methods and Safety

Notwithstanding any references to laws and regulations, rules, codes or standards in the contract documents, the representative and District will not be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and the representative and District will not be responsible for Contractor's failure to perform or furnish the work in accordance with the contract documents.

Acts and Omissions of Contractor

Neither the District nor its representatives will be responsible for the acts or omissions of Contractor or of any subcontractor, any supplier, or any other person or organization performing or furnishing any of the work.

ARTICLE XXII: PARTIAL COMPLETION

Partial Completion (Completion of a Portion of the Work)

Use by District of any finished part of the work, which has specifically been identified in the contract documents, or which District and Contractor agree constitutes a separately functioning process or facility that can be used by District without significant interference with Contractor's performance of the remainder of the work, may be accomplished prior to completion of all the work subject to the following:

1. District at any time may request Contractor in writing to permit District to use any such part of the work which District believes to be ready for its intended use and substantially complete. If Contractor agrees, Contractor will certify to District that said part of the work is substantially complete and request District to issue a certificate of substantial completion for that part of the work. Contractor at any time may notify District in writing that Contractor considers any such part of the work ready for its intended use and substantially complete and request District to issue a certificate of substantial completion for that part of the work. Within a reasonable time after either such request, District and Contractor shall make an inspection of that part of the work to determine its status of completion. If District does not consider that part of the work to be substantially complete, District will notify Contractor in writing giving the reasons therefor. If District considers that part of the work to be substantially complete, District will deliver to Contractor a written recommendation as to the division of responsibilities pending final payment between District and Contractor for the entire work with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties. Unless Contractor disagrees in writing and so informs District promptly, District's aforesaid recommendation will be binding on Contractor until final payment for the entire work.

2. District may at any time request Contractor in writing to permit District to take over operation of any such part of the work although it is not substantially complete. A copy of such request will be sent to Contractor and within a reasonable time thereafter District and Contractor shall make an inspection of that part of the work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If Contractor does not object in writing to District that such part of the work is not ready for separate operation by District, District will finalize the list of items to be completed or corrected and will deliver such list to Contractor together with a written recommendation as to the division of responsibilities pending final payment between District and Contractor with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the work which will become binding upon District and Contractor at the time when District takes over such operation (unless they shall have otherwise agreed in writing). During such operation and prior to substantial completion of such part of the work, District shall allow Contractor reasonable access to complete or correct items on said list and to complete other related work.
3. No occupancy or separate operation of part of the work will be accomplished prior to the insurers who are then providing the property insurance having acknowledged notice thereof and in writing effecting the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policies, but the property insurance shall not be canceled or lapse on account of any such partial use or occupancy. Each party shall be responsible for notifying its own insurer.

ARTICLE XXIII: ARBITRATION

Arbitration

Where the total of all claims filed by Contractor are under \$375,000, District shall have the option of electing arbitration pursuant to Public Contract Code Sections 10240, et seq. If District does so elect, the mediation provisions of Public Contract Code Section 20104.4 shall not apply pursuant to Public Contract Code Section 20104(a)(2). If District does not elect such arbitration pursuant to Public Contract Code Sections 10240 et seq., the provisions of Public Contract Code Section 20104.4 shall apply.

Where the total of all claims filed by Contractor are above \$375,000, the arbitration provisions of this contract are voluntary. Neither District nor Contractor shall be required to enter into mediation or arbitration for amounts above \$375,000. Written consent of both parties to mediate or arbitrate such claims shall be a prerequisite to such mediation or arbitration. If the parties agree to arbitrate claims above \$375,000, the provisions of Public Contract Code Sections 10240, et seq. shall be utilized.

Time to Request Arbitration

No request for arbitration of any claim, dispute or other matter that is required to be referred to District initially for decision will be made until the earlier of (a) the date on which District has rendered a decision or (b) the tenth day after Contractor has presented its evidence to District if a written decision has not been rendered by District before that date. Unless otherwise required by law, no request for arbitration of any such claim, dispute or other matter will be made later than thirty days after the date on which District has rendered a written decision. Notice of the request for arbitration will be in writing to the other party.

ARTICLE XXIV: LABOR AND EMPLOYMENT

Worker's Compensation Certification

By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract.

Prevailing Wage Rates

In accordance with the provisions of Section 1770 and 1773 of the Labor Code, the District has determined that prevailing wage rates are applicable to the work to be done. The Contractor shall post a copy of the wage rates on the job site.

The general prevailing wage rates determined by the Director of Industrial Relations, for the county or counties in which the work is to be done, are available from the California Department of Industrial Relations' Internet website at <http://www.wdol.gov>. These wage rates are not included in the bid documents and contract for the project. Changes, if any, to the general prevailing wage rates will be available at the same location.

Pursuant to California Labor Code Section 1775, Contractor shall forfeit Two-hundred Dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates for such work or craft, and said amounts shall be distributed pursuant to the requirements of said Section 1775. Any employee whose type of work is not covered by any of the classified wage rates shall be paid not less than the rate of wage listed for the classification which most nearly corresponds to the type of work to be performed.

Collective Bargaining Agreements

Pursuant to California Labor Code Section 1773.8, Contractor shall pay travel and subsistence payments to all workers needed to execute the work as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.

Payroll Records

Contractor shall be responsible for keeping accurate payroll records as required by California Labor Code Section 1776. Contractor is aware that a penalty of twenty-five dollars (\$25.00) per day or portion thereof for each worker may be assessed for noncompliance with said section. Contractor shall forward to District a certified copy of each payroll record within ten days after close of each payroll period. Such certification shall include a statement that payroll is correct and complete and complies with prevailing wage requirements.

If by the 15th of the month, the Contractor has not submitted satisfactory payrolls for all work performed during the monthly period ending on or before the 1st of that month, District will retain an amount equal to 10 percent of the estimated value of the work performed during the month from the next monthly estimate, except that such retention shall not exceed \$10,000. Retentions for failure to submit satisfactory payrolls shall be additional to all other retentions provided for in the contract. The retention for failure to submit payrolls for any monthly period will be released for payment on the monthly estimate for partial payments next following the date that all the satisfactory payrolls for which the retention was made are submitted.

The Contractor and each subcontractor shall preserve their payroll records for a period of three years from the date of completion of the contract.

Limitations on Hours Worked

Eight hours constitutes a day's work and workers shall be limited to working 8 hours during any one calendar day and 40 hours during any one calendar week. Contractor and all subcontractors shall keep an accurate record of hours worked by each worker for each calendar day and each calendar week which record shall be available for inspection during business hours. Contractor shall, pursuant to California Labor Code Section 1813, forfeit twenty-five dollars (\$25) for each day for each worker where such worker is required or permitted to work more than 8 hours in any one day and 40 hours in any one week in violation of the provisions of the Labor Code. No overtime shall be authorized unless prior written approval of District is obtained permitting such overtime. If such overtime work is authorized by District, Contractor shall compensate each worker required to work overtime at the rate specified by State regulation. All costs for overtime inspection, except those occurring as a result of overtime and shift work established as a regular procedure, shall be paid by the Contractor. Overtime inspection shall include inspection required during holidays, Saturdays, Sundays, and any weekday between the hours of 3:30 p.m. and 7:00 a.m. Such costs will include but will not necessarily be limited to engineering, inspection, general supervision and other overhead expenses which are directly chargeable to the overtime work. All such charges shall be deducted by District from payments due the Contractor.

Equal Employment Opportunity and Nondiscrimination

During the performance of this contract, the contractor agrees to abide by all provisions of Section 1735 of the California Labor Code, as amended, regarding nondiscrimination practices.

Employment of Apprentice Labor

Reference is hereby made to Section 1777.5 of the Labor Code of the State of California, which regulations shall govern the employment of apprentices on the work.

Preference for Resident Labor

In the employment of labor for doing the work, the Contractor shall give preference to qualified persons residing within the general area of the work.

Incompetent Workers

If at any time any worker employed by Contractor or any of the subcontractors shall be declared by District to be incompetent or unfaithful in executing the work, the Contractor, on receiving written notice, shall forthwith initiate appropriate action to dismiss such person.

Labor Class Substitutions

If Contractor substitutes a labor classification or provides a new classification which results in a reduction in the contract price, District's execution of a change order evidencing said reduction in price shall in no way be construed, either express or implied, as consent to the use of said labor classification in the performance of any work on the project.

ARTICLE XXV: ASSIGNMENT

No assignment by a party hereto of any rights under or interests in the contract documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the contract documents.

ARTICLE XXVI: CONFLICT OF INTEREST RESTRICTIONS

No official of District who is authorized in such capacity and on behalf of District to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspecting, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof. No officer, employee, architect, attorney, engineer, or inspector of or for District who is authorized in such capacity and on behalf of District who is in any legislative, executive, supervisory, or other similar function in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

ARTICLE XXVII: WAIVER OF RIGHTS

No action or lack of action on the part of District at any time to exercise any right or remedy conferred upon it under this contract shall be deemed to be a waiver on the part of District of any of District's rights or remedies.

ARTICLE XXVIII: SUCCESSORS IN INTEREST

District and Contractor each bind themselves, their partners, successors, assigns and legal representatives to the other party hereto, their partners, successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the contract documents.

ARTICLE XXIX: NOTICE

Giving Notice

Whenever any provision of the contract documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent registered or certified mail, postage prepaid, to the last business address known to the giver of the notice. The business addresses of Contractor given in the bid form and Contractor's office at the site of the work are hereby designated as the places to which all notices, letters, and other communication to Contractor will be delivered. However, District or Contractor may change their addresses at any time by an instrument in writing delivered to the other.

Joint Venture Contractor

In the event the Contractor is a joint venture of two or more Contractors, all grants, covenants, provisos and claims, rights, powers, privileges and liabilities of the contract shall be construed and held to be several as well as joint; any notice, order, direction, request or other communication required to be or that may be given by District to the Contractor under this agreement shall be well and sufficiently given to all persons being the Contractor if given to any one or more of such persons; any notice, request or other communication given by any one of such persons to District under this agreement shall be deemed to have been given by and shall bind all persons being the Contractor.

ARTICLE XXX: VENUE AND JURISDICTION

This contract shall be construed in accordance with the laws of the State of California and the parties agree that venue shall be in Nevada County, California.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the date first written, above. One counterpart each has been delivered to District, Contractor, and the Sureties. All portions of the contract documents have been signed or identified by District and Contractor.

ATTEST:


Clerk of the Board

NEVADA COUNTY SANITATION
DISTRICT NO. 1

By: 

Chairman, Board of Supervisors

CONTRACTOR

By: 

Licensed in accordance with an act providing for
the registration of Contractors

License Number: 793724

Fed. Tax ID No: 44-3391116

Telephone No: 530 432-4000

BID FORM

(Nevada County Standard Form Bid Document)

BID TO THE COUNTY OF NEVADA FOR: PENN VALLEY DUAL SEWER FORCE MAIN PROJECT

Name of Bidder: Koch 3 Koch, Inc.

The work to be done and referred to herein is in Nevada County, State of California, and shall be constructed in accordance with the Plans, Specifications (including the payment of not less than the wage rates set forth therein) and the Contract annexed hereto.

The work to be done is shown on project documents entitled: Bidding Documents, Specifications and Contract Documents for the Penn Valley Dual Sewer Force Main.

The undersigned, as bidder, declares that the only persons or parties interested in this bid as principals are those named herein; that this bid is made without collusion with any other person, firm, or corporation, and in submitting this bid, the undersigned bidder agrees that he or she has carefully examined the location of the proposed work, the annexed proposed form of contract, and the plans therein referred to and all other documents listed or incorporated in the bidding documents and contract documents; and bidder proposes, and agrees if this bid is accepted, that bidder will contract with the County of Nevada in the form of the copy of the contract annexed hereto, to provide all necessary machinery, tools, apparatus, and other means of construction, and to do all the work and furnish all the materials specified in the contract, in the manner and time therein prescribed, and according to the requirements of County as therein set forth, and that bidder will take in full payment therefor the following: