

**CONTRA COSTA WATER DISTRICT**  
**Technical Services Agreement**

THIS AGREEMENT for technical services is between Contra Costa Water District ("District") and \_\_\_\_\_ ("Contractor"). Contractor's address is \_\_\_\_\_, telephone \_\_\_\_\_, and fax number \_\_\_\_\_. Contractor is a [ ] corporation, [ ] partnership, [ ] individual, having taxpayer's identification or Social Security number \_\_\_\_\_, and professional license class and number \_\_\_\_\_.

1. The Agreement. District and Contractor agree that Contractor shall perform technical services for District on the terms and conditions herein set forth in connection with District's project number \_\_\_\_\_ for \_\_\_\_\_. The following documents are attached hereto and are a part of this Agreement:

- Attachment A – General Agreement Provisions
- Attachment B – Scope of Work
- Attachment C – Contractor's Rates and Charges

This Agreement, including said attachments, constitutes the entire agreement between the parties and supersedes any prior proposals, representations, or understandings. This Agreement may be modified only by a written amendment signed by each party.

2. Time of Performance. Unless otherwise stated in Attachment B, Contractor is authorized to commence performance of this Agreement upon its execution by the District and receipt of a Notice to Proceed from the District. Contractor shall complete all services covered by this Agreement no later than \_\_\_\_\_ unless this date is extended by District in writing. Should the District elect to extend this Agreement through \_\_\_\_\_, there shall be no change in the terms and conditions of this Agreement (other than to the time of performance). If Contractor fails to complete the services by said date, Contractor shall pay District as liquidated damages \$\_\_\_\_\_ per day of default.

3. Payment. Contractor shall at convenient intervals not more frequently than monthly submit itemized statements of services performed at the rates and charges in Attachment C. District shall pay for work satisfactorily performed within thirty (30) days after receipt of a statement, less any retention withheld as specified in Attachment A. The total amount payable by District for Contractor's services pursuant to the Agreement shall not exceed \$\_\_\_\_\_ for the period from \_\_\_\_\_ to \_\_\_\_\_, without the prior written approval of the District.

4. Termination. District may terminate this Agreement at any time by 15 days prior written notice to Contractor. Upon termination, District shall pay Contractor for all amounts due for service rendered up to the date of termination.

Dated: \_\_\_\_\_

CONTRA COSTA WATER DISTRICT

CONTRACTOR

By: \_\_\_\_\_  
Jerry Brown

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

Title: General Manager

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

**GENERAL AGREEMENT PROVISIONS**

**1. Bonds and Insurance**

**a. Bonds**

Unless excused by the District, the Contractor shall furnish, on forms provided by the District, a Payment Bond and a Faithful Performance Bond, each of which shall be in an amount equal to one hundred percent (100%) of the total amount specified in section 3 of the Agreement. The Faithful Performance Bond is to secure the faithful performance of the Contract, and the Payment Bond is to secure the payment of those to whom the Contractor may become legally indebted for labor, materials, tools, equipment, or services of any kind used or employed by the Contractor in performing the work. Said bonds shall be secured from a surety company satisfactory to District or shall comply with the minimum requirements specified in sections 995.610 through 995.660 of the California Code of Civil Procedure.

**b. Insurance**

- 1) Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverage
  - a) Workers' Compensation, in not less than statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
  - b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
  - c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable; and
  - d) Professional liability insurance, if applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.
- 2) Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to:
  - a) Name as Additional Insureds, Contra Costa Water District and its respective Directors, Officers, Agents, and Employees.

- b) Provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- 3) Regarding Workers' Compensation, Contractor hereby agrees to waive its rights to subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Contra Costa Water District for all work performed by the Contractor, its employees, agents and subcontractors.
- 4) All policies shall provide thirty days' advance written notice to Contra Costa Water District of reduction or nonrenewal of coverage or cancellation of coverage for any reason.
- 5) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of four years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.
- 6) Before commencing any work under this Agreement, Contractor shall furnish to Contra Costa Water District certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to Contra Costa Water District, in form evidencing all coverage set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.
- 7) Approval of the insurance by District shall not relieve or decrease the liability of Contractor hereunder.
- 8) If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor obtains all necessary insurance, which shall name Contra Costa Water District, and its respective directors, officers, agents and employees and the Contractor as Additional Insureds.

## **2. Hold Harmless and Indemnification**

If an action is filed in which it is claimed or alleged that any damages, injuries, or deaths arose out of, pertained to, or related to negligent acts, errors or omissions, recklessness, or willful misconduct of Contractor (or any person or organization for whom Contractor is legally liable), in the performance of the services for District, Contractor agrees, at its own expense, to defend District, its Governing Bodies, Directors, officers, employees and agents; provided that no settlement of a claim shall be made without the consent of District.

To the extent permitted by law, Contractor shall indemnify, save and hold harmless District, its Governing Bodies, Directors, officers, employees and agents from and against all claims, demands, costs and expenses, including reasonable attorney's fees, and liability for any damages, injuries or deaths arising out of, pertaining to, or relating to the negligent acts, errors or omissions, recklessness, or the willful misconduct of Contractor (or any person or organization for whom Contractor is legally liable), directly or indirectly related to the services provided hereunder excepting there from only those claims, demands, or liability caused by the sole or active negligence, or the willful misconduct of the District. Contractor will reimburse District for any expenditure or fees District may make by reason of such matters.

To the extent permitted by law, Contractor shall also indemnify the District, its Governing Bodies, Directors, officers, employees and agent, against any and all claims, demands, costs and expenses at law or in equity including reasonable attorneys' fees, and liability, suffered or incurred on account of, or that may at any time arise out of, or are in any way connected with, any breach by Contractor, or its employees, agents, sub-Contractors, or subcontractors, of the obligations, covenants, or any other provisions of this Agreement.

This Section shall survive any expiration or termination of this Agreement.

### **3. Laws and Regulations**

The Contractor shall observe and comply with all Federal, State, and local laws, ordinances, codes, orders and regulations which in any manner affect those engaged or employed on the work, materials used in the work, or the conduct of the work. If any discrepancy or inconsistency should be discovered in this Agreement in relation to any such law ordinance, code, order, or regulation, the Contractor shall report the same in writing to the Purchasing Officer. The Contractor shall indemnify, hold harmless and defend the District, its officers, agents and employees, against all claims or liability arising from violation of any such law, ordinance, code, order, or regulation, whether by the Contractor, the Contractor's employees, or its subcontractors. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

The Contractor or subcontractor offers and agrees to assign to the District all rights, title and interest in, and all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2) commencing with Section 16700 (of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the Agreement. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor, without further acknowledgment by the parties.

### **4. Permits and Licenses**

Unless otherwise provided, the Contractor shall obtain at his own expense all permits and licenses or property used in connection with the work, including all safety permits for excavations, tunneling, trenches, construction (building structure, scaffolding, or falsework) and demolition required by CAL/OSHA including but not limited to, the permits required by

Labor Code Section 6500, and shall pay all taxes properly assessed against his/her equipment or property used in connection with the work. The Contractor shall possess a current and valid State of California Contractor's License/endorsement, and shall not employ any subcontractors that are not both properly licensed in accordance with State law and properly registered to perform public works contracts, or change any subcontractors listed in the Proposal without the consent of the District using the procedures set forth in Public Contract Code 4100 et. seq.

**5. Sales and Use Taxes**

The Contractor shall pay all sales and use taxes assessed by Federal, State, or local authorities on parts and materials furnished by the Contractor in the performance of the work.

**6. Patents and Copyrights**

The Contractor shall defend, indemnify, and save harmless the District, its officers, agents and employees against all claims or liability arising from the use of any patented or copyrighted design, device, material, or process used by Contractor or any subcontractors in the performance of the work.

**7. Termination**

If any or all services to be performed under the Agreement are abandoned by the Contractor, or if the District determines that the schedule of service is not being maintained, or that the Contractor is violating any of the conditions or provisions of the Agreement or failing to provide a consistently high level of service; and if the Contractor fails to remedy such default within three days after receipt of written notice of such default, or, within three (3) days after receipt of District's written consent to such longer period to remedy such default, fails to provide satisfactory evidence that such default will be promptly corrected, the District may at its sole election choose to terminate any or all portions of the Agreement, or withhold any amounts otherwise due under the Agreement. Thereupon, the District will have the right to complete such service by whatever method the District deems expedient. Any additional expense for completing such service shall be chargeable to the Contractor.

Additionally, the District may, at its option, terminate the Agreement in whole or in part, at any time, by written 15-day notice thereof to the Contractor, whether or not the Contractor is in default. Upon such termination, the Contractor shall waive any claims for damages, including loss of anticipated profits on account thereof.

**8. Waste Disposal**

The Contractor shall properly transport and dispose of all waste, including hazardous wastes, generated by these activities. Copies of proper disposal documentation must be maintained by the Contractor and submitted to District on demand.

**9. Additions, Deletions and Changes**

The District reserves the right to add, delete, or change the scope of work under this Agreement and may do so upon giving written notice to the Contractor. To the extent possible, payment will be made at the unit price set forth in Attachment C. If other changes cause an increase or a reduction in the costs of this agreement, the parties shall attempt to negotiate an equitable adjustment based upon an acceptable lump sum proposal from the Contractor. Any agreed upon adjustment to the prices shall be incorporated in a written Change Order issued by the District, which shall be written so as to indicate an acceptance on the part of the Contractor as evidenced by its signature. By signature of the Change Order, the Contractor acknowledges that the adjustments to cost and time contained in the Change Order are in full satisfaction and accord, payment in full, and so waives any right to claim any further cost and time impacts at any time during and after completion of the Contract for the changes encompassed by the Change Order.

If the parties cannot agree on a lump sum adjustment, the Contractor shall proceed to do the additional work on a "force account" or time and expense basis, that is, on an accounting of the Contractor's forces, materials, equipment, and other items of cost as required and used to do the Work. For the work performed, payment will be made for the documented actual cost of the following:

- a. Direct labor cost for workers, who are directly assigned to the force account work, including wages, fringe benefits, if any (as established by negotiated labor agreements or State prevailing wages), and a labor surcharge of thirty percent (30%) for all other fixed labor burdens such as workers' compensation and labor insurance, and labor taxes.
- b. Material delivered and used on the designated work, including sales tax, if paid for by the Contractor or its subcontractor.
- c. Equipment rental, for those days or hours during which the equipment is in actual use based on actual rental and transportation invoices.

A fixed fee not to exceed ten percent (10%) of the costs of Items (a), (b), and (c) above covering the cost of general supervision, overhead, profit, bond, insurance, and any other general expenses.

## **10. Equal Opportunity Employer**

The District is committed to equal employment opportunities. The District encourages the consideration and utilization of minority and women-owned businesses.

## **11. Successors and Assigns**

Contractor shall not assign, sell, sublet, or subcontract all or any portion of this Agreement or any personal interest herein or any property, real or personal, used hereunder, without the prior written consent of the District. No assignments by Contractor shall be effective until the assignee shall, in writing, agree to assume and fully perform all of the terms and provisions of the Agreement.

## **12. Subcontractors**

In accordance with California Public Contracting Code Section 4100, et. seq., the Contractor shall list, in Section 00430, PROPOSED SUBCONTRACTORS, the name, business address, California contractor's license number, public works contractor registration number, and portion of Work to be performed, and location of the place of business for the following.

- A. Each subcontractor who will perform work or labor or render service to the bidder in or about the construction of the Work or improvement, in an amount in excess of one-half of one percent of the bidder's total bid;
- B. Any subcontractor licensed by the State of California who, under subcontract to the bidder, will specially fabricate and install a portion of the Work or improvement according to detailed drawings contained in the drawings and specifications, in an amount in excess of one-half of one percent of the bidder's total bid.

Failure to list the subcontractors defined in subparts A. and B. above may render the bid or proposal non-responsive and may be grounds for rejection thereof. For each portion of the Work (as defined by the Contractor for the purpose of listing subcontractors) the Contractor shall list only one subcontractor in Section 00430, PROPOSED SUBCONTRACTORS. Failure to comply with the provisions of the California "Subletting and Subcontracting Fair Practices Act" shall make the Contractor subject to the sanctions as set forth in the Act. Failure by a listed subcontractor to be registered to perform public work as required by subdivision (a) of Labor Code section 1725.5 shall be grounds under Section 4107 of the Public Contract Code for the Contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

Nothing contained in the Agreement shall create any contractual relation between any subcontractor and the District. The persons engaged in the work, including employees of subcontractors and suppliers, will be considered employees of the Contractor. The Contractor will be responsible for their work and their work shall be subject to the provisions of the Agreement. The Contractor is fully responsible to the District for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them, just as the Contractor is fully responsible for the acts and omissions of persons directly employed by the Contractor.

## **13. Responsibility for the Work**

Until completion and acceptance of the work, the Contractor shall have the charge and care of the work and of the materials to be used therein and shall bear the risk of injury, loss, or damage, to any part thereof from any other cause, whether or not arising from the non-execution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries, losses, or damages to any portion of the work or the materials occasioned by any cause before

its acceptance and shall bear the expense thereof, except for such injuries, losses, or damages as are directly and approximately caused by acts of the District.

#### **14. Inconsistencies and Omissions**

Where the Agreement describes portions of the work in general terms but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be used. Unless otherwise specified, the Contractor shall furnish tools, equipment, and incidentals, and do all the work necessary to complete the work in a satisfactory and workmanlike manner.

Unless specifically noted otherwise, the Agreement and all Attachments are intended to be complementary and applicable to each other.

In resolving inconsistencies among two or more portions of the Agreement and/or the Attachments, the most stringent requirements shall apply.

#### **15. Inspection of Site(s)**

The information provided by the District is not intended to be a substitute for, or a supplement to, the independent verification by the bidder/proposer to the extent such independent investigation of site conditions is deemed necessary or desirable by the bidder/proposer. Bidders/proposers are required to satisfy themselves, by personal examination of the site(s) of the work or by such other means as they may prefer, of the location and of the actual conditions at the site(s) of Work. If, during the course of its examination, a bidder/proposer finds facts or conditions which appear to be in conflict with the letter or spirit of the Agreement, bidding/proposal documents, the bidder/proposer shall report the conflict in writing, to the District's Contract Administrator, within a reasonable time before submitting its bid/proposal.

Submission of a bid/proposal by the bidder/proposer shall constitute conclusive evidence that, if awarded the Contract, it is relying on its own examination of the site(s) of the work, including existing facilities and conditions to be encountered on and in the vicinity of the site(s).

#### **16. Examination of Agreement**

Each Proposer shall thoroughly examine and be familiar with the Agreement before submitting its proposal. Any inconsistencies or omissions found in the Agreement and/or Attachments shall be reported to the District's Contract Administrator, who will clarify discrepancies or omissions, in writing, within a reasonable time.

The submission of a bid/proposal shall constitute an acknowledgment, upon which the District may rely, that the bidder/proposer has thoroughly examined and is familiar with the Agreement, with the character, quality and scope of the work to be constructed under the Agreement, including the quality and quantity of the materials and services to be furnished, and all other requirements of the Agreement. The bidder's/proposer's failure or neglect to examine and become familiar with the Agreement, shall in no way relieve it from any

obligation with respect to its proposal or to the Agreement, and no claim for additional compensation will be allowed which is based upon a lack of knowledge or misinterpretation of any portion of the Agreement.

### **17. Waiver or Acquiescence**

No action or failure to act by the District's Contract Administrator or anyone else acting for the District shall constitute a waiver of any right or duty afforded under the Agreement nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

### **18. Liquidated Damages**

It is agreed by the parties to the Agreement that time is of the essence in the completion of this work, and that in case all the work called for under the Agreement, or such portion thereof as may be designated by the District's Contract Administrator, is not completed before the date specified in section 2 of the Agreement or such earlier date as may be specified by the District's Contract Administrator, or each District facility affected by the work is not restored to full service within the period specified by the District's Contract Administrator for that facility, damage will be sustained by the District. As it is impracticable to determine the actual delay damage; it is, therefore, agreed that the Contractor shall pay liquidated damages to the District in the amount set forth in section 2 of the Agreement. Contractor further agrees that if such liquidated damages are not promptly paid, the District may deduct the amount thereof from any moneys due, or that may become due, the Contractor under the Agreement.

### **19. Prevailing Wages**

In accordance with Section 1770 of the Labor Code, the District does hereby specify that, if any personnel of Contractor or a subcontractor of Contractor performs work under the Agreement for which a general prevailing wage of the locality in which the Work is to be performed and applicable to the Work to be done has been determined by the Director of the Department of Industrial Relations, Contractor or subcontractor shall pay the prevailing wage for such work, including all employer payments that are required by Section 1773.1 of the Labor Code, and such travel and subsistence payments to workers needed to execute the Work as defined in the applicable collective bargaining agreement filed with the Department of Industrial Relations pursuant to Labor Code Section 1773.8, and shall comply with all applicable provisions of the California Labor Code Section relating to public works (Section 1720 et. seq.). Copies of such prevailing wage rates are on file at the District's principal office. If it becomes necessary to employ a craft other than those listed in the prevailing wage rates, the Contractor shall notify the District immediately and the District will obtain the additional prevailing rate from the Director of the Department of Industrial Relations, which rate shall be applicable at the time of initial employment. For questions regarding this section, Contractor should visit [www.dir.ca.gov/oprl/pwd/index.htm](http://www.dir.ca.gov/oprl/pwd/index.htm) or call the Department of Industrial Relations at 1-415-703-4774.

This project is subject to labor compliance monitoring and enforcement by the California Department of Industrial Relations.

The general prevailing wage rates for such work which establish minimum wages for this Agreement shall be posted by Contractor in a prominent place at the site where such work is performed.

The wage rates set forth are the minimum that may be paid by the Contractor. Nothing herein shall be construed as preventing the Contractor from paying more than the minimum set forth. No extra compensation whatever shall be allowed by the District due to the inability of the Contractor to hire labor at the minimum rate nor for any necessity for payment by the Contractor for subsistence, travel time, overtime, or other added compensation.

For each worker performing work under the Agreement for which prevailing wages are applicable who is paid less than the stipulated rate by the Contractor, or any subcontractor under it, in violation of the provisions of Section 1770 to Section 1780 of the Labor Code, inclusive, the Contractor shall be subject to the provisions of Section 1775 of the Labor Code, which require the Contractor to pay penalties to the District, and to pay to each worker the difference between such stipulated prevailing wage rates and the amounts actually paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the stipulated prevailing rate.

Contractor is responsible for its and its subcontractors' compliance with all of the provisions of Section 1776 of the Labor Code. Each month, each Contractor and subcontractor shall furnish the records specified in Labor Code Section 1776 directly to the Labor Commissioner, in the format prescribed by the Labor Commissioner, and shall submit them to the District with requests for payment. Certified payroll records shall also be available for inspection at all reasonable hours at the principal office of the Contractor as specified in Labor Code 1776.

The Contractor shall forfeit, as a penalty to the District, the penalty as provided in Section 1813 of the Labor Code for each worker performing work under the Agreement for which prevailing wages are applicable employed in the execution of the Contract by the Contractor, or any subcontractor under the Contractor, for each day during which such worker is required or permitted to work more than eight (8) hours in any one (1) day and forty (40) hours in any one (1) week, in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815 thereof, inclusive, except that work performed by employees of Contractors in excess of eight (8) hours a day and forty (40) hours during one (1) week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day, at not less than one and one-half (1.5) times the basic rate of pay as provided for in Section 1815 of the Labor Code.

It shall be the responsibility of the Contractor, if it employs tradespersons in any apprenticeable occupation, to comply by the provisions of Section 1777.5 of the Labor Code and the regulations of the California Apprenticeship Council, which pertain to the employment of apprentices, and shall require all subcontractors employed by or contracting with the Contractor to abide by said provisions. The Contractor shall furnish the District sufficient

evidence of compliance with this code section upon request of the District. For failure to comply with Section 1777.5 of the Labor Code where applicable, the Contractor shall be subject to the penalties in Section 1777.7 of the Labor Code.

## **20. Safety**

To protect the public's safety as well as the safety of their employees, the District's employees, and all persons at or near the site(s) of work, the Contractor and its subcontractors shall take all measures required to comply with all applicable Federal, State, County, and local laws, ordinances, codes, and regulations, including but not limited to, providing protection barriers and barricades, and signs. The Contractor, its suppliers, and its subcontractors of all tiers, and their respective employees, shall also comply with the CCWD Contractor Safe Practices Handbook at all times when present on District property or at the site(s) of work. The Handbook is available at <http://www.cewater.com/files/safepacticeshandbook.pdf>. The signature page of the CCWD Contractor Safe Practices handbook shall be signed by the Contractor and submitted to the District. The Contractor shall provide copies of the Handbook to all Sub-Contractors. The Contractor shall be solely and completely responsible for performing all work under this Agreement so as to protect the safety of all persons and property at or near any site(s) of the work. The Contractor shall continually and diligently inspect all work, materials and equipment to discover, and shall be solely responsible for discovery and correction of, such conditions which might cause bodily harm to persons or damage to property. These requirements shall apply twenty-four (24) hours per day continuously during the term of this Agreement and shall not be limited to normal working hours. The District shall not be responsible in any way for the methods selected by the Contractor in discharging its exclusive responsibility for safety of its work hereunder.

The Contractor shall perform all work in a fire-safe manner. He shall supply and maintain on the site adequate fire-fighting equipment capable of extinguishing incipient fires. The Contractor shall comply with applicable Federal, local, and State fire-prevention regulations, or, if these regulations do not apply, applicable parts of the National Fire Prevention Standards for Safeguarding Building Construction Operations (NFPA No. 241).

In the event of any spill or other release to the environment of any regulated chemical in any physical form that occurs on or immediately adjacent to the site(s) and arises from work under this contract, the Contractor shall immediately notify the District. The Contractor shall be responsible for all costs that result from any chemical spill or other release caused by the Contractor including, but not limited to containment, control, and disposal, and any fines or other damages lawfully assessed against the Contractor or the District.

The Contractor shall cooperate fully with District personnel while working within the scope of this contract.

The Contractor shall support a drug-and-alcohol free workplace. The unlawful use, possession, or distribution of a controlled substance within the site(s) of any work will not be tolerated. Employees are prohibited from being under the influence of alcohol within the site(s) of any

work. The Contractor shall be responsible for initiating, maintaining, and supervising safety and anti-substance abuse programs in connection with the work.

If the work to be performed under this contract involves confined space work, the Contractor shall prepare confined space operating and rescue procedures fully complying with the applicable provisions of Section 5158, Title 8, California Code of Regulations and shall submit the procedures to the District. The Contractor shall be fully responsible for the adequacy of the procedures. The District shall neither review nor accept the procedures, and the sole purpose of submitting the procedures is to advise the District that such procedures have been prepared.

To the extent required by Labor Code Section 6401.7, Contractor shall establish, implement, and maintain a written injury prevention program, and shall take all actions necessary to comply with all provisions thereof before proceeding with any work under the Agreement, including but not limited to furnishing and maintaining all safety equipment, test equipment, and safety apparel applicable to the work, enforcing the use of such equipment by its employees and the employees of any of its Subcontractors, and furnishing all items necessary for giving first aid and other medical treatment to anyone injured at any site(s) of work, and shall provide for the immediate removal of such person to a hospital or a doctor's care.

If death or serious injuries or illness, or serious damages are caused, the accident or illness shall be reported immediately by telephone or messenger to the District. In addition, the Contractor must promptly report in writing to the District, all accidents whatsoever arising out of, or in connection with, the performance of the work whether on, or adjacent to, the site(s), giving full details and statements of witnesses. The Contractor shall make all reports as are, or may be, required by any authority having jurisdiction, and permit all safety inspections of the work being performed under this Agreement. If a claim is made by anyone against the Contractor or any subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the District, giving full details of the claim.

## **21. Differing Site Conditions**

Pursuant to Public Contract Code Section 7104, the Contractor shall promptly, and before such conditions are disturbed, notify the District, in writing, of any:

- a. Material that the 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.
- b. Subsurface or latent physical conditions at the site differing from those indicated.
- c. Unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement.

In addition to giving written notice as described above upon encountering material that the Contractor believes may be "hazardous waste" as defined above, Contractor also shall

immediately stop all Work to any area affected by said material, if continuing Work may present a substantial danger to persons or property exposed to the materials in connection with any Work at the site. These obligations pertaining to “hazardous waste” shall apply only to such “hazardous waste” not shown or indicated in the Agreement Documents to be within the Scope of Work.

The District, or the Contractor, if the District so directs in its sole discretion, shall promptly investigate the conditions, determine the necessity to retain a qualified expert to evaluate such hazardous condition, and/or to take corrective action, if necessary, and if the District finds that the conditions do materially differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor’s cost of, or the time required for, performance of any part of the Work, the District shall cause to be issued a change order.

Contractor shall not be required to resume work in connection with such hazardous condition identified in the Agreement Documents, or in any such affected area until after District has obtained any required permits related thereto and delivered to Contractor special written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of work, or (ii) specifying any special conditions under which such work may be resumed safely.

In the event that a dispute arises between the District and the Contractor whether the conditions materially differ, or involve hazardous waste (other than that shown or indicated in the Agreement Documents), or cause a decrease or increase in the Contractor’s cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Agreement, but shall proceed with all work to be performed under the Agreement provided that, if after receipt of the special written notice described above in this section 21, Contractor does not agree to resume such work based upon a reasonable belief that it is unsafe to do so, or does not agree to resume such work under the special conditions specified in said special written notice, the District may at its sole election order the portion of the Work affected by said hazardous waste to be deleted from the Work, and the District may thereupon have the portion of the Work so deleted performed by District’s own forces or by separate Agreement(s). The Contractor shall retain any and all rights provided either by Agreement or by law which pertain to the resolution of disputes and protests between the contracting parties.

No claim of the Contractor under this clause shall be allowed unless the Contractor has complied with Section 23.

The Contractor shall cooperate with forces engaged in sampling, investigation, and clean-up work pertaining to hazardous waste (whether or not said hazardous waste is shown or indicated in the Agreement Documents) and shall conduct its operations in such a manner as to avoid any unnecessary delay or hindrance to the work being performed by such forces.

The District shall not be responsible for any such materials brought to the site by the Contractor, subcontractors, suppliers, or anyone else for whom the Contractor is responsible.

## 22. Retention

As specified in Public Contract Code Section 9203, District will deduct and retain five percent (5%) from each progress payment, if any, and will retain such amounts in accordance therewith as part security for the satisfactory and timely completion of the Work until release thereof is required under Public Contract Code Section 7109:

In addition to the amount which the District may otherwise retain under the Contract, the District may withhold a sufficient amount or amounts of any payment or payments otherwise due the Contractor, as in its judgment may be necessary to cover just claims against the Contractor or any subcontractor for labor or materials furnished for the performance of this Contract, damage to the District or a third party, and any costs or penalties imposed because of the failure of the Contractor or any subcontractor to comply with environmental, labor, employee safety, or any other regulatory requirements. When the above reasons for withholding are resolved, payment may be made to the Contractor for amounts withheld less any District incurred expenses.

- a. Pursuant to Public Contract Code Section 22300, for moneys earned by the Contractor and withheld by the District to ensure the performance of the Contract or otherwise as provided above, the Contractor, may, at their option, choose to substitute securities, meeting the requirements of said Section 22300. In the event the Contractor wishes to choose this option, the Contractor shall enter into an escrow agreement with the District and the escrow agent, a qualified bank to be acceptable to the District, in the form of the agreement included in the project specifications. The costs of such escrow shall be paid by the Contractor. The securities to be deposited in said escrow account shall be equivalent, in fair market value, to the amount to be withheld as performance retention. The securities shall be held in accordance with the provisions of Public Contract Code Section 22300, and the implementing agreement.
- b. Contractor shall have the obligation of ensuring that such securities deposited are sufficient so as to maintain, in total fair market value, an amount equal to the cash amount of the sums to be withheld under the Contract. If, upon written notice from the District, or from the appropriate escrow agent, indicating that the fair market value of the securities has dropped below the dollar amount of moneys to be withheld by the District to ensure performance, Contractor shall, within five (5) days of the date of such notice, post additional securities as necessary to ensure that the total fair market value of all such securities held by the District, or in escrow, is equivalent to the amount of money to be withheld by the District under the Contract.
- c. Any Contractor wishing to exercise this option shall, at the request of any Subcontractor performing more than five percent (5%) of the Contractor's total bid/proposal price, make this same option available to the Subcontractor regarding any moneys withheld in retention by the Contractor, and if the Contractor elects to receive interest on any moneys withheld in retention by the District, then the Subcontractor shall receive the identical rate of interest on any retention moneys withheld from the Subcontractor by the Contractor. In addition, any Contractor wishing to exercise its option to substitute securities shall give notice in

writing to District, and shall thereafter execute an escrow agreement in the form entitled **SECURITY DEPOSITS IN LIEU OF RETENTION**.

### 23. Dispute Resolution

This section specifies the procedures for making, processing, and resolving claims.

- a. *Notice and Submission* - Claims based on adverse determinations of the District regarding the meaning of the Agreement shall be filed in writing within ten (10) days of receipt of such decision. All other Claims for extra work shall be filed in writing prior to the commencement of such work. Such Claims shall state the circumstances and the reasons for the claim, but need not state the amount. No claim filed after the date of final payment will be considered.

Unless notice is properly given, the Contractor shall not recover costs incurred by it as a result of the alleged extra work, changed work, or other situation which, had proper notice been given, would have given rise to a right for additional compensation. Timely notice of potential claim is of great importance to the District, and is not merely a formality. Such notice allows the District to consider preventative action, to monitor the Contractor's increased costs resulting from the situation, to marshal facts, and to plan its affairs. Such notice by the Contractor, and the fact that the District has kept account of the costs, shall not in any way be construed in any way as proving the validity of the claim.

- b. *Written Statement* – Upon receipt of a Claim sent by registered mail or certified mail with return receipt requested, the District shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the District and the Contractor may, by mutual agreement, extend the time period provided in the preceding sentence.
- c. *Records of Disputed Work* - The Contractor shall furnish reasonable documentation to support the Claim. Unless otherwise agreed, such documentation will consist of accurate records of all costs, including a daily summary of the hours and classification of equipment and labor utilized on the disputed work, as well as a summary of any materials or any specialized services which are used. Unless otherwise agreed in writing, such information shall be submitted to the Construction Administrator on a monthly basis, receipt of which shall not be construed as an authorization for or acceptance of the disputed work.
- d. *Submission of Claim Costs* - Within thirty (30) days after the last cost of work for which the Contractor contends it is due additional compensation is incurred, the Contractor shall submit to the Construction Administrator reasonable documentation to support the Claim, including, as best it is able, its costs incurred for the claimed matter. If costs are incurred over a span of more than thirty (30) days, then within fifteen (15) days after the thirtieth day of the first month and every month thereafter, the Contractor shall submit to the Construction Administrator reasonable documentation to support the Claim, including, as best it is able, its costs incurred for the claimed matter.

- e. *Board approval* - If the District needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the District shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.
  
- f. *Payment of Undisputed portion* - Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the District issues its written statement. If the District fails to issue a written statement, subsection i shall apply.
  
- g. *Informal conference* - If the Contractor disputes the District's written statement, or the District fails to provide a written statement responding to the Claim within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the District shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.
  
- h. *Further written statement; mediation* - Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the District shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the District issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the District and the Contractor sharing the associated costs equally. The District and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to applicable procedures outside this Section.

For purposes of this Section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Section.

Unless otherwise agreed to by the District and the Contractor in writing, the mediation conducted pursuant to this Section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

- i. *Effect of failure to respond* - Failure by the District to respond to a Claim from a Contractor within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by reason of the District's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of this Section, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the Contractor.
- j. *Interest* - Amounts not paid in a timely manner as required by this Paragraph 00700-7.3 shall bear interest at 7 percent per annum.
- k. *Subcontractors' claims* - If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against the District because privity of contract does not exist, the Contractor may present to the District a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Contractor present a Claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the District shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, the Contractor shall notify the subcontractor in writing as to whether the Contractor presented the Claim to the District and, if the original Contractor did not present the Claim, provide the subcontractor with a statement of the reasons for not having done so.
- l. Claims for Three Hundred Seventy Five Thousand Dollars (\$375,000) or less which cannot be resolved between the parties shall be resolved pursuant to the provisions of the Public Contract Code commencing with section 20104, except that the mediation conducted pursuant to this Section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced unless otherwise agreed.
- m. *Proceedings in Court* - If a civil action is filed to resolve the Claim, the case shall be submitted to judicial arbitration pursuant to chapter 2.5 (commencing with section 1141.10) of title 3 of part 3 of the Code of Civil Procedure, notwithstanding section 1141.11 of that code. The Civil Discovery Act of 1986 (article 3 (commencing with section 2016) of chapter 3 of title 3 of part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision to the extent consistent with the rules pertaining to judicial arbitration.
  1. **Arbitrators.** Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.
  2. **Trial de Novo.** In addition to chapter 2.5 (commencing with section 1141.10) of title 3 of part 3 of the Code of Civil Procedure, any party who after receiving an arbitration

- award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.
3. **Witnesses.** The court may, upon request by any party, order any witnesses to participate in the mediation (if any) or arbitration process.
  4. **Payment of Undisputed Claims.** The District shall not fail to pay money as to any portion of a claim that is undisputed except as otherwise provided in the Contract Documents.
  5. **Interest.** In any suit filed on a claims subject to Public Contract Code section 20104, the District shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law in the California County where the work is being performed.
  6. **Venue.** Should either party to this Agreement bring legal action against the other, the case shall be handled in the California county where the work is being performed. The Agreement shall be construed and its performance enforced under California law without regard to the conflict of law provisions thereof.

## 24. Underground Work

The following provisions will govern any underground work under this Agreement.

- a. For each excavation five (5) feet or more in depth, Contractor shall provide shoring, bracing, sloping, or make other provisions in accordance with Labor Code Section 6705, to protect workers from hazard of caving ground during such excavation. In addition, the Contractor shall submit, sufficiently in advance of excavation to permit review by the District, detailed plans showing the design of the provisions to be made for worker protection from hazard of caving ground during such excavation. If such plans vary from the shoring system standards set forth in the Construction Safety Orders in Title 8, California Code of Regulations, the plans shall be prepared and signed by a registered civil or structural engineer. Shoring, bracing, sloping, or other protective system shall not be less effective than required by the California Construction Safety Orders, and shall be accepted by the District before excavation may begin. The Contractor shall designate in writing to the Construction Administrator the "competent person" with the authority and responsibilities designed in the Construction Safety Orders. By submitting its plan, the Contractor warrants that its actions pursuant thereto shall not impose tort liability on the District, its Contractors, and their respective employees, agents.
- b. **Notification:** Pursuant to Government Code Sections 4216 through 4216.24, the Contractor shall notify the appropriate regional notification center of all excavations, as defined in Government Code section 4216(t), for all excavations, by obtaining a ticket, as defined in Government Code section 4216(g), from Underground Service Alert of Northern/Central California and Nevada ("Underground Service Alert") by logging on the website at [www.usanorth811.org](http://www.usanorth811.org). If the work is at a single address, the Contractor may instead log on to the website at [www.811express.com](http://www.811express.com). If it is necessary to do so, the Contractor may

instead contact Underground Service Alert by dialing 811. The business office of Underground Service Alert can be contacted at 1-800-642-2444 for reasons other than to request that subsurface installations be field marked. Contractor shall furnish to the Construction Administrator written documentation of its contact(s) with Underground Service Alert within three (3) days after such contact(s). If any portion of the excavation will be on private property, the Contractor shall check if any local ordinances apply to the placement of temporary markings, and shall ensure that any temporary marking placed at the planned excavation location can be clearly seen, functional, and considerate to surface aesthetics and the local community.

- c. Identification of Location: The Contractor shall notify the appropriate regional notification center as described in Paragraph 00700-9.1 at least two (2) working days (not including the date of notification) but not more than fourteen (14) days before beginning any excavation work. Before notifying the appropriate regional notification center as described in the preceding sentence, the Contractor shall delineate (as specified in Government Code section 4216.2(d)) the area to be excavated. Underground Service Alert will notify the operators of subsurface installations in the area of the proposed excavation, to enable them to locate and field mark (as specified in Government Code section 4216.2(d)) the location of their subsurface installations within the tolerance zone (as “tolerance zone” is defined in Government Code Section 4216(u)) as required by Government Code section 4216.3(a). Contractor shall furnish to the Construction Administrator written documentation of its contact(s) with the appropriate regional notification center within 3 (three) days after such contact(s).

A ticket shall be valid for 28 days from the date of issuance. If work continues beyond 28 days, the Contractor shall renew the ticket by the end of the 28th day either by logging on the Underground Service Alter website at [www.usanorth811.org](http://www.usanorth811.org), or if it is necessary to do so, by dialing 811. Contractor shall also provide written documentation to the Construction Administrator of its contact(s) with Underground Service Alert and any other Regional Notification Center as described in the preceding sentence.

If a ticket obtained expires but work is ongoing, the Contractor shall get a new ticket and wait a minimum of two working days, not including the date of call in, before restarting excavation. All excavation shall cease during the waiting period.

Where the excavation does not require an excavation permit, at District facilities such as treatment plants, pumping plants, pump stations, reservoirs, and Contra Costa Canal, where the property is known, or reasonably should be known, to contain a subsurface installation, the District performs additional locating for electrical, control, chemical, cathodic protection, and irrigation lines. The Contractor shall delineate the area to be excavated and then notify the Construction Administrator and Underground Service Alert at least five (5) working days before potholing or excavating at these sites. The Contractor shall be responsible for verifying location, including depth of existing utilities, prior to the relevant submittals. The Contractor shall preserve markings provided by the District so that remarking of the same utilities is not required.

Upon being notified by the operator of the high priority subsurface installation that the excavation is proposed within ten (10) feet of a high priority subsurface installation, the Contractor shall meet onsite with the operator or its representative at a mutually-agreed-on time to determine actions or activities required to verify the location of the high priority subsurface installations prior to start time. As part of the meeting, the Contractor shall discuss with the operator the method and tools that will be used during the excavation and the information the operator will provide to assist in verifying the location of the subsurface installation. The Contractor shall not begin excavating until after the completion of the onsite meeting.

Unless an emergency exists, the Contractor shall not begin excavation until the excavator receives a response from all known operators of subsurface installations within the delineated boundaries of the proposed area of excavation pursuant to Government Code Section 4216.3(a) and the completion of any onsite meeting, if required by Government Code Section 4216.3(c).

If, at any time during an excavation for which there is a valid ticket, an operator's field markings are no longer reasonably visible, the Contractor shall contact the appropriate regional notification center with a request for re-marks that can be for all or a portion of the excavation. The Contractor shall not proceed with excavation until the operator has re-located and re-marked those subsurface installations that may be affected by the excavation to the extent necessary in conformance with Government Code Section 4216.3(d). If the delineation markings are no longer reasonably visible, the Contractor shall re-delineate the area to be re-marked. The operator shall have two working days, not including the date of request, to re-mark the subsurface installation. If the area to be remarked is not the full extent of the original excavation, the Contractor shall delineate the portion to be remarked and provide a description of the area requested to be remarked on the ticket. The excavator shall provide a description for the area to be remarked that falls within the area of the original location request.

The Contractor shall notify the appropriate regional notification center of the failure of an operator to locate or mark its subsurface installations in compliance with Government Code Section 4216.3(a)(1)(A), 4216.3(a)(1)(B), or 4216.3(b). The notification shall include the ticket.

- c. Contractor's Responsibility: It shall be the Contractor's responsibility to determine the exact location and depth of all subsurface installations, including high priority subsurface installation and service connections, which have been field marked by the respective operators, and which Contractor believes may affect or be affected by Contractor's operations. Only a qualified person, as defined in Government Code section 4216(p) shall perform subsurface installation locating activities, and such person shall use a minimum of a single-frequency utility locating device and shall have access to alternative sources for verification, if necessary. If no pay item is provided in the Contract for this Work.

When the excavation is within the approximate location of subsurface installation, the Contractor shall determine the exact location of subsurface installations in conflict with the excavation by excavating with hand tools within the area of the approximate location of subsurface installations as provided by the operators before using any power-operated or power-driven excavating or boring equipment within the approximate location of the subsurface installation, except that power-operated or power-driven excavating or boring equipment may be used for the removal of any existing pavement if there are no subsurface installations contained in the pavement. If documented notice of the intent to use vacuum excavation devices, or power-operated or power-driven excavating or boring equipment, has been provided to the subsurface installation operator or operators and it is mutually agreeable with the operator or operators and the Contractor, the Contractor may utilize vacuum excavation devices, or power-operated or power-driven excavating or boring equipment within the approximate location of a subsurface installation and to any depth.

If the exact location of the subsurface installation cannot be determined by hand excavating in accordance with the preceding subparagraph, the Contractor shall request the subsurface installation operator to provide additional information to the Contractor, to the extent that information is available, to enable the Contractor to determine the exact location of the installation. The regional notification center shall provide the Contractor with the contact phone number of the subsurface installation operator.

The Contractor assumes responsibility for the removal, relocation, or protection of existing underground facilities wherein said facilities are correctly marked and/or delineated with reasonable accuracy on District's plans, and other underground facilities apparent from visual inspection of the site or which can be inferred from the presence of other visible facilities such as buildings, meters, junction boxes, etc., on or adjacent to the construction site. The Contractor shall coordinate with the owner of underground facilities for the rearrangement thereof. Full compensation for such work shall be considered as included in the price specified in section 3 of the Agreement. Temporary or permanent relocation or alteration of subsurface installations desired by the Contractor for its own convenience shall be the Contractor's responsibility and it shall make arrangements and bear all costs.

The Contractor shall communicate with an operator that has a subsurface installation embedded or partially embedded in the pavement that is not visible from the surface upon being notified by that operator and shall implement a plan of action to protect that subsurface installation as specified in Government Code section 4261.3(e).

- e. Upon discovering or causing damage to a subsurface installation, including all breaks, leaks, nicks, dents, gouges, grooves, or other damage to subsurface installation lines, conduits, coatings, or cathodic protection, the Contractor shall immediately notify the District and the operator of the subsurface installation. If the operator is unknown and the damage or discovery of damage occurs outside the working hours of the regional notification center, the excavator may follow the instructions provided by the regional notification center through its Internet Web site or the telephone line recorded message. If high priority subsurface installations are damaged and the subsurface installation operator cannot be contacted, the Contractor shall call 911 emergency services upon discovering or

causing damage to high priority subsurface installation of any kind, including without limitation a natural gas or hazardous liquid pipeline subsurface installation in which the damage results in the escape of any flammable, toxic, or corrosive gas or liquid.

The Contractor shall be responsible for the payment of all civil penalties imposed pursuant to Government Code section 4216.6(a)(1) and/or 4216.6 (a)(2). The Contractor shall also be responsible for the cost of repairing and/or relocating damaged subsurface installations if:

- 1) The Contractor has failed to comply with the provisions of this Section 24 and/or Government Code section 4216.2 through 4216.4;
- 2) The Contractor has failed to comply with the requests of the operator of the subsurface installation to protect the subsurface installation as specified by the operator;
- 3) The damaged subsurface installations are located within the tolerance zone (as “tolerance zone” is defined in Government Code Section 4216(u)) based on the actual field marking; or
- 4) The damaged subsurface installations are apparent from visual inspection of the site or which can be inferred from the presence of other visible facilities, such as buildings, meters, junction boxes, etc., on or adjacent to the construction site.

In addition to the cost of repairing and/or relocating damaged subsurface installations, the Contractor shall, pursuant to Section 2, **Hold Harmless and Indemnification**, defend, indemnify, and hold harmless the District, and its elected officials, officers, agents, employees and representatives against and from all damages, costs, and expenses that may at any time arise out of, or are in any way connected with, damages to a subsurface installation caused by the Contractor’s failure to proceed as specified above.

Time Extensions and Compensation: In the event that subsurface installations are found that are not shown in the Contract Documents or are found to exist in a substantially different location than shown in the Contract Documents, or are not correctly field located (meaning that the installation is not located within the tolerance zone, as “tolerance zone” is defined in Government Code Section 4216(u)), the Contractor shall immediately: (1) notify the District in writing of the existence of said subsurface installations; and (2) take steps to ascertain the exact location thereof all subsurface installations prior to doing any further work that may damage such installations.

Requests for extensions of time arising out of delays resulting from subsurface installations not shown in the Contract Documents or found to exist in a substantially different location than shown in the Contract Documents, and not correctly field marked by a subsurface installation operator, shall be reviewed by the Construction Administrator. In accordance with Government Code Section 4215 the Contractor shall not be assessed liquidated damages for delay in completion of the project, when such delay is caused by the failure of the District or the operator of subsurface installations to provide for the removal or

relocation of installations for which the District or the operator is the responsible party as described above in this Section 24.

In accordance with the provisions of Section 9, **Additions, Deletions, and Changes**, the Contractor shall be entitled to compensation for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating subsurface installations other than those for which the Contractor is the responsible party under sub-section 24.d, Contractor's Responsibility, including but not limited to utility mains, and for equipment necessarily idled during such work. No facility actually being installed or replaced by the Contractor under the Contract shall be considered a subsurface installation for the purposes of this Section 24.

Where it is determined by the Construction Administrator that the rearrangement of a subsurface installation, the existence of which is not shown in the Contract Documents, is essential in order to accommodate the contemplated improvement, the Construction Administrator will provide for the rearrangement of such installation by other forces or by the Contractor in accordance with the provisions of Section 9, **Additions, Deletions, and Changes**.

- d. Except where the operator of a damaged subsurface installation has advised that it intends to repair the damage through its own forces or forces that it will retain or has retained, Contractor shall, within twenty-four (24) hours of receipt from the District of notice to commence correction of damage, notify the District, in writing, if Contractor intends to repair the damage. During nights and weekends when work is not in progress, District may give such notice by telephone or by facsimile transmission to the Contractor's facsimile number, and such notice will be immediately effective. The Contractor's failure to provide timely written notification that it intends to repair the damage shall be deemed its agreement that the District may repair the damage at Contractor's expense without further notice and without prejudice to any other remedy available to District. In such event, the Contractor may observe the Work if this can be done without in any way delaying the progress thereof, but may not contest any element of the expense of repair or the lack of further notice. This provision is in addition to any other remedy, including the District's right to carry out the work when the Contractor is in default or in an emergency.

## **25. Forms Included as Part of the Agreement**

- a. Proposed Subcontractor's Form
- b. Non-Collusion Declaration
- c. Faithful Performance Bond
- d. Payment Bond
- e. Workers' Compensation Insurance Certificate
- f. Security Deposits in Lieu of Retention
- g. Warranty Form

The Proposed Subcontractor's Form and the Non-Collusion Declaration shall be completed and submitted with the proposal. The successful respondent will be required to complete and submit the Faithful Performance Bond, Payment Bond, and Workers' Compensation Insurance Certificate within ten days of award of the Agreement, and before any work starts under the terms of the Agreement.

## 26. Warranty and Scheduled Maintenance

The Contractor hereby agrees to make, at its own expense, all repairs or replacements necessitated by defects in materials or workmanship, in those components provided, installed, replaced and/or modified by the Contractor, and pay for any damage to other works resulting from such defects, which becomes evident within ( ) year(s) after the date of acceptance of installation work, or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Agreement . This warranty shall include all parts and labor and the performance of all manufacturers' recommended maintenance. This in no way shall limit, amend or reduce any manufacturer's warranty. The Contractor further assumes responsibility for a similar guarantee for all work and materials provided by subcontractors. This warranty shall not apply to existing equipment that was not modified or significantly adjusted so as to change its operation. The Contractor also agrees to indemnify, defend and hold the District harmless from liability of any kind arising from damage due to covered defects.

Prior to the final acceptance of installation work, the Contractor shall provide phone numbers for around-the-clock notification of the need for emergency service repairs, a schedule showing specific dates for routine maintenance service calls, and shall execute and submit a completed Warranty Form in the format approved by the District.

The Contractor shall respond within two hours of District's emergency service call and shall provide on-site troubleshooting services within \_\_\_\_ ( ) \_\_\_\_ after receipt of notice from the District, and promptly make all repairs arising out of defective materials, workmanship, or equipment. In the event that a service response does not occur within two hours, or troubleshooting services are not on-site within \_\_\_\_ ( ) \_\_\_\_, or diligent efforts are not made to effect repairs, the District will notify the contractor (by fax or voice mail if no representative is available) of its intent to secure another service provider. Thereafter, the District is authorized to make such repairs, and the Contractor and his Surety shall be liable for the cost thereof. In case of emergency, where, in the opinion of the District, delay could cause serious loss or damage, repairs may be made without notice being sent to the Contractor, and the expense in connection therewith shall be charged to the Contractor, and his Surety shall be liable for the cost thereof.

The Contractor shall direct all of its equipment suppliers and/or manufacturers to promptly provide to it and to the District any and all information concerning product defects or other problems and shall promptly forward to the District any such information received, whether before, during, or after the warranty period.



**NON-COLLUSION DECLARATION**

State of California     )  
  ) ss.  
County of                     )

\_\_\_\_\_, being first duly sworn, deposes and say that he or she is of \_\_\_\_\_ the party making the foregoing proposal that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, business entity, business combination, or corporation; that the proposal is genuine and not collusive or sham; that the proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that the proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the proposer or any other proposer, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other proposer, or to secure any advantage against the public body awarding the Agreement of anyone interested in the proposed Agreement; that all statements contained in the proposal are true; and, further, that the proposer has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public in and for  
the County of \_\_\_\_\_  
State of California.

**FAITHFUL PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS, THAT, WHEREAS, Contra Costa Water District, hereinafter designated the "District," has, on \_\_\_\_\_, 20, awarded to \_\_\_\_\_ hereinafter designated as the "Contractor," an Agreement for \_\_\_\_\_, and

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

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

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounden Principal, it or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and faithfully perform the covenants, conditions, and agreements in the said Agreement and any alterations made as therein provided, on it or their part to be kept and performed, at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless, the District, its officers and agents as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

It is acknowledged that this Agreement provides for a one-year warranty period, during which time this bond remains in full force and effect.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement or to the Work to be performed thereunder or the specifications accompanying the same shall, in any way, affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Agreement or to the Work or to the specifications. Said Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their seals this day of \_\_\_\_\_, 20\_\_. The name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Seal)

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Signature for Principal

\_\_\_\_\_  
Title of Signator

\_\_\_\_\_  
Surety

(Seal)

\_\_\_\_\_  
Signature for Surety

\_\_\_\_\_  
Title of Signator

**PAYMENT BOND**

KNOW ALL PERSONS BY THESE PRESENTS, THAT, WHEREAS, Contra Costa Water District, hereinafter designated as the "District," has, on \_\_\_\_\_, 20\_\_\_\_, awarded to \_\_\_\_\_, hereinafter designated as the "Principal," an Agreement for \_\_\_\_\_, and

WHEREAS, said Principal is required to furnish a bond in connection and with said Agreement, providing that if said Principal, or any of it or its subcontractors shall fail to pay for any materials, provisions, or other supplies used in, upon, for, or about the performance of the Work contracted to be done, or for any work or labor done thereon of any kind, the Surety of this bond will pay the same to the extent hereinafter set forth.

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

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Principal, it or its heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies used in, upon, for, or about the performance of the Work contracted to be done, or for any work or labor thereon of any kind or for amount due under the Unemployment Insurance Act, including such amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and subcontractors under Section 13020 of the Unemployment Insurance Code, with respect to such work or labor, or for any amounts due, or to be withheld pursuant to Sections 18806 of the Revenue and Taxation Code of the State of California with respect to such work or labor, then said surety will pay the same in or to an amount not exceeding the amount hereinabove set forth, and also will pay in case suit is brought upon this bond, such reasonable attorney's fees to the District as shall be fixed by the court.

This bond shall inure to the benefit of any and all persons, companies, and corporations named in Section 9100 of the Civil Code of the State of California so as to give a right of action to them or their assigns in any suit brought upon this bond.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition of the terms of the Agreement or to the Work to be performed thereunder or the specifications accompanying the same shall, in any way, affect its obligations of this bond, and it does hereby waive notice of any change, extension of time, alteration, or addition to the terms of the Agreement or to the Work or to the specifications. Said Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their seals this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Seal) \_\_\_\_\_  
Principal

\_\_\_\_\_  
Signature for Principal Title

(Seal) \_\_\_\_\_  
Surety

\_\_\_\_\_  
Signature for Surety Title

**WORKERS' COMPENSATION INSURANCE CERTIFICATE**

In accordance with California Labor Code Section 1861, prior to commencement of work on the Agreement, the Contractor shall sign and file with the District the following certification:

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

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Signature

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Name of Contractor

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Title

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Date

**ESCROW AGREEMENT FOR**  
**SECURITY DEPOSITS IN LIEU OF RETENTION**

This Escrow Agreement is made and entered into on \_\_\_\_\_ by and between:

**Contra Costa Water District**

whose address is 1331 Concord Avenue, Concord, California, hereinafter called "District", and \_\_\_\_\_  
whose address is \_\_\_\_\_

hereinafter called "Contractor," and \_\_\_\_\_  
whose address is \_\_\_\_\_  
hereinafter called "Escrow Agent".

For the consideration hereinafter set forth, the District, Contractor, and Escrow Agent agree as follows:

1. Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities which meet the requirements set forth in said Section 22300, with Escrow Agent, as a substitute for retention earnings required to be withheld by District pursuant to the Construction Contract entered into between District and Contractor for \_\_\_\_\_  
in the amount of \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the District shall make payments of the retention earnings directly to the Escrow Agent. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the District within ten (10) days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the District and Contractor. Securities shall be held in the name of District, and shall designate the Contractor as the beneficial owner.
2. District shall make progress payments to Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.
3. When the District makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under this Contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the District pays the Escrow Agent directly.
4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account, and all expenses of the District. These expenses and payment terms shall be determined by the District, Contractor and Escrow Agent.
5. The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor, at any time and from time to time, without notice to the District.
6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from District to the Escrow Agent that District consents to the withdrawal of the amount sought to be withdrawn by Contractor.

7. The District shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven (7) days' written notice to the Escrow Agent from the District of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the District.
8. Upon receipt of written notification from the District certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.
9. Escrow Agent shall rely on the written notifications from the District and the Contractor pursuant to Sections (5) to (8), inclusive, of this Agreement, and District and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.
10. The persons who are authorized to give or receive written notice on behalf of the District and on behalf of the Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

**ON BEHALF OF DISTRICT:**

**ON BEHALF OF CONTRACTOR:**

General Manager

Title

\_\_\_\_\_

Title

Jerry Brown

Name

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Signature

1331 Concord Avenue, Concord, CA 94520

Address

\_\_\_\_\_

Address

**\*ON BEHALF OF DISTRICT:**

**ON BEHALF OF ESCROW AGENT:**

Assistant General Manager

Title

\_\_\_\_\_

Title

Stephen J. Welch

Name

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Signature

1331 Concord Avenue, Concord, CA 94520

Address

\_\_\_\_\_

Address

At the time the Escrow Account is opened, District and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

**DISTRICT:**

**CONTRACTOR:**

General Manager  
Title

\_\_\_\_\_  
Title

Jerry Brown  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\* In the event the General Manager is not available to give or receive written notice on behalf of the District, the Assistant General Manager shall be authorized to give or receive said written notice.

**WARRANTY FORM**

Warranty For

(Project/Component)

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(Location)

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We hereby guarantee the \_\_\_\_\_ (Project/Component) \_\_\_\_\_ that we have constructed for a period of \_\_\_\_ (\_\_) year(s) from \_\_\_\_\_ (Date) \_\_\_\_\_ the date of final acceptance by the Contra Costa Water District of the installation work.

The following are excluded from the provisions of this warranty:

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We agree that if any of the equipment should fail due to any reason other than improper maintenance or improper operation, or should any portion of the work fail to fulfill any of the requirements of the Agreement, including without limitation the Scope of Work, we will, within five (5) days after receipt of written notice of such defects, provide on-site troubleshooting services, and within ten (10) days after receipt of written notice, commence to repair or replace the same together with any other work which may be damaged or displaced in so doing.

**In the event of our failure to comply with the above mentioned conditions or should the exigencies of the case require repairs or replacements to be made before we can be notified or respond to notification, we do hereby authorize the Contra Costa Water District to proceed to have the defect repaired and made good at our expense, and we will pay the cost therefor upon demand.**

**The warranty provided herein shall not be in lieu of, but shall be in addition to any warranties or other obligations otherwise imposed by the Agreement and by law.**

Contractor: \_\_\_\_\_

Signed: \_\_\_\_\_

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

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

**SCOPE OF WORK**

**Section 1. General Services to be Provided and Requirements**

Types of Services:

Deliverables:

**CONTRACTOR'S RATES AND CHARGES**