

WEST BAY SANITARY DISTRICT



REQUEST FOR PROPOSALS

Project #1760.0

To Provide
Recycled Water Project – Sharon Heights
Design-Build (DB) Services and Short-Term Operations

Volume 2 of 3

Design-Build Agreement/
General Conditions

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DESIGN - BUILD AGREEMENT

This AGREEMENT (“Agreement”) is entered into this ___ day of _____, 20__ (“Effective Date of the Agreement”) by and between the West Bay Sanitary District (“Owner” or “District”) and _____ (“DB Entity”).

WHEREAS, Owner intends to design and construct a project known as Recycled Water Project – Sharon Heights (Project) at the Sharon Heights Golf & Country Club (SHGCC) in Menlo Park, San Mateo County, California; and

WHEREAS, Owner anticipates that the Project will be completed no later than _____, 2018; and

WHEREAS, Owner determined that its goals for the Project would be best-served by using a process whereby Owner and DB Entity will implement the Project through Design and Build project delivery method, during which DB Entity will complete the design and construction of the Project as defined by the Design-Build Phase; and

WHEREAS, after conducting a design/build procurement process, Owner awarded this Agreement to DB Entity.

In consideration of the mutual covenants and obligations contained herein, Owner and DB Entity hereby agree as follows:

1. The Work

1.1. Final Design and Construction.

DB Entity will perform the Design-Build Phase in accordance with the General Conditions and Contract Documents.

In accordance with RFP Volume 3, DB Entity will provide 6-months of the initial operations and training during which DB Entity shall fully operate, repair, monitor and maintain the treatment facility and all other activities required to produce recycled water conforming to the water quality requirements of the Project, and provide training to West Bay Personnel to assume all operations and maintenance responsibilities after said 6-month period.

2. The Project

The Owner has developed the Recycled Water Project – Sharon Heights (“Project”) to construct a 0.5 million gallons per day (MGD) satellite facility at the Sharon Heights Golf & Country Club (SHGCC), recycled water distribution line, and influent wastewater pumping station and force main (PS/FM). The purpose of the project is to meet 152-200 acre-feet/year (AFY) of non-potable water demand with recycled water at the SHGCC in the first phase. The ultimate project (first and second phase) involves the construction of satellite treatment facilities designed to treat a max day flow of 0.5 MGD, a wastewater pump station to divert flow to the treatment facility, 1,580 LF of pipeline to discharge

solids to an existing sewer, a recycled water distribution line to the SHGCC irrigation water storage pond, and 5,300 LF of distribution pipeline to SLAC (second phase). The Project would deliver an estimated 236 AFY of recycled water, including 152-200 AFY to Sharon Heights G&CC through the year and, in the second phase, approximately 84 AFY over seven months to SLAC for irrigation and cooling tower uses.

3. Contract Time

3.1. Date of Commencement.

DB Entity shall commence the Design-Build Phase Services upon DB Entity's receipt of Owner's Notice to Proceed ("NTP with Final Design and Construction Services").

3.2. Contract Time for Final Design and Construction Services.

- A. Scheduled Substantial Completion Date. DB Entity shall substantially complete the Work no later than April 20, 2019, or the date set forth in the Contract Price Proposal ("Scheduled Substantial Completion Date"), subject to adjustment in accordance with the General Conditions. DB Entity shall be entitled to the sum of _____ DOLLARS (\$ _____) for every day the Project is deemed substantially complete before _____, 2018, up to a limit of _____ (\$ _____).
- B. Scheduled Final Acceptance Date. DB Entity shall achieve Final Acceptance no later than sixty (60) days from Substantial Completion ("Scheduled Final Acceptance Date"), subject to adjustment in accordance with the General Conditions.

3.3. Time of the Essence.

The time limits for Substantial Completion and Final Acceptance are of the essence of the Contract.

3.4. Delay Liquidated Damages.

- 3.4.1. Calculation of Delay Liquidated Damages. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that Owner will sustain in the event of and by reason of DB Entity's delay; therefore, DB Entity agrees that it shall pay to Owner the sum of FIFTEEN THOUSAND FIVE HUNDRED DOLLARS (\$15,500) per day as liquidated damages for each and every following day's delay beyond the Substantial Completion Date that Substantial Completion is not achieved.
- 3.4.2. Liquidated Damages Not Penalty. It is hereby understood and agreed that this amount is not a penalty, but is a reasonable estimate of the damages that Owner will incur. In the event any portion of the liquidated damages is not paid to Owner, Owner may deduct that amount from any money due or that may become due the

DB Entity under this Agreement, Owner may seek recovery of Liquidated Damages from the DB Entity's Performance Bond Surety and/or Owner may seek recovery of Liquidated Damages from the DB Entity or the Performance Bond Surety without having exhausted remedies against the other.

4. Compensation and Contract Price

4.1. Contract Price.

- A. Owner shall pay DB Entity in accordance with the General Conditions a contract price ("Contract Price"). The Contract Price is subject to adjustments made in accordance with Article 9 of the General Conditions.
- B. The Contract Price is deemed to include but not be limited to all labor, materials, equipment, supplies, and all sales, consumer, use, employment-related and other taxes mandated by applicable Laws and Regulations or that result from the performance of the Work.

5. Payment Procedures

5.1. Submittal and Processing of Payments.

- A. DB Entity shall submit, and Owner will process, Applications for Payment in accordance with Article 13 of the General Conditions.
- B. All Applications for Payment shall reference Owner's contract number, and shall follow the same format as shown on the Application for Payment provided in the Contract Documents.
- C. Failure of DB Entity to follow the instructions set forth in the Contract Documents regarding a proper Application for Payment and acceptable services may result in an unavoidable delay in payment by Owner.
- D. Any early payment discount offered by DB Entity shall be clearly indicated on the Application for Payment), including the percentage of the discount and the time period for which the discount is valid. Owner reserves the option to accept such early payment discounts.
- E. DB Entity shall comply with the requirements in Section 9 of Technical Requirements relating to Funding Requirements.

5.2. Progress Payments And Retention

- A. Payments for Work Performed after the Effective Date of the Contract Price Proposal. For Work performed after the Effective Date of the Contract Price Proposal, Owner shall make progress payments within the time set forth in Section

5.4 below after Owner's receipt of each properly submitted and accurate Application for Payment submitted in accordance with Paragraph 13.02 of the General Conditions. All such payments will be measured by the Progress Payment Schedule, pursuant to Paragraph 13.01 of the General Conditions, and shall reflect the total of payments previously made and amounts properly withheld as retainage, as set forth below, and under the Paragraph 13.03 of the General Conditions. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall release DB Entity or any Surety from such work or from enforcing each and every provision of the Contract Documents.

- (1) Progress payments will be in an amount equal to ninety five percent (95%) of Work completed (with the balance as retention), and at the option of Owner, Owner may pay an amount equal to ninety five percent (95%) of materials and equipment not incorporated in the Work in place but delivered and suitably stored on Site, less in each case the aggregate of payments previously made. In no event shall payments for materials and equipment stored exceed ninety five percent (95%) of the value of the related cost for the specific item of work in place shown in the progress payment schedule regardless of the stated value of the materials or equipment. Owner may, at its sole option, pay an amount equal to ninety five percent (95%) of materials and equipment not incorporated in the work stored offsite if stored in a manner acceptable to Owner, as stated above for on-site stored materials. When payment to DB Entity is made for stored materials and equipment, DB Entity shall submit invoices marked paid by the supplier with the next month's request for payment to document that DB Entity has paid for said materials and equipment or the previously paid amount for stored materials shall be deducted from any remaining payment(s) or retainage for any stored materials not so properly documented.
- (2) The remaining five percent (5%) of such amounts shall be held as the Retention Amount and shall be released in accordance with Public Contract Code section 7107. If all of the necessary information is properly submitted, undisputed and accurate (including the progress payment schedule and certified payrolls), Owner shall approve the Progress Payment in accordance with Public Contract Code section 20104.50.

- B. Waiver and Release upon Payment. Each Progress Payment shall be conditioned upon DB Entity providing to Owner with the corresponding Application for Payment a conditional waiver and release of claims for payment upon payment from the DB Entity and each of its subcontractors and materials suppliers that have contracts with DB Entity that exceed \$250,000 in the form required by Civil Code Section 8132, covering all sums requested in such Application for Payment , and an unconditional waiver and release of claims for payment from each party, in the form required by Civil Code Section 8132, covering sums disbursed pursuant to the most recently preceding Application for Payment . Failure to provide either a condition waiver and release, or unconditional waiver and release shall result in the subject sums being in dispute, and thus withheld from payment.

C. Option for Escrow or Securities in Lieu of Retention. Pursuant to the requirements of Public Contract Code Section 22300, upon DB Entity's request within ten (10) days of execution of this Agreement, Owner will make payment to DB Entity of any earned retention funds withheld from payments under this Agreement if DB Entity deposits with Owner or in escrow with a California or federally chartered bank acceptable to Owner, securities eligible for the investment pursuant to Government Code Section 16430 or bank or savings and loan certificates of deposit.

(1) Conditions upon such deposit include the following:

(a) DB Entity shall be the beneficial owner of any securities substituted for retention funds withheld and shall receive any interest thereon.

(b) All expenses relating to the substitution of securities under said Section 22300 and under this Article 5.2, including, but not limited to Owner's overhead and administrative expenses, and expenses of escrow agent shall be the responsibility of the DB Entity.

(c) If DB Entity shall choose to enter into an escrow agreement, such agreement shall be in the form as set forth in Public Contract Code section 22300(f) and which shall allow for the conversion to cash to provide funds to meet defaults by the DB Entity including, but not limited to, termination of the DB Entity's control over the work, stop notices filed pursuant to law, assessment of liquidated damages or amount to be kept or retained under the provisions of the Contract Documents.

(d) Securities, if any, shall be returned to DB Entity only upon satisfactory completion of the Agreement.

(2) To minimize the expense caused by such substitution of securities, DB Entity shall, prior to or at the time DB Entity requests to substitute security, deposit sufficient security to cover the entire amount to be then withheld and to be withheld under the General Conditions of this Agreement. Should the value of such substituted security at any time fall below the amount for which it was substituted, or any other amount which Owner determines to withhold, DB Entity shall immediately, and at DB Entity's expense, deposit additional security qualifying under said Section 22300 until the total security deposited is no less than equivalent to the amount subject to withholding under the Agreement.

(3) In the alternative, under Section 22300, DB Entity, at its own expense, may request Owner to make payment of earned retention funds directly to the escrow agent. Also at the expense of DB Entity, DB Entity may direct investment of the payments into securities, and DB Entity shall receive the interest earned on the investment upon the same conditions as shown in this Agreement for securities deposited by DB Entity. Upon satisfactory completion of the Agreement, DB Entity shall receive from the escrow

agent all securities, interest and payments received by the escrow agent from Owner, pursuant to the terms of Section 22300.

- (4) If any provision of this Article 5.2 shall be found to be illegal or unenforceable, then, notwithstanding, this Article 5.2 shall remain in full force and effect, and such provision shall be deemed stricken.

5.3. Final Payment.

Upon Final Acceptance of the Work in accordance with Paragraph 13.08 of the General Conditions, Owner shall pay the remainder of the Contract Price as provided in said Paragraph 13.08. DB Entity shall not be entitled to payment for non-conforming work performed, so long as any lawful or proper direction concerning that non-conforming work or any portion thereof given by Owner lacks correction by DB Entity. Owner may withhold from the Progress Payments one hundred fifty percent (150%) of the estimated value of any amount in dispute between Owner and DB Entity. This provision shall also apply in the event that a portion of non-complying Work may impact other completed Work, resulting in a need to reconstruct or rework related Work. Owner shall not unreasonably withhold payment for unrelated and uninvolved Work in the event of dispute over non-complying Work without entering into negotiations to arrive at settlement of said conflict, unless withholding pursuant to a Stop Payment Notice.

5.4. Date of Payment.

It is the policy of Owner that payment for all goods and services shall be made in a timely manner and that interest payments are made on late payments. The time at which payment shall be due from Owner shall be thirty (30) days from receipt of a proper invoice (i.e., Application for Payment) and acceptance of services, based on compliance with the statutory requirements set forth in California Public Contract Code section 7107, and upon satisfaction of the conditions as detailed in the contract.

6. DB Entity's Representations

6.1. Representations.

DB Entity shall be deemed to have made the following representations with its submission of the Contract Price Proposal:

- A. DB Entity has examined, carefully studied, and thoroughly understands the Contract Documents and the Reference Documents associated with the Work covered by a Contract Price Proposal.
- B. DB Entity has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work covered by the Contract Price Proposal.

- C. DB Entity is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work covered by the Contract Price Proposal.
- D. DB Entity is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- E. DB Entity has correlated the Contract Documents with the information known to DB Entity, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies and data.
- F. DB Entity has given Owner written notice of all conflicts, errors, ambiguities or discrepancies that DB Entity has discovered in the Contract Documents before submitting a Contract Price Proposal and the written resolution thereof by Owner is acceptable to DB Entity.
- G. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work covered by the Contract Price Proposal.
- H. DB Entity shall be bound by and shall perform its obligations in full compliance with the Contract Documents.
- I. DB Entity, in the performance of this Agreement, shall be and act as an independent contractor. DB Entity understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture of Owner, and are not entitled to benefits of any kind or nature normally provided employees of Owner and/or to which Owner's employees are normally entitled, including, but not limited to, State Unemployment Compensation, Worker's Compensation or eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Owner and entitlement to any contribution to be paid by Owner for employer contributions and/or employee contributions for PERS and other post-employment benefits. DB Entity shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to DB Entity's employees. DB Entity shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.
- J. DB Entity shall perform its obligations under this Agreement using its best professional skill and judgment, acting with due care and in accordance with the standard of care applicable to the Work and Services to be provided by DB Entity, the covenants, terms and conditions of this Agreement, and all applicable laws, codes, rules and regulations of the State of California and all other federal, state, and local jurisdictions having authority. DB Entity represents and warrants that it is fully experienced in projects of the nature and scope of Work, and that it is properly qualified, licensed and equipped to supply and perform the Work. The

Work completed herein must meet the approval of Owner and shall be subject to Owner's general right of inspection and supervision to secure the satisfactory completion thereof.

- K. DB Entity agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to Owner and/or used in connection with this Agreement, shall either be the property of DB Entity, or DB Entity shall have all necessary rights to use such formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions and to provide the same and derivative works thereof to Owner in connection with this Agreement, and shall not otherwise be copied in whole or in part from any other source.
- L. Except with respect to design pre-check documents and associated works and other third party intellectual property used by DB Entity on an authorized basis, all drawings, specifications, calculations, data, notes and other materials and documents, including electronic data (other than System performance data provided during operation, which shall not be deemed "Work Product") furnished by DB Entity to Owner under this Agreement ("Work Product") shall be and remain the property of Owner. DB Entity, or the author of such works, if other than DB Entity, will retain all common law, statutory and other reserved rights, including copyrights in the Work Product. Upon Final Completion, DB Entity will grant Owner, and its successors and assigns, a perpetual, non-transferable royalty-free license to use the Work Product for the purposes of repair, maintenance, renovation, modernization, and all other purposes related to the Project, including, without limitation, additions, alignments, or other development on the Site.

7. Contract Documents

7.1. Contract Documents.

The Contract Documents consist of the following:

- A. This Agreement, including all of the Exhibits;
- B. The General Conditions
- C. Technical Requirements;
- D. The following, which shall be designated, completed, delivered, prepared, or issued after the Effective Date of the Agreement and are not attached hereto:
 - (1) Any and all written amendments, Change Orders, Work Change Directives, and Field Orders amending, modifying, or supplementing the Contract Documents.

- (2) The Final Drawings and Specifications, which shall be developed, submitted and acted upon pursuant to Paragraph 6.17 of the General Conditions.

7.2. Amending the Contract Documents.

The Contract Documents may only be amended, modified, or supplemented as provided in Article 8 hereof with respect to the Contract Price Proposal, and as provided in Paragraph 3.04.A of the General Conditions for any other amendment, modification or supplementation.

7.3. Order of Precedence of the Contract Documents.

The following order of precedence shall apply in the case of direct, irresolvable conflicts between or among Contract Documents:

- A. Written amendments signed by the Parties (other than the Contract Price Proposal) with those of a later date taking precedence;
- B. Work Change Directives, Change Orders, and Field Orders with those of a later date taking precedence;
- C. This Agreement, including all Exhibits;
- D. The General Conditions;
- E. The Final Drawings and Specifications; and
- F. Technical Requirements.

8. **Miscellaneous**

8.1. Defined Terms.

Terms used in this Agreement will have the meanings indicated in the General Conditions.

8.2. Exhibits.

The following exhibits (“Exhibits”) are specifically made part of, and incorporated by reference into, this Agreement:

Exhibit 1	General Conditions
Exhibit 2	Technical Requirements (Volume 3)
Exhibit 3	Designated Proposal Forms (<i>as applicable</i>) (Volume 1)
Exhibit 4	Prevailing Wage Certification
Exhibit 5	Worker’s Compensation Certification
Exhibit 6	Asbestos & Other Hazardous Materials Certification

Exhibit 7 Performance Bond
Exhibit 8 Labor and Materials Payment Bond
Exhibit 9 Insurance Requirements

Exhibit 10 contains forms that will be used after the Effective Date of the Agreement, during the administration of the Contract.

IN WITNESS WHEREOF, Owner and DB Entity have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and DB Entity.

OWNER:

DB ENTITY:

WEST BAY SANITARY DISTRICT

[NAME OF DB ENTITY]

Edward P. Moritz
President

[NAME OF SIGNATORY]
[title]

Date: _____

Date: _____

Attest:

Attest:

ROY THIELE-SARDIÑA
Secretary

[NAME]
Secretary

Approved as to form:

ANTHONY P. CONDOTTI
District Counsel

Information regarding Design-Builder:

Proper Name: _____

License No.: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Type of Business Entity:

Individual

Sole Proprietorship

Partnership

Limited Partnership

Corporation, State: _____

Limited Liability Company

Other: _____

Employer Identification and/or Social Security Number

NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, Owner requires the Design-Builder to furnish the information requested in this section.

*Important Note: Labor Code §1771.1(a) provides that “A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.” Go to <https://apps.dir.ca.gov/ecpr/DAS/AltLogin> for more information and to register. This project is subject to monitoring by the Department of Industrial Relations.

**EXHIBIT 1—GENERAL CONDITIONS
OF THE CONTRACT BETWEEN
OWNER AND DB ENTITY**

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

Wherever used in the Contract Documents and printed with initial capital letters, the following terms have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

Addenda: Written or graphic instruments issued prior to the opening of Proposals which clarify, correct or change the Request for Proposals or the Contract Documents.

Agreement: The written instrument which is evidence of the agreement between Owner and DB Entity covering the Work.

Application for Payment: The form which is to be used by DB Entity in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

Asbestos: Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

Bonds: Performance and payment bonds and other instruments of security.

Change Order: A written order which, when signed by Owner, authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time(s), issued on or after the Effective Date of the Agreement.

District: Another name for "Owner" that may be used in Technical Requirements. See definition for "Owner." District or Owner may be used interchangeably throughout the Contract Documents.

Construction: The part of the Work that is the result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents.

Construction Subagreement: A written agreement between DB Entity and a construction Subcontractor for provision of Construction.

Contract: The entire and integrated written agreement between Owner and DB Entity concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

Contract Documents: Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents.

Contract Price: The moneys payable by Owner to DB Entity for completion of the Work in accordance with Article 4 of the Agreement.

Contract Price Proposal: The document submitted by DB Entity setting forth, among other things, the design concepts, proposed prices, and other conditions for the Work to be performed thereunder.

Contract Time(s): The Scheduled Substantial Completion Date and Scheduled Final Acceptance Date.

Contractor: Another name for "DB Entity" that may be used in Technical Requirements. See definition for "DB Entity." Contractor and DB Entity may be used interchangeably throughout Contract Documents.

DB-Related Entity: DB Entity, Design Sub-consultants, Subcontractors, Suppliers, and anyone for whose acts any of them may be legally or contractually responsible.

Delay Liquidated Damages: Those liquidated damages set forth in Section 3.4 of the Agreement.

DB Entity: The individual or entity with whom Owner has entered into the Agreement. There may be instances in Technical Requirements where the DB Entity is referred to as "Contractor."

Design Professional Services: That part of the Work comprised of services relating to the preparation of Drawings, Specifications, and other design submittals specified by the Contract Documents and required to be performed by licensed design professionals, as well as other services provided by or for licensed design professionals as part of the Work.

Design Sub-agreement: A written agreement between DB Entity and a Design Sub-consultant for provision of Design Professional Services.

Design Sub-consultant: A qualified, licensed design professional, eligible to provide professional engineering, architectural and/or land surveying services in California, who is not an employee of DB Entity, but is retained by DB Entity to furnish design services on the Project through a Design Sub-agreement.

Drawings: Consists of drawings, diagrams, illustrations, schedules and other data which show the scope, extent, and character of the Work.

Effective Date of the Agreement: The date that the Contract is executed by both Owner and DB Entity.

Effective Date of the Contract Price Proposal: The date that the Contract Price Proposal is executed by both Owner and DB Entity.

Facilities: The reference to the collective Project components that consists generally of certain Project Elements as described in RFQ Section 2.4.

Field Order: A written order issued by Owner which orders minor changes in the Work but which does not involve a change in the Contract Price or the Contract Time(s).

Final Acceptance: The written notice from Owner to DB Entity pursuant to Paragraph 13.08 of the General Conditions that Owner is satisfied that the Work has been completed and DB Entity's other obligations under the Contract Documents have been fulfilled.

Final Drawings and Specifications: Those Drawings and Specifications that will be approved by Owner and will become Contract Documents.

General Conditions: The General Conditions of the Contract between Owner and DB Entity included as part of the Contract Documents.

Hazardous Environmental Condition: The presence at the Site of Hazardous Materials in such quantities or circumstances that may present an imminent or substantial danger to persons or property exposed thereto on connection with the Work.

Hazardous Materials: Collectively, Asbestos, Hazardous Waste, PCB's, Petroleum Products, Radioactive Materials and other materials, waste, substances and chemicals deemed to be hazardous under applicable Laws or Regulations.

Hazardous Waste: The term Hazardous Waste shall have the meaning provided in Section 25117 of the California Health and Safety Code as amended from time to time.

Indemnified Parties or Owner Indemnitee(s): Owner, SHGCC and their respective representatives, appointed and elected officials, officers, employees, authorized agents, consultants (including Owner's Advisor), and other duly authorized representatives.

Joint Venture: An association of two or more persons or businesses carrying out a single business enterprise for which purpose they combine their capital, efforts, skills, knowledge and/or property. Joint ventures must be established by written agreement.

Key Personnel: The individuals, employed by Design-Builder or other firm included on the Project Team, who would fill certain key roles in delivery of the Project and related services if Respondent is chosen as the Design-Builder, including the following positions: Project Manager, Design Manager, On-Site Construction Superintendent, and Construction Manager.

Laws and/or Regulations: Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

Lead Contractor: The member of the Project Team having primary responsibility for construction services for the Project.

Lead Designer: The member of the Project Team having primary responsibility for design services for the Project.

Liens: Charges, security interests or encumbrances upon real property or personal property.

Major Subcontractor/Subconsultant: Any entity on the Project Team that will perform specialized design or construction services for Project and/or will perform a minimum of ten percent (10 percent) of the project scope (by dollar value).

Milestone: Completion date(s), if any, specified as "Milestones" in Article 6 of the Agreement and relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

Notice to Proceed ("NTP"): A written notice given by Owner to DB Entity, which notice is the date on which the Contract Time(s) will commence to run and is the date on which DB Entity shall start to perform the Work.

Owner: West Bay Sanitary District. There may be instances in Technical Requirements where the Owner is referred to as "District."

Owner's Advisor: Woodard & Curran

Partial Utilization: Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

PCBs: Polychlorinated biphenyls.

Progress Payment Schedule: A schedule prepared by DB Entity and acceptable to Owner indicating that portion of the Contract Price to be paid for each major component of the Work.

Project: The Recycled Water Project – Sharon Heights – Design Build Services Project that is the subject of this RFP and ultimate DB Contract. The Project is generally described in RFP Section 2, including, but not limited to, the Project Elements described in RFP Section 3.

Project Team: The DB Entity; the Lead Contractor and the Lead Designer (with the understanding that one or more of these entities will be the DB Entity); Key Personnel; and any additional subcontractors and subconsultants included in the SOQ.

Project Technical Specifications (Project Technical Requirements): A contract document that is provided as part of the RFP that shall serve, in part, as the basis of the Respondents' technical design proposals.

Proposal: Shortlisted Respondents' response to the RFP issued by District, which shall consist of a detailed "best-value"- based proposal (i.e., cost, technical, and qualifications evaluated) for the Design-Build Project. The cost component of the Proposal will be submitted in a separate envelope and will consist of a guaranteed maximum price (GMP) that will be further defined in the RFP.

Respondent: The entity responding to this RFP by submitting the Proposal, and the entity proposed as the DB Entity.

Responsibility Requirements: The requirements set forth in the RFP that, at a minimum, must be satisfied (or waived by the District) in order for the Proposal to be evaluated and ranked according to the comparative evaluation criteria.

Responsiveness Requirements: The requirements set forth in the RFP that, at a minimum, must be satisfied (or waived by the District) in order for the Proposal to be evaluated and ranked according to the comparative evaluation criteria.

Respondent: The Design-Build entity/firm responding to this RFQ by submitting the SOQ, and the entity/firm proposed as the DB Entity and that, if selected by the District, will enter into the DB Contract with the District for delivery of the Design-Build services and the Project.

Scheduled Final Acceptance Date: The date set forth in Article 13 of the Agreement by which Final Acceptance shall be achieved.

Scheduled Substantial Completion Date: The date set forth in the Contract Documents by which the Work shall be substantially complete.

SHGCC: Sharon Heights Golf and Country Club in Menlo Park, San Mateo County, California, and its officers, directors, members, partners, employees and agents.

Shortlist: A limited list of Respondents selected by the District to compete in the RFP process.

Shortlisted Respondent: Those entities who submitted an SOQ in response to the RFQ and were invited to submit Design-Build Proposals in response to the RFP. The RFP is the second step in the District's two-step procurement process employed to procure a DB Entity for the Project.

Site: Lands or other areas designated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements for

access thereto, and such other lands furnished by Owner which are designated for use of DB Entity.

Specifications: Those Submittals prepared by or for DB Entity and approved by Owner consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Subcontractor or Sub-consultant: An individual or entity other than a Design Sub-consultant or Supplier having a direct contract with DB Entity or with any other Subcontractor for the performance of a part of the Work.

Submittal: A written or graphic document prepared by or for DB Entity which is required by the Contract Documents to be submitted to Owner by DB Entity. Submittals may include Drawings, Specifications, progress schedules, shop drawings, samples, cash flow projections, and Schedules of Values. Except for the Contract Price Proposal Documents and the Final Drawings and Specifications, Submittals are not Contract Documents.

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

Successful Respondent: The Respondent with the highest total Proposal score that will be offered the opportunity to serve as the DB Entity and negotiate the DB Contract for the Project.

Supplier: A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with DB Entity or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by DB Entity or any Subcontractor.

Technical Requirements: The Project requirements provided as RFP Volume 3 that shall serve, in part, as the basis of the Respondents' Proposals (including Respondent's Price Proposal).

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

Work: All of the DB Entity's design, construction, and other services required by the DB Contract, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the DB Contract documents.

Work Change Directive: A written directive to DB Entity, issued on or after the Effective Date of the Agreement and signed by Owner ordering an addition, deletion or revision in the Work, or responding to differing site conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract

Time(s), but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Time(s).

Work Product: All Drawings, Specifications, Submittals, and other documents and data identified in the Contract Documents as being prepared or furnished by DB Entity and submitted to Owner.

1.02 *Terminology*

The words and terms discussed in Paragraph 1.02.B are not defined terms, but when used in the Contract Documents have the indicated meanings.

Intent of Certain Terms or Adjectives:

The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

The word "defective," when modifying the word "Construction" refers to Construction that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Final Acceptance (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner

The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition

The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials or equipment or equipment complete and ready for intended use.

The words "perform" or "provide" when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of DB Entity, "provide" is implied.

Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with that meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Delivery of Bonds, Insurance Certificates and Insurance Declaration Page(s)*

When DB Entity delivers the executed Agreement to Owner, DB Entity shall also deliver to Owner: (a) an updated letter from DB Entity's surety or sureties verifying that DB Entity has bonding capacity of ONE HUNDRED MILLION DOLLARS (\$100,000,000) available for this Project; (b) certificates of insurance and the insurance declaration page(s) for the insurance requirements and policies set forth herein which DB Entity is required to purchase and maintain in accordance with Paragraphs 5.04 and 5.06; and (c) evidence that DB Entity is enrolled in the e-verify system required by Paragraph 6.03 below.

2.02 *Commencement of Work; Notice to Proceed*

DB Entity shall commence the Work in accordance with Contract Documents.

2.03 *Intent of the Contract Documents*

The Contract Documents are complementary; what is required by one shall be as binding as if required by all.

All Work that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as necessary to properly execute and complete the Work to conform to the requirements of the Contract Documents shall be provided by DB Entity with no change in the Contract Price or Contract Time. Additionally:

Arrangement and titles of drawings and organization of the specifications into divisions, sections and articles in the Contract Documents shall not be construed as segregating the various units of material and labor, dividing the Work among Subcontractors, or establishing the extent of Work to be performed by any trade. DB Entity may arrange and delegate the Work in conformance with trade practices, but DB Entity shall be responsible for completion of all Work in accordance with the Contract Documents.

Before undertaking the Work, DB Entity shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. DB Entity shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy which DB Entity may discover and shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected thereby.

2.04 *Submission of Schedules*

The schedules set forth below shall be included in the Contract Price Proposal:

A progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including the Scheduled Substantial Completion Date upon which the proposal and progress schedule is based;

A schedule of Submittals which will list each required Submittal and the times for submitting, reviewing and processing each Submittal;

A Progress Payment Schedule for all of the Work which will include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work; and

A cash flow projection estimating that portion of the Contract Price to be due during each month of performance.

2.05 *Applicable Owner Policies*

DB Entity hereby agrees to be bound by all applicable Owner policies and standards of conduct. It is DB Entity's responsibility to advise its employees, Design Subconsultants, Subcontractors, Suppliers, or hired workers of the nature of the Project, as described in the Contract Documents. Upon request, DB Entity shall, at its sole expense, conduct background checks for any DB Entity employee or hired worker providing services on the Project.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent of the Contract Documents*

The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

It is the intent of the Contract Documents, including but not limited to the Final Drawings and Specifications, to describe a functionally complete Project (or part thereof) to be designed and constructed in accordance with the Contract Documents. DB Entity will furnish or perform all labor, documentation, services, materials, and equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for, at no additional cost to Owner.

3.02 *Reference Standards*

Standards, Specifications, Codes, Laws or Regulations.

Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean (except as may be otherwise specifically stated in the Contract Documents) the standard, specification, manual, code, or Laws or Regulations in effect on the Effective Date of the Agreement.

No provision of any such standard, specification, manual, or code, or instruction of a Supplier, shall be effective to change the duties and responsibilities of Owner, DB Entity, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Owner any duty or authority to supervise or direct the furnishing or

performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Resolving Discrepancies*

Except as otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

The provisions of any such standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

The provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

Section 7.3 of the Agreement establishes the order of precedence shall apply in the case of direct, unresolvable conflicts between or among Contract Documents.

For the avoidance of doubt, in the event of a discrepancy between the Contract Price Proposal Documents on the one hand and the Drawings and Specifications on the other hand, the Contract Price Proposal Documents will control, except when Owner has accepted a Submittal pursuant to the Contract Documents.

3.04 *Amending and Supplementing Contract Documents*

The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

A Work Change Directive;

A Change Order;

Field Order.

A written amendment executed by the Parties.

Owner's acceptance of required Submittals pursuant to the Contract Documents.

3.05 *Ownership and Use of Work Product*

DB Entity hereby assigns to Owner all right, title and interest, including but not limited to any intellectual property rights, copyrights and/or patents, in all Work Product. All Work Product shall become the property of Owner upon the earlier of: (a) Owner's payment to DB Entity of monies due in accordance with this Agreement; (b) the date any Work Product is delivered to Owner; or (c) upon termination of the Agreement pursuant to Article 14 below.

The Work Product is not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation

by DB Entity for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to DB Entity. DB Entity will be entitled to further compensation at rates to be agreed upon by Owner and DB Entity if it is asked by Owner to verify or adapt the Work Product for extensions of the Project or any other project.

DB Entity may make and retain copies of the Work Product for information, reference, and use on this Project by DB Entity and all other DB-Related Entities.

Owner acknowledges and agrees that in the performance of the services under this Agreement, DB Entity will use its proprietary algorithms, software, hardware, databases and other background technology that DB Entity or any other DB-Related Entity developed or licensed from third parties prior to the Effective Date of the Agreement ("Pre-Existing Technology"). Pre-Existing Technology used by a DB-Related Entity in connection with the Project shall remain the property of such DB-Related Entity, but DB Entity shall cause such DB-Related Entity to grant a non-exclusive, irrevocable, royalty-free license to Owner to use, copy or modify such Pre-Existing Technology solely with respect to this Project.

With respect to any intellectual property rights in software vested in any third party that are supplied to Owner by DB Entity as part of the Work, but not prepared, developed or modified under or in connection with this Project, DB Entity shall use all reasonable efforts to obtain from such third party such permission, waiver, or license as may be necessary to enable the software to be used, copied, or modified by Owner solely in connection with this Project.

3.06 *Electronic Data*

Copies of data furnished by Owner to DB Entity or by DB Entity to Owner that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

Because data stored on electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving data in electronic format agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 - AVAILABILITY OF LANDS; DIFFERING SITE CONDITIONS; REFERENCE POINTS; HAZARDOUS ENVIRONMENTAL CONDITIONS

4.01 Availability of Lands

Owner shall notify DB Entity of any encumbrances or restrictions not of general application but specifically related to use of the Site which DB Entity will have to comply in performing the Work. Unless otherwise provided in the Contract Documents, Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If DB Entity and Owner are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Time(s) as a result of any delay in Owner's furnishing the Site, DB Entity may make a claim therefor as provided in Article 9.

DB Entity shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment. DB Entity shall coordinate with SHGCC for use of any property not specifically included within Owners' easements.

4.02 Differing Site Conditions

DB Entity shall promptly, but in no event later than ten (10) days, after discovery, and before the conditions are further disturbed, give a written notice to Owner of: (i) subsurface or latent physical conditions at the Site which differ materially from those indicated in the Contract Documents; or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents.

Owner will investigate the Site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in DB Entity's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 9.

No request by DB Entity for an equitable adjustment under Paragraph 4.02 shall be allowed unless DB Entity has given the written notice required; provided that the time prescribed in Paragraph 15.02 for giving written notice may be extended by Owner.

The provisions of this Paragraph 4.02 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

DB Entity shall not be entitled to any adjustment in the Contract Price or Contract Time(s) if: (a) DB Entity knew of the existence of such conditions as of the Effective Date of the Contract Price Proposal; or (b) the existence of such condition could reasonably have been discovered or revealed as a result of the examinations, investigations, explorations, tests or studies of the Site during DB Entity's performance of the Project.

In the event that a dispute arises between Owner and the DB Entity, whether the conditions materially differ, involve hazardous waste, or cause a decrease or increase in the DB Entity's cost of or time required for performance of any part of the work, the DB Entity shall not be excused from any

scheduled completion date provided for by the Construction Provisions but shall proceed with all work to be performed under the Construction Provisions. The DB Entity shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

4.03 *Reference Points*

DB Entity shall be responsible for laying out the Work and shall protect and preserve the reference points and property monuments established by Owner pursuant to Paragraph 8.01.A.6.e, and shall make no changes or relocations without the prior written approval of Owner. DB Entity shall report to Owner whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Hazardous Environmental Conditions at Site*

Owner represents to the best of its knowledge that a Hazardous Environmental Condition does not exist and it has disclosed to DB Entity the existence of all known Hazardous Materials located at the Site, including type, quantity, and location.

If DB Entity encounters any unknown Hazardous Environmental Conditions at the Site, it shall stop Work immediately in the affected part of the Work to the extent required to avoid any such safety or health hazard until it has taken such action as is necessary, in accordance with applicable Laws and Regulations, to protect the interests of any affected party. DB Entity shall, immediately upon encountering any Hazardous Environmental Conditions at the Site, notify Owner and, if required by Laws and Regulations, assist Owner in providing notifications to all governmental authorities having jurisdiction over the Project or Site.

DB Entity, working with Owner, shall take all necessary measures required to ensure that Hazardous Environmental Conditions are remediated or rendered harmless in accordance with applicable Laws and Regulations. DB Entity shall, as may be directed by Owner and prior to proceeding with any such work: (a) obtain all environmental site assessments of the affected property and submit copies of such assessments to Owner for its approval; (b) develop remediation plans for the Hazardous Environmental Conditions, subject to Owner's approval; and (c) obtain on Owner's behalf all applicable approvals of governmental authorities having jurisdiction over the Project or Site to implement such plans. During the period of any investigation and remediation efforts, DB Entity shall take all necessary measures to isolate and contain such Hazardous Environmental Conditions from the unaffected parts of the Work, and shall continue the Work to the maximum extent possible on unaffected parts of the Work.

Except for those Hazardous Environmental Conditions and Hazardous Materials set forth in Paragraph 4.04.E below, DB Entity will be entitled to submit a request for an adjustment to the Contract Price and/or Contract Time, in accordance with the requirements of these General Conditions, to the extent DB Entity's cost and/or time of performance have been adversely impacted by the presence, removal or remediation of unknown Hazardous Environmental Conditions.

Notwithstanding anything to the contrary in this Paragraph 4.04, DB Entity shall bear full responsibility for the handling, treatment, storage, removal, remediation, avoidance, or other

appropriate action (if any), with respect to: (a) any Hazardous Materials present at, on, in or under, or migrating and/or emanating to or from the Site, that were brought or caused to be brought on the Site by any act or omission of any DB-Related Entity; and (b) the creation or exacerbation of any Hazardous Environmental Condition due to the negligence, recklessness or willful misconduct of any DB-Related Entity. To the fullest extent permitted by Laws and Regulations, DB Entity shall indemnify, defend and hold harmless the Indemnified Parties from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from Items (a) and/or (b) above.

Nothing contained in this Paragraph 4.04 is intended to identify DB Entity as the generator of any pre-existing Hazardous Materials, except as set forth in applicable Legal Requirements.

ARTICLE 5 - BONDS AND INSURANCE

5.01 Performance, Payment and Other Bonds

On or before the Effective Date of the Contract Price Proposal, DB Entity shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all DB Entity's obligations to furnish, provide and pay for the Work, including but not limited to all Design Professional Services. The Performance Bond shall remain in effect at least until one (1) year after Final Acceptance, except as provided otherwise by Laws or Regulations. DB Entity shall also furnish such other Bonds as are required by the Contract Documents. The applicable section of California Civil Code Section 9550 et seq. shall apply.

All Bonds shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. Additionally, the surety shall:

- hold a certificate of authority authorizing it to write surety bonds in California;
- have twice the minimum surplus and capital required by the California insurance code at the time of the Effective Date of the Contract Price Proposal;
- be in compliance with the provisions of the California insurance code;
- hold a currently valid certificate of authority issued by the United States Department of the Treasury under 31 U.S.C. Sections 9304 to 9308; and
- provide an affidavit executed by an officer of the surety bond insurer as evidence that the surety company is in compliance with the foregoing requirements.

All Bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

If the surety on any Bond furnished by DB Entity is declared a bankrupt or becomes insolvent or its right to do business is terminated in California or it ceases to meet the requirements of Paragraphs 5.01.B and 5.02, DB Entity shall within twenty (20) days thereafter substitute another Bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

All Bonds and insurance required by the Contract Documents to be purchased and maintained by DB Entity shall be obtained from surety or insurance companies that are duly licensed or authorized to conduct business in the state of California. In addition, such sureties and insurance companies shall have an A.M. Best company rating of no less than A-VII.

5.03 *Certificates of Insurance*

DB Entity shall deliver to Owner, with copies to each additional insured and loss payee identified in the Contract Documents, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured or loss payee) which DB Entity is required to purchase and maintain. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by Owner before Work commence.

Failure of Owner to demand such certificates or other evidence of DB Entity's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of DB Entity's obligation to maintain such insurance.

Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect DB Entity.

The insurance and insurance limits required herein shall not be deemed as a limitation on DB Entity's liability under the indemnities granted to Owner and others in the Contract Documents.

5.04 *DB Entity's Insurance*

See Insurance Requirements in Exhibit 9.

5.05 *Owner is Self-Insured*

In addition to the insurance required to be provided by DB Entity under Paragraph 5.04, Owner is insured to protect itself against claims which may arise from operations under the Contract Documents through the California Sanitations Agencies Risk Management Authority.

5.06 *Property Insurance*

DB Entity will purchase and maintain property insurance upon Construction at the Site. Such insurance is in the amount of the full replacement cost. Such insurance shall:

- include the interests of Owner, SHGCC, DB Entity, and any other persons or entities identified as a loss payee in the Contract Documents, each of whom is deemed to have an insurable interest to the extent of their actual loss.
- be written on a Builder's Risk "all risk" policy that shall at least include insurance for physical loss or damage to the Work, including any real or personal property delivered to the site and shall insure against at least the perils of fire, lightning, extended coverage, theft, vandalism and malicious mischief, flood, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws or Regulations, water damage and such other perils or causes of loss as may be specifically required by the Contract Documents;
- include expenses incurred in the repair or replacement of any Owner's or SHGCC's property (including but not limited to fees and charges of Owner's Advisor);
- cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner and SHGCC prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Owner;
- includes the hazards usually contained in a boiler and machinery policy, and any additional property insurance as may be required by the Contract Documents or Laws or Regulations;
- remain in effect and not be excluded by a "force majeure clause," whether in these General Conditions or otherwise; and
- be maintained in effect until Final Acceptance unless otherwise agreed to in writing by Owner and DB Entity with thirty days written notice to each other person or entity that is identified as a loss payee in the Contract Documents.

All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by DB Entity in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled, renewal refused, or reduced in coverage or limits, until at least 30 days' prior written notice has been given to Owner and to each other loss payee identified in the Contract Documents, and will contain waiver provisions in accordance with Paragraph 5.07.

Owner shall not be responsible for purchasing and maintaining any property insurance to protect the interests of any DB-Related Entity to the extent of any deductible amounts that are identified in the Contract Documents. The risk of loss within such identified deductible amount will be borne by DB Entity or the DB-Related Entity suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

If DB Entity requests in writing that other special insurance be included in the property insurance policies provided under Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to DB Entity by appropriate Change Order. Prior to commencement of the

Work at the Site, Owner shall in writing advise DB Entity whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

Owner and DB Entity intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Owner's Advisor, SHGCC, DB Entity, and all DB-Related Entities, and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and DB Entity waive all rights against each other and their respective officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Owner's Advisor, and DB-Related Entities. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

5.08 *Receipt and Application of Insurance Proceeds*

Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with DB Entity and made payable to DB Entity and Owner as joint loss payees and fiduciaries for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. DB Entity shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Construction shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order.

DB Entity as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to DB Entity's exercise of this power. If such objection be made, DB Entity as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, DB Entity as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, DB Entity as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

If Owner has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by DB Entity in accordance with Article 5 on the basis of their not complying with the Contract Documents, Owner shall notify DB Entity in writing within ten days after receipt of the certificates and insurance declaration page(s) required by Paragraph 2.01. DB Entity shall provide to Owner such additional information in respect of insurance provided as Owner may reasonably request. If DB Entity does not maintain all of the Bonds and insurance required by the Contract Documents, and without prejudice to any other right or remedy, Owner shall have the right to terminate DB Entity for cause under Paragraph 14.02.

5.10 *Partial Utilization, Acknowledgment of Property Insurance*

If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 13.06, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - DB ENTITY'S RESPONSIBILITIES

6.01 *Design Professional Services*

General:

The standard of care for all Design Professional Services performed or furnished by DB Entity under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar conditions at the same time and in the same locality. Notwithstanding the preceding sentence, if the Contract Price Proposal Documents contain specific performance standards, the services shall be performed to achieve such standards.

DB Entity shall comply with all California laws with respect to the practice of land surveying and professional engineering.

DB Entity assumes full responsibility for any portion or element of the Contract Documents that is incorporated into the Drawings and Specifications. For the avoidance of doubt, DB Entity shall be responsible hereunder for any errors in the Work Product developed through Design-Build Agreement.

Owner shall have the right to review and comment upon all DB Entity design documents, whether in draft or final form, including all field-directed amendments to the design, in order to confirm the compliance and consistency of the design documents with the Contract Documents. DB Entity shall give due consideration and provide written responses to any comments delivered by Owner as to DB Entity's design Submittals. Neither compliance by DB Entity with the Contract Documents, nor review of and comment by Owner on DB Entity's design documents, nor any failure or delay by Owner in commenting on any design Submittals, shall in any way relieve DB Entity of full responsibility for the design, construction, and performance of the Project in accordance with the Contract Documents.

Owner has made no representation or warranty to DB Entity that the information provided to DB Entity in the Contract Documents is correct, sufficient, complete or accurate. DB Entity shall, as part of the Design Professional Services, evaluate and validate any design criteria, requirements or other data and information provided in the Contract Documents, and, if it believes that there are errors, omissions, contradictions or any other problems in the Contract Documents, it shall notify Owner accordingly. DB Entity assumes responsibility for the sufficiency, completeness, and accuracy of all Contract Documents, notwithstanding the fact that Owner provided such information. DB Entity shall

have no right to claim or seek an adjustment to the Contract Price or Contract Time as the result of: (i) any incomplete, inaccurate, ambiguous, or inadequate information or requirements contained in or among any of the Contract Documents; or (ii) Owner's review or approval of any Contract Documents.

Design-Build Services: DB Entity shall:

On the basis of the Contract Price Proposal Documents, prepare Final Drawings showing the scope, extent, and character of the Construction to be performed and furnished by DB Entity and Final Specifications (which will be prepared, where appropriate, in general conformance with the format recommended by the Construction Specifications Institute);

Provide technical criteria, written descriptions, and design data required for obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist Owner in consultations with appropriate authorities;

Furnish the above documents, Drawings, and Specifications to and review them with Owner within the times indicated in the schedules described in Paragraph 2.04; and

Identify any deviations from other Contract Documents.

6.02 *Supervision and Superintendence of Construction*

DB Entity shall supervise, inspect, and direct the Construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the Construction in accordance with the Contract Documents. DB Entity shall be solely responsible for the means, methods, techniques, sequences, and procedures of the Work. DB Entity shall be responsible to see that the completed Construction complies fully with the Contract Documents and shall keep Owner advised as to the quality and progress of the Construction.

At all times during the progress of Construction, DB Entity shall assign a competent resident superintendent who shall not be replaced without written notice to Owner except under extraordinary circumstances. The superintendent will be DB Entity's representative at the Site and shall have authority to act on behalf of DB Entity. All communications given to or received from the superintendent shall be binding on DB Entity. The superintendent shall be able to read, write, speak, and understand the English language.

6.03 *Labor, Working Hours*

DB Entity shall provide competent, suitably qualified personnel to perform the Work as required by the Contract Documents. DB Entity shall at all times maintain good discipline and order at the Site.

DB Entity shall remove from the Site any person in the employ of DB Entity or any Subcontractor or Consultant whom Owner may deem incompetent or unfit and such worker shall not again participate in the work and shall not again be employed on it except with written consent of Owner.

DB Entity shall take all reasonable steps necessary to ensure that any employees of DB Entity or any of its Subcontractors or Consultants report for work in a manner fit to do their job. Such employees: (i) shall not utilize tobacco on the Site, and (ii) shall not be under the influence of or in possession of

any alcoholic beverage or any controlled substance (except a controlled substance as prescribed by a physician so long as the performance or safety at the Site is not affected thereby). DB Entity shall advise its employees, Subcontractors, suppliers, and invitees of these requirements before they enter on the Site and shall immediately remove from the Site any person in violation of these requirements as determined by DB Entity or by Owner. DB Entity shall impose these requirements on its Subcontractors, suppliers, and other invitees. DB Entity shall execute, under penalty of perjury, the certification of a drug-free workplace and certification of a tobacco-free workplace on the forms provided herewith provided herewith.

DB Entity shall comply with the requirements in Section 9 of Technical Requirements relating to Funding Requirements.

Working Hours: As provided in Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, DB Entity stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by DB Entity or by the work or upon any part of the work contemplated by this contract is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, work performed by employees of DB Entity in excess of eight (8) hours per day and forty (40) hours during any one week upon this public work shall be permitted compensation of all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

DB Entity shall pay to Owner a penalty of TWENTY-FIVE DOLLARS (\$25.00) for each worker employed in the execution of these Contract Documents by DB Entity or by any Subcontractor for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation to the worker so employed by DB Entity is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to Owner, unless otherwise agreed to by the parties.

Construction work under the Construction Provisions shall be accomplished on a schedule consistent with the normal and reasonable practices of Design-Builder and in compliance with applicable ordinances.

Prevailing Wage: This Project is subject to the California Prevailing Wage Law. For convenience and for the purposes of reference, several provisions of the California Prevailing Wage Laws are set forth in this section. DB Entity shall be responsible for complying with the California Prevailing Wage Laws in their entirety, even if applicable provisions of the laws are not specifically listed in this Agreement.

Pursuant to Section 1770, et seq., of the Labor Code of the State of California, the DB Entity shall pay its employees the general prevailing rate of wages as determined by the Director of the Department of Industrial Relations. In addition, the Respondent shall be responsible for compliance with the requirements of Section 1777.5 of the California Labor Code relating to apprentice public works

contracts. In accordance with Section 1771.1 of the California Labor Code, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to California Labor Code section 1725.5. In accordance with Section 1771.4 of the California Labor Code, this Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Per Diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided in Labor Code § 1773.1 apprenticeship or other training programs authorized by Labor Code § 3093, and similar purposes when the term “per diem wages” is used herein. Each worker needed to execute the Work must be paid travel and subsistence payments as defined in the applicable collective bargaining agreements in accordance with Labor Code § 1773.1.

Holiday and overtime work when permitted by law shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified.

Each worker of DB Entity and any of its subcontractors engaged in work on the System shall be paid not less than the prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between DB Entity or any subcontractors and such workers.

DB Entity shall, as a penalty to Owner, forfeit an amount as determined by the Labor Commissioner pursuant to Labor Code § 1775 for each calendar day, or portion thereof, for each worker paid less than the prevailing rate as determined by the director for such work or craft in which such worker is employed for any public work done under the contract by him or by any subcontractor under him. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by DB Entity.

Copies of the determined prevailing wage rates are on file and available upon request at Owner’s office, or online at the California Department of Industrial Relations website, which may be located at www.dir.ca.gov. Owner shall provide DB Entity with current prevailing wage rates, in writing, upon request. DB Entity shall post, at an appropriate conspicuous point on the Site, a schedule showing all determined general prevailing wage rates. Alternatively, DB Entity may obtain copies of the current prevailing wage rates from the Department of Industrial Relations.

Any worker employed to perform work on the Project which is not covered by any classification available in Owner’s office, shall be paid not less than the minimum rate of wages specified for the classification which most nearly corresponds with work to be performed by him, and that minimum wage rate shall be retroactive to the time of initial employment of the person in the classification.

Apprentices.

All apprentices employed by DB Entity to perform services under these Contract Documents shall be paid the standard wage paid to apprentices under the regulation of the craft or trade at which that apprentice is employed, and shall be employed only at the work of the craft or trade in which that apprentice is registered. Only apprentices, as defined in Labor Code § 3077, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing at Section 3070), Division 3 of the Labor Code, are eligible to be employed under these Construction Provisions. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprenticeship agreements under which that apprentice is training.

When DB Entity to whom the work under these Construction Provisions is awarded by Owner or any Subcontractor under DB Entity, in performing any of the work under the Contract Documents, employs workers in any apprenticeable craft or trade, DB Entity and Subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the Site of the public work, for a certificate approving DB Entity or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. DB Entity or Subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade on the public work, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but in no case shall the ratio be less than one hour of apprentice work for each five (5) hours of labor performed by a journeyman, except as otherwise provided in Section 1777.5 of the Labor Code. However, the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen.

“Apprenticeable craft or trade” as used in Labor Code § 1777.5 and this Article, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

DB Entity, or any Subcontractor which, in performing any of the work under this contract, employs journeymen or apprentices in any apprenticeable craft or trade and which is not contributing to a fund or funds to administer and conduct the apprenticeship programming of any craft or trade in the area of the Site of the public work, to which fund or funds other DB Entitys in the area of the Site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which that DB Entity employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as other DB Entitys do, but where the trust fund administrators are unable to accept the funds, DB Entitys not signatory to the trust agreement shall pay like amount to the California Apprenticeship Council. DB Entity or Subcontractor may add the amount of such contributions in computing their bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in Labor Code § 227.

The responsibility of compliance with Labor Code § 1777.5 and this Article for all apprenticeable occupations is with DB Entity.

The interpretation and enforcement of Sections 1777.5 and 1777.7 of the Labor Code shall be in accordance with the rules and procedures of the California Apprenticeship Council.

Compliance: Failure to fully comply with Paragraphs A, B, C, D, E, F and G above shall be a material breach of the Contract and cause for termination of the Contract for cause.

6.04 *Services, Materials, and Equipment*

Unless otherwise specified in the Contract Documents, DB Entity shall furnish or cause to be furnished and assume full responsibility for the Work, including but not limited to all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

All materials and equipment incorporated into the Work shall be as specified by Owner, or in the Drawings or Specifications, or if not specified shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If required by Owner, DB Entity shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

6.05 *Progress Schedule*

DB Entity shall adhere to the progress schedule established in accordance with Paragraph 2.04.A as it may be adjusted from time to time as provided below:

DB Entity shall submit to Owner for acceptance proposed adjustments in the progress schedule that will not change the Contract Time(s) (or Milestones). Such adjustments will conform generally to the progress schedule then in effect.

Proposed adjustments in the progress schedule that will change the Contract Time(s) (or Milestones) shall be submitted in accordance with the requirements of Paragraph 11.02. Such adjustments may only be made by a Change Order.

If, in the opinion of Owner, DB Entity falls behind the progress schedule due to an event that does not enable DB Entity to extend the Contract Time(s), including but not limited to actions or neglect of any DB-Related Entity's failure to perform part or all of the Work or to supply any equipment or materials, Owner may direct DB Entity, at DB Entity's sole cost and expense, to take remedial steps, including, but not limited to, increasing the number of personnel, shifts, and/or overtime operations, days of Work, and/or amount of construction equipment until such time as the Work is back on schedule. In such event, DB Entity shall also submit for review not later than the time of submittal of the next request for partial payment, a supplementary schedule demonstrating the manner in which the acceptable rate and achievement of progress will be regained, all without additional cost to Owner.

6.06 *Concerning DB-Related Entities*

DB Entity shall not employ any DB-Related Entity or any individual against whom Owner may have reasonable objection. DB Entity shall not be required to employ any Design Sub-consultant or Subcontractor against whom DB Entity has reasonable objection.

DB Entity shall be fully responsible to Owner for all acts and omissions of the DB-Related Entities just as DB Entity is responsible for DB Entity's own acts and omissions. Nothing in the Contract Documents:

- shall create for the benefit of any such DB-Related Entity any contractual relationship between Owner and any such DB-Related Entity;
- shall create any obligation on the part of Owner to pay or to see to the payment of any moneys due any DB-Related Entity except as may otherwise be required by Laws or Regulations.

DB Entity shall be solely responsible for scheduling and coordinating all DB-Related Entities.

DB Entity shall require all DB-Related Entities to communicate with Owner through DB Entity.

All Work performed for DB Entity by a DB-Related Entity will be pursuant to an appropriate Design Sub-agreement or Construction Sub-agreement between DB Entity and the DB-Related Entities which specifically binds the DB-Related Entities to the applicable terms and conditions of the Contract Documents for the benefit of Owner. Whenever any such agreement is with a DB-Related Entity who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between DB Entity and such DB-Related Entity will contain provisions whereby the DB-Related Entity waives all rights against Owner, Owner's Advisor, DB Entity, and all other loss payees (and their officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any DB-Related Entity, DB Entity will obtain the same.

6.07 *Patent Fees and Royalties*

DB Entity shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others.

To the fullest extent permitted by Laws or Regulations, DB Entity shall indemnify and hold harmless the Indemnified Parties from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the specification or incorporation in the Work of any invention, design, process, product or device. Notwithstanding the foregoing, DB Entity shall not be liable to Owner for infringement claims: (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not objected to in writing by DB Entity to Owner; (ii) arising from modifications to the Work by

Owner after acceptance of the Work; or (iii) Owner's use or operation of the Work for purposes other than intended.

6.08 *Permits*

Unless otherwise provided in the Contract Documents, DB Entity shall obtain and pay for all necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Work. If any such permit, license or approval of governmental authorities is required to be formally issued in the name of Owner, DB Entity shall undertake all efforts to obtain such permit, license or approval subject to Owner's reasonable cooperation with DB Entity, including execution and delivery of appropriate applications and other documentation in forms approved by Owner.

DB Entity shall pay all governmental charges and inspection fees necessary for the performance of the Work. DB Entity shall pay all charges of utility owners for connections to the Work, and Owner shall pay all charges of such utility owners for capital costs related thereto.

A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

6.09 *Laws or Regulations*

DB Entity shall give all notices required by and comply with all Laws or Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring DB Entity's compliance with any Laws or Regulations.

If DB Entity performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, DB Entity shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

Changes in Laws or Regulations not known on the Effective Date of the Contract Price Proposal having an effect on the cost or time of performance may be the subject of a change in Contract Price or Contract Time(s). Notwithstanding the above, DB Entity shall not be entitled to an adjustment in the Contract Price or Contract Time for, and assumes the risk of, any changes in Laws or Regulations related to DB Entity's corporate existence or the maintenance of its business, including, but not limited to, gross receipt taxes, social security, Medicare, and other payroll-related taxes.

The DB Entity acknowledges to and for the benefit of the Owner and the State of California that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as "American Iron and Steel;" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and

Steel Requirement”) including iron and steel products provided by the Contactor pursuant to this Agreement. The DB Entity hereby represents and warrants to and for the benefit of the Owner and the State that (a) the DB Entity has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the DB Entity will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Owner or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the DB Entity shall permit the Owner or State to recover as damages against the DB Entity any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Owner or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Owner). While the DB Entity has no direct contractual privity with the State, as a lender to the Owner for the funding of its project, the Owner and the DB Entity agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

6.10 *Taxes*

DB Entity shall pay all sales, consumer, use, employment-related and other taxes required to be paid by DB Entity in accordance with the Laws or Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 *Use of Site and Other Areas*

Limitation on Use of Site and Other Areas:

DB Entity shall confine construction equipment, the storage of materials and equipment, and the operations of construction workers to the Site and other areas permitted by Laws or Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. DB Entity shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work.

Should any claim be made by any such owner or occupant because of the performance of Work, DB Entity shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

To the fullest extent permitted by Laws or Regulations, DB Entity shall indemnify and hold harmless the Indemnified Parties from and against all claims, costs, losses and damages (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from any claim brought by any such owner or occupant against Owner, or any other party indemnified hereunder to the extent caused by or based upon the failure of any DB-Related Entity to perform the Construction in accordance with the Contract Documents.

DB Entity shall ensure that all employees performing or furnishing any of the Work will be prohibited from using firearms, engaging in hunting, fishing, trapping, using illegal drugs or using alcohol either on the work site, on Owner or SHGCC property, or on any land adjoining the work site.

Removal of Debris: During the performance of the Construction, DB Entity shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Construction. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws or Regulations.

Cleaning: Prior to Substantial Completion, DB Entity shall clean the Site and make it ready for utilization by Owner and SHGCC. At completion of Construction, DB Entity shall remove all tools, appliances, construction equipment, temporary construction and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

Loading Structures: DB Entity shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall DB Entity subject any part of the Construction or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

DB Entity shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders, Work Change Directives, approved Submittals, QA/QC records, and all other written interpretations and clarifications in good order and annotated to show all changes made during performance of the Work. Such copies shall constitute the "Record Documents" and will be available to Owner for reference.

The Record Documents shall, as appropriate, be marked-up as the Work progresses to reflect current conditions and shall become the "as-built" plans. The revisions are to be indicated in a neat, well-organized manner and are to include the elevation and plan location of any utilities, structures, etc., encountered or installed. A "record" survey book will be kept and shall include the following items:

- The location and elevation of all existing utilities, structures, etc. encountered.
- The finished product location and elevation of all utilities and structures installed, including, but not limited to, fire hydrants, catch basin and manhole lids, inverts, pipes, and any and all underground structures.

The Record Documents shall comply with Paragraph 16.11 ("Records").

All record notes shall be kept in book(s) designated "record" and no other survey notes will be kept in such books. DB Entity will be required to review with Owner the status of the "as-built" plans and the "record" survey notes in connection with Owner's evaluation of an application for payment. Failure to maintain record documents current shall be just cause for Owner to withhold payments for Work performed.

Upon Substantial Completion of the Work, the Record Documents will be delivered to Owner. DB Entity shall deliver to Owner a reproducible set of updated contract plans. DB Entity will transfer all its "as-built" information to these reproducibles and deliver the resultant "as-built" set of plans,

together with the record survey book to Owner. Each completed set of "as-built" drawings must include on its face, a certified statement by DB Entity that the set of "as-built" drawings accurately depicts the actual Work as constructed.

6.13 *Safety and Protection*

DB Entity shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. DB Entity shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

- All persons on the Site or who may be affected by the Work;
- All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
- Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation, or replacement in the course of construction.

DB Entity shall comply with applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. DB Entity shall notify owners of adjacent property and of underground facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

DB Entity shall comply with the applicable requirements of Owner's safety programs, if any. The Contract Documents identify any Owner's safety programs that are applicable to the Work.

DB Entity shall inform Owner of the specific requirements of DB Entity's safety program with which Owner and its employees and representatives must comply while at the Site.

All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by any DB-Related Entity shall be remedied by DB Entity.

DB Entity's duties and responsibilities for safety and for protection of the construction shall continue until such time as all the Work is completed and Owner has issued a notice to DB Entity in accordance with Paragraph 13.08 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

DB Entity shall designate a competent safety representative at the Site who has the experience, duty and responsibility to take prompt actions to eliminate hazards, correct unsafe conditions, and enforce the implementation of DB Entity's safety requirements.

6.15 *Hazard Communication Programs*

DB Entity shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, DB Entity is obligated to act to prevent threatened damage, injury, or loss. DB Entity shall give Owner prompt written notice if DB Entity believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. DB Entity shall be responsible for providing first aid and medical care in accordance with applicable laws and regulations.

DB Entity shall be required to secure or remove from the site, prior to a storm event, any materials or equipment which could cause bodily injury, damage to the Work, Owner's installations and/or public or private property. Site excavations shall be required to be secured and/or backfilled. No DB Entity equipment may be parked within 100 feet of any Owner facilities. In the event of the issuance of a storm warning, Owner will attempt to notify DB Entity, however, DB Entity is responsible for preparing for a storm event. DB Entity shall take the necessary precautions to protect the walking and motoring public from harm due to construction activity.

Owner may, but is not required to, order the work be stopped if a condition of eminent danger exists. Nothing shall be construed to shift responsibility or risk of loss for injuries and /or damages, cost of stoppage or delay of work, from DB Entity to Owner. DB Entity shall remain solely and exclusively responsible for compliance with all safety requirements and the safety of all persons and property at the Site.

6.17 *Continuing the Work*

DB Entity shall continue the Work and adhere to the progress schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as set forth in Paragraph 14.04 or as DB Entity and Owner may otherwise agree in writing.

6.18 *DB Entity's General Warranty and Guarantee*

DB Entity warrants and guarantees to Owner that all Construction will be in accordance with the Contract Documents and will not be defective.

DB Entity's warranty and guarantee hereunder excludes defects or damage caused by:

- abuse, modification or improper maintenance or operation by persons other than a DB-Related Entity; or
- normal wear and tear under normal usage.

DB Entity's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of DB Entity's obligation to perform the Work in accordance with the Contract Documents:

- Observations by Owner;
- The making of any progress or final payment;
- The issuance of a certificate of Substantial Completion;
- Use or occupancy of the Work or any part thereof by Owner;
- Any review and approval of a Submittal;
- Any inspection, test, or approval by others; or
- Any correction of defective Work by Owner.

6.19 *Indemnification*

DB Entity agrees to and does hereby defend, indemnify and hold harmless Owner, SHGCC and their respective its representatives, appointed and elected officials, officers, employees, authorized agents, consultants (including Owner's Advisor), and other duly authorized representatives (the "Indemnified Parties") from every claim or demand made, and every liability, loss, damage, expense or attorney's fees of any nature whatsoever, which may be incurred by reason of:

- Liability for: (1) death or bodily injury to persons; (2) damage or injury to, loss (including theft), or loss of use of, any property; (3) any failure or alleged failure to comply with any provision of law or the Contract Documents; or (4) any other loss, damage or expense, sustained by any person, firm or corporation arising from any act, omission or breach of DB Entity or any person, firm or corporation employed by, under contract with, or acting on behalf of Design-Builder, arising out of or in any way connected with the Work performed by DB Entity, its employees, contractors and/or agents pursuant to this Agreement or the Contract Documents, whether said injury or damage occurs either on or off Owner Property, except for liability resulting from the negligence or the willful misconduct of any of the Indemnified Parties; and
- Any dispute between DB Entity and DB Entity's subcontractors, suppliers and/or sureties, including, but not limited to, any failure or alleged failure of the DB Entity (or any person hired or employed directly or indirectly by the DB Entity) to pay any subcontractor or materialman of any tier or any other person employed in connection with the Work and/or filing of any stop notice or mechanic's lien claims.

DB Entity, at its own expense, cost, and risk, shall defend any and all third party claims, actions, suits, or other proceedings, including any and all appeals thereof, that may be brought or instituted against the Indemnified Parties, and their respective officers, agents or employees, on account of or founded

upon any cause, damage, or injury identified in this Section except for liability resulting from the sole or active negligence or the willful misconduct of any of the Indemnified Parties and shall pay or satisfy any final and non-appealable judgment that may be rendered against Indemnified Parties, and their respective officers, agents or employees in any action, suit or other proceedings as a result thereof, except for liability resulting from the sole or active negligence or the willful misconduct of any of the Indemnified Parties. DB Entity may select counsel to provide such defense, subject to acceptance by Owner, which acceptance shall not unreasonably be withheld. In any event, Owner shall solely control any defense provided by DB Entity, and counsel defending Owner shall have a duty of loyalty and zealous advocacy solely to Owner.

In any and all claims against an Owner Indemnitee by any employee (or the survivor or personal representative of such employee) of a DB-Related Entity, the indemnification obligations under Paragraphs 6.19.A and 6.19.B shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for a DB-Related Entity under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 7 - OTHER CONSTRUCTION

7.01 Related Work at Site

Owner may perform work, or cause other work to be performed, related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or through other utility owners. If such other work is not noted in the Contract Documents, then:

- Written notice thereof will be given to DB Entity prior to starting any such other work; and
- If Owner and DB Entity are unable to agree on entitlement to or on the extent, if any, of any adjustment in the Contract Price or Contract Time(s) that should be allowed as a result of such other work, DB Entity may make a claim therefor as provided in Article 9 if DB Entity believes that such performance will involve additional expense to DB Entity or requires additional time.

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

If the proper execution or results of any part of DB Entity's Work depends upon work performed or services provided by others under this Article 7, DB Entity shall inspect such other work and

appropriate instruments of service and promptly report to Owner in writing any delays, defects or deficiencies in such other work or services that render it unavailable or unsuitable for the proper execution and results of DB Entity's Work. DB Entity's failure so to report will constitute an acceptance of such other work as fit and proper for integration with DB Entity's Work except for latent or nonapparent defects and deficiencies in such other work.

7.02 *Coordination*

If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Contract Documents:

- The individual or entity that will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;
- The specific matters to be covered by such authority and responsibility will be itemized; and
- The extent of such authority and responsibilities will be provided.

Unless otherwise provided in the Contract Documents, Owner shall have sole authority and responsibility in respect of such coordination.

7.03 *Legal Relationships*

Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner for the reasonable direct delay and disruption costs incurred by DB Entity as a result of the other contractor's wrongful actions or inactions.

DB Entity shall be liable to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of DB Entity's wrongful action or inactions.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *General*

Owner shall do the following in a timely manner so as not to delay the services of DB Entity:

- Designate in writing a person to act as Owner's Representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, make decisions with respect to performance of the Work, and shall provide such other services as may be agreed upon;
- Make payments to DB Entity promptly when they are due as provided in Paragraphs 13.03 and 13.09;

- Furnish the Site as set forth in Paragraph 4.01.A;
- Furnish to DB Entity, as required for performance of DB Entity's Services, the following:
 - Environmental assessment and impact statements;
 - Property, boundary, easement, right-of-way, topographic, and utility surveys;
 - Property descriptions;
 - Zoning, deed, and other land use restrictions;
 - Engineering surveys to establish reference points for design and construction which in Owner's judgment are necessary to enable DB Entity to proceed with the Work;
 - Assistance to DB Entity in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project;
 - Permits, licenses, and approvals of government authorities Owner is specifically required to obtain by the Contract Documents; and
 - Identify all reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site, all drawings known to owner of physical conditions relating to existing surface or subsurface structures at the Site, and any information or data known to Owner concerning underground facilities at the Site.
- Review Submittals subject to Owner review pursuant to the Contract Documents; and
- Provide information known to Owner relating to the presence of materials and substances at the Site which could create a Hazardous Environmental Condition.

8.02 *Insurance*

Owner's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in Article 5.

8.03 *Limitations on Owner's Responsibilities*

Owner shall not supervise, direct, or have control or authority over, nor be responsible for, DB Entity's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of DB Entity to comply with Laws or Regulations applicable to the furnishing or performance of the Work. Owner will not be responsible for DB Entity's failure to perform the Work in accordance with the Contract Documents.

8.04 *Undisclosed Hazardous Materials and Hazardous Environmental Conditions*

Owner's responsibility in respect of undisclosed Hazardous Materials and Hazardous Environmental Conditions uncovered or revealed at the Site is set forth in Paragraph 4.04.

8.05 *Owner's Advisor*

Owner's Advisor, if any, has no duties, responsibilities, or authorities with respect to DB Entity, unless so provided in the Contract Documents.

8.06 *Compliance with Safety Program*

While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of DB Entity's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

ARTICLE 9 - CHANGES IN THE WORK; CLAIMS

9.01 *Authorized Changes in the Work*

Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition, or deletion is approved in advance and in writing by a valid change order executed by Owner and approved by the Owner in accordance with this Agreement and the Contract Documents. The foregoing notwithstanding, the DB Entity shall continue to perform its Work under the Agreement with respect to all undisputed portions of the Work and shall not cause a delay of the Work by virtue of the inability of Owner and DB Entity to agree upon the extent of any adjustment to the Contract Time and/or the Project Price on account of such change. DB Entity specifically understands, acknowledges, and agrees that Owner shall have the right to request any alterations, deviations, reductions, or additions to the Project or Work, and the cost thereof shall be added to or deducted from the amount of the Project pursuant to the Change Order process in Contract Documents.

Required Documentation. DB Entity agrees to provide Owner with all information requested to substantiate the cost of the change order and to inform Owner whether the Work will be done by the DB Entity or a subcontractor. DB Entity shall maintain detailed records on a daily basis. Such records shall include without limitation hourly records for labor and Construction Equipment and itemized records of materials and equipment used that day in connection with the performance of any Change to the Work. In the event that more than one Change to the Work is performed by the DB Entity in a calendar day, DB Entity shall maintain separate records of labor, Construction Equipment, materials and equipment for each such Change. In the event that any Subcontractor, of any tier, shall provide or perform any portion of any Change to the Work, DB Entity shall require that each such Subcontractor maintain records in accordance with this provision. Each daily record maintained hereunder shall be signed by DB Entity's Superintendent or DB Entity's authorized representative; such signature shall be deemed DB Entity's representation and warranty that all information contained therein is true, accurate, complete, and relate only to the Change referenced therein. All records maintained by a subcontractor, of any tier, relating to the costs of a Change to the Work shall be signed by such subcontractor's authorized representative or superintendent. All records maintained hereunder

shall be subject to inspection, review and/or reproduction by Owner upon request. In the event that DB Entity shall fail or refuse, for any reason, to maintain or make available for inspection, review and/or reproduction such records and the adjustment to the Project Price on account of any Change to the Work is determined pursuant to this section, Owner's reasonable good faith determination of the extent of adjustment to the Project Price on account of such Change shall be final, conclusive, dispositive and binding upon DB Entity.

Adjustment to Contract Time. Except as otherwise stated this Agreement, including the General Conditions and the Contract Documents, the Contract Time may be extended or reduced by change order if the performance of such Change necessitates such extension or reduction. DB Entity shall submit, prior to approval of the change order, its request for a time extension (if any), as well as all information necessary to substantiate its belief that such change will delay the completion of the Work. If DB Entity fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension.

9.02 *Unauthorized Changes in the Work*

DB Entity shall not be entitled to an increase in the Contract Price or an extension of the Contract Time(s) with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Construction as provided in Paragraph 12.04.

9.03 *Claims*

If DB Entity shall claim compensation for any reason, including, without limitation, changes to the in the Work or Services, extensions of time, and/or damages sustained by DB Entity for which it may seek recovery from Owner ("Claim"), DB Entity shall, within ten (10) business days after the first occurrence giving rise to the Claim, make and deliver to Owner a written statement of the amount of the Claim, the first occurrence giving rise to the Claim, and a description of the occurrences, events and bases for the Claim ("Notice of Claim"). DB Entity shall file with Owner an itemized statement of all details and the amount of the Claim within fifteen (15) business days of delivery to Owner of the Notice of Claim. Thereafter all claims shall be handled in accordance with Article 15 below.

9.04 *Execution of Change Orders*

Owner and DB Entity shall execute appropriate change orders (or written amendments) covering:

- Changes in the Work which are:
 - ordered by Owner pursuant to Paragraph 9.01;
 - Required because of acceptance of defective work under Article 13 or Owner's correction of defective work under Article 12; or
 - Base claims agreed to by the parties.

- Changes in the Contract Price or Contract Time(s) which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a change order or amendment; and
- Unilateral changes in the Contract Price or Contract Time(s) which are issued by Owner, including any undisputed and/or disputed sum or amount of time for Work actually performed in accordance with a change order or amendment; and
- Changes in the Contract Price or Contract Time(s) which embody the substance of any written decision rendered by Owner pursuant to Paragraph 15.02; provided that, in lieu of executing any such change order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, DB Entity shall carry on the work and adhere to the progress schedule pursuant to, among other provisions of the Contract Documents, Paragraph 6.18.

DB Entity acknowledges that agreement on any change order shall constitute a final settlement and full accord and satisfaction of all matters relating to the change directly or indirectly changed or unchanged in the Work which is the subject of the change order, including, but not limited to, all direct, indirect costs, and impact costs associated with such change, including inefficiencies or acceleration based claims, and any and all adjustments to the Contract Price and Contract Time(s), and schedule.

There shall be no DB Entity delay claim based upon DB Entity's inability to perform change order work due to delay caused by Owner's approval process.

9.05 *Notice to Sureties*

If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time(s)) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be DB Entity's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

ARTICLE 10 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

10.01 *Cost of the Work*

Costs Included: The term Cost of the Work means the sum of all costs necessarily incurred and paid by DB Entity in the proper performance of the Work. When the value of Work covered by a Change Order or when a claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to DB Entity will be only those additional or incremental costs required because of the change of the Work or because of the event giving rise to the claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, and shall not include any of the costs itemized in Paragraph 10.01.B, and shall include only the following items:

- Payroll costs for employees in the direct employ of DB Entity in the performance of the Work under schedules of job classifications agreed upon by Owner and DB Entity.

Such employees shall include without limitation superintendents, foremen, and other personnel employed full-time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by Owner.

Such employees shall also include engineers, engineering technicians, architects, and others providing Design Professional Services. For purposes of this Paragraph 10.01.A.1, DB Entity shall be entitled to payment for such employees an amount equal to salary costs times a factor, both as designated in the Agreement, for all services performed or furnished by such employees engaged on the Project.

- Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to DB Entity unless Owner deposits funds with DB Entity with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and DB Entity shall make provisions so that they may be obtained.
- Payments made by DB Entity to Subcontractors (excluding payments for Design Professional Services pursuant to Paragraph 10.01.A.4) for Work performed or furnished by Subcontractors. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as DB Entity's Cost of the Work and fee.
- Payments made by DB Entity for Design Professional Services provided or furnished under a Design Sub-agreement.
- Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

Supplemental costs including the following items:

- The proportion of necessary transportation, travel and subsistence expenses of DB Entity's employees incurred in discharge of duties connected with the Work.
- Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of DB Entity.

- Rentals of all construction or engineering equipment and machinery and the parts thereof whether rented from DB Entity or others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.
- Sales, consumer, use, and other similar taxes related to the Work, and for which DB Entity is liable, imposed by Laws or Regulations.
- Deposits lost for causes other than negligence of a DB-Related Entity, and royalty payments and fees for permits and licenses.
- Losses, damages, and related expenses caused by damage to the Work not compensated by insurance or otherwise, sustained by DB Entity in connection with the furnishing and performance of the Work provided they have resulted from causes other than the negligence of a DB-Related Entity. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining DB Entity's fee.
- The cost of utilities, fuel, and sanitary facilities at the Site.
- Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- Cost of premiums for all Bonds and insurance DB Entity is required by the Contract Documents to purchase and maintain.

Costs Excluded: The term Cost of the Work shall not include any of the following items:

- Payroll costs and other compensation of DB Entity's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by DB Entity whether at the Site or in DB Entity's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 10.01.A.1, all of which are to be considered administrative costs covered by DB Entity's fee.
- Expenses of DB Entity's principal and branch offices other than DB Entity's office at the Site.
- Any part of DB Entity's capital expenses, including interest on DB Entity's capital employed for the Work and charges against DB Entity for delinquent payments.

- Costs due to the negligence of a DB-Related Entity, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 10.01.A.

DB Entity's Fee: When the value of the Work covered by a Change Order is determined on the basis of Cost of the Work, DB Entity's fee shall be determined as set forth in Paragraph 11.01.C.

Documentation: Whenever the cost of any Work is to be determined pursuant to Paragraph 10.01.A and 10.01.B, DB Entity will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.

10.02 *Unit Prices*

Where the Contract Price Proposal provides that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all of Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by DB Entity will be made by Owner.

No unit price will have any DB Entity's overhead or fee in such item.

If the actual quantity of any item of Unit Price Work varies more than twenty-five percent (25%) above or below the estimated quantity, either party may request an adjustment in the Contract Price. Any such adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred twenty-five percent (125%) or below seventy-five percent (75%) of the estimated quantity.

ARTICLE 11 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIME(S)

11.01 *Change of Contract Price*

The Contract Price may only be changed by a Change Order. Any claim for an adjustment in the Contract Price shall be based on written notice delivered by DB Entity to Owner promptly in accordance with Paragraph 15.02.

The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price will be determined as follows:

- Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 10.03); or

- Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.01.C); or
- Where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 11.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 10.01) plus a DB Entity's Fee for overhead and profit (determined as provided in Paragraph 11.01.C).

DB Entity's Fee on any Work covered by a Change Order or of any claim for an adjustment in the Contract Price shall be ten percent (10%) of the amount set forth in Paragraph 11.01.B above.

Work covered by a Change Order or of any claim for an adjustment in the Contract Price that is being performed by Design Sub-consultants, Subcontractors or Suppliers of any tier shall be limited to the following markups, which markup shall compensate Design Sub-consultant, Subcontractor, Supplier for all indirect costs, field and home office overhead, and profit:

- A total markup of ten percent (10%) of the costs incurred by such Design Sub-consultant, Subcontractor or Supplier under Paragraphs 10.01.A.1 and 10.01.A.2.
- Any higher tier Design Sub-consultant, Subcontractor or Supplier will be paid a total markup of ten percent (10%) of the amount paid to the next lower tier Design Sub-consultant, Subcontractor or Supplier.

The amount of credit to be allowed by DB Entity to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost, plus a deduction in DB Entity's fee by an amount of ten percent (10%) of such net decrease; and

When both additions and credits are involved in any one change, DB Entity's fee shall be computed on the basis of amount of the net increase or decrease in cost. If there is a net increase in cost, then the fee shall be as set forth in Paragraph 11.01.C, and if there is a net decrease, the fee deduction shall be as set forth in Paragraph 11.01.E.

11.02 *Change of Contract Time(s)*

The Contract Time(s) (or Milestones) may only be changed by a Change Order. Any claim for an adjustment of the Contract Time(s) (or Milestones) shall be based on written notice pursuant to Paragraph 15.02. All adjustments for additional time must include a detailed critical path analysis of the Contract schedule.

Any adjustment of the Contract Time(s) (or Milestones) covered by a change order or of any claim for an adjustment in the Contract Time(s) (or Milestones) will be determined in accordance with the provisions of this Paragraph 11.02.

DB Entity expressly agrees that in undertaking to complete the work within the time specified, it has made allowances for certain foreseeable hindrances and delays ordinarily encountered on projects of this type. The parties specifically anticipate and contemplate such hindrances and delays, including but not limited to, labor disputes; those reasonable delays caused by or arising from minor design

conflicts and issues; schedule adjustments; the actions of DB-Related Entities; late or out-of-sequence Owner-furnished equipment, materials and facilities not affecting the critical path; reasonable turnaround or approval of DB Entity's Submittals; normal unfavorable weather, wet grounds, or other similar unsuitable construction conditions likely to occur in the West Bay Sanitary District; reasonable turnaround to DB Entity's requests for information or direction; change order processing; and access and coordination by Owner that does not create any new critical paths in the schedule. DB Entity agrees that such delays are included in the Contract Price and Contract Time(s) and that they shall not constitute the basis for a time extension or a claim for additional compensation of any type.

Delays Beyond DB Entity's Control: Where DB Entity is prevented from completing any part of the Work within the Contract Time(s) (or Milestones) due to delay beyond the control of DB Entity, the Contract Time(s) (or Milestones) will be extended in an amount equal to the time lost due to such delay if a claim is made therefor as provided in Paragraph 11.02.A. Delays beyond the control of DB Entity shall include, but not be limited to, acts or neglect by Owner, governmental agencies, changes of law pursuant to Paragraph 6.09.C, acts or neglect of utility owners or other contractors performing other construction work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or other acts of God.

If DB Entity intends to seek an adjustment in the Contract Time for abnormal weather conditions, it shall, in addition to fulfilling all other requirements for a time extension, demonstrate that the actual weather encountered was unusually severe and abnormal compared with the five-year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration (“NOAA”) for the time of year and locality of the Site. If Owner or other contractor or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then DB Entity shall be entitled to an equitable adjustment in the Contract Price or the Contract Time(s), or both. DB Entity’s entitlement to an adjustment of the Contract Time(s) is conditioned on such adjustment being essential to DB Entity’s ability to complete the Work within the Contract Time(s).

If DB Entity is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and DB Entity, then DB Entity shall be entitled to an equitable adjustment in Contract Time(s), if such adjustment is essential to DB Entity’s ability to complete the Work within the Contract Time(s). Such an adjustment shall be DB Entity’s sole and exclusive remedy for the delays described in this Paragraph 11.02.G. Notwithstanding the preceding sentence:

- If such delays result in Owner suspending the Work in accordance with Paragraph 14.01, DB Entity’s remedy shall be as specified in that provision.
- If the total aggregate of such delays exceeds thirty (30) days, commencing on the Notice to Proceed, then DB Entity shall be entitled to treat the days of delay that exceed such 30-day period in the same manner as set forth in Paragraph 11.02.F above.

Owner, Owner’s Advisor shall not be liable to DB Entity for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other

professionals and all court or arbitration or other dispute resolution costs) sustained by DB Entity on or in connection with any other project or anticipated project.

DB Entity shall not be entitled to an adjustment in Contract Price or Contract Time(s) for delays within the control of DB Entity. Delays attributable to and within the control of a DB-Related Entity shall be deemed to be delays within the control of DB Entity.

Notwithstanding anything to the contrary in this Article 11 or in any other Contract Document, Owner shall not be liable, and DB Entity shall not be entitled to recover, for any time-related or delay damages for: (1) loss of anticipated profit; (2) home office overhead; (3) consequential damages (including but not limited to loss of bonding capacity, loss of bidding opportunities, and insolvency); and (4) legal fees, claims preparation expenses, or the cost of dispute resolution.

ARTICLE 12 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

12.01 Notice of Defects

Owner shall give DB Entity prompt written notice of all defective Construction of which Owner has actual knowledge. All defective Construction may be rejected, corrected or accepted as provided in this Article 12.

12.02 Access to Construction

Owner, Owner's Advisor, other representatives and personnel of Owner, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Site and the Construction at reasonable times for their observation, inspecting, and testing. DB Entity shall provide them proper and safe conditions for such access and advise them of DB Entity's Site safety procedures and programs so that they may comply therewith as applicable.

12.03 Tests and Inspections

If the Contract Documents or Laws or Regulations of any public body having jurisdiction require any part of the Construction specifically to be inspected, tested or approved, DB Entity shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish Owner the required certificates of inspection or approval. DB Entity shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's acceptance of materials or equipment to be incorporated in the Work or of materials, mix designs, or equipment submitted for approval prior to DB Entity's purchase thereof for incorporation in the Work.

DB Entity shall give Owner reasonable notice of the planned schedule for all required inspections, tests, or approvals.

If any Construction (or the construction work of others) that is required to be inspected, tested, or approved is covered by DB Entity without written concurrence of Owner, then DB Entity shall, if requested by Owner, uncover such Construction for observation.

Uncovering Construction as provided in Paragraph 12.04 shall be at DB Entity's expense unless DB Entity has given Owner timely notice of DB Entity's intention to cover the same and Owner has not acted with reasonable promptness in response to such notice.

12.04 *Uncovering Construction*

If any Construction is covered contrary to the written request of Owner, it must, if requested by Owner, be uncovered for Owner's observation and recovered at DB Entity's expense.

If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, DB Entity, at Owner's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Owner may require, that portion of the Construction in question, furnishing all necessary labor, material and equipment. If it is found that such Construction is defective, DB Entity shall pay all costs and damages caused by or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction, (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If, however, such Construction is not found to be defective, DB Entity shall be allowed an increase in the Contract Price or an extension of the Contract Time(s) (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction. If the parties are unable to agree as to the amount or extent thereof, DB Entity may make a claim therefor as provided in Article 9.

12.05 *Owner May Stop Construction*

If Construction is defective, or DB Entity fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform Construction in such a way that the completed Construction will conform to the Contract Documents, Owner may order DB Entity to stop Construction or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop Construction will not give rise to any duty on the part of Owner to exercise this right for the benefit of DB Entity or any other party.

12.06 *Correction or Removal of Defective Work*

Owner will have authority to disapprove or reject defective Work and will have authority to require special inspection or testing of the Work whether or not the Work is fabricated, installed or completed. If required by Owner, DB Entity shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Owner, remove it from the Site and replace it with non-defective Work. DB Entity shall bear all direct, indirect, and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and all court, arbitration, or other dispute resolution costs) arising out of or relating to such correction or removal.

12.07 *Correction Period*

If within one year after the date of Final Acceptance or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract

Documents or by any specific provision of the Contract Documents, any Work is found to be defective, DB Entity shall promptly, without cost to Owner and in accordance with Owner's written instructions, (i) correct such defective Work, or, if it has been rejected by Owner, remove it from the Site and replace it with Work that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If DB Entity does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or the rejected Work removed and replaced, and all costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) will be paid by DB Entity.

In special circumstances where a particular item of equipment is placed in continuous service before Final Acceptance, the correction period for that item may start to run from an earlier date if so specifically provided in the Contract Documents.

Where defective Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this Paragraph 12.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

12.08 Acceptance of Defective Work

If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so. DB Entity shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work. If any such acceptance occurs prior to Final Acceptance, a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price reflecting the diminished value of the Work so accepted. If the acceptance occurs after Final Acceptance, an appropriate amount will be paid by DB Entity to Owner.

12.09 Owner May Correct Defective Work

If DB Entity fails within a reasonable time after written notice from Owner to correct defective Work or to remove and replace rejected Work as required by Owner in accordance with Paragraphs 12.06.A or 12.07.A, or if DB Entity fails to perform the Work in accordance with the Contract Documents, or if DB Entity fails to comply with any other provision of the Contract Documents, Owner may, after seven days' written notice to DB Entity, correct and remedy any such deficiency.

In exercising the rights and remedies under this Paragraph 12.09 Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude DB Entity from all or part of the Site, take possession of all or part of the Work, and suspend DB Entity's services related thereto, take possession of DB Entity's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid DB Entity but which are stored elsewhere. DB Entity shall allow Owner, Owner's Advisor,

Owner's representatives, agents, employees, and other contractors access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

All costs, losses, and damages (included but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs and all costs of repair or replacement of work of others) incurred or sustained by Owner in exercising such rights and remedies under this Paragraph 12.09 will be charged against DB Entity and a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price.

DB Entity shall not be allowed an extension of the Contract Time(s) (or Milestones) because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 12.09.

ARTICLE 13 - PAYMENTS TO DB ENTITY AND COMPLETION

13.01 Progress Payment Schedule

A schedule prepared by DB Entity and acceptable to Owner indicating that portion of the Contract Price to be paid for each major component of the Work.

13.02 Application for Progress Payment

DB Entity shall submit to Owner, on or about the last day of each month, an Application for Payment filled out and signed by DB Entity covering the Work completed as of the date indicated on the Application and accompanied by supporting documentation as required by the Contract Documents.

If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which will be satisfactory to Owner.

Beginning with the second Application for Payment, each Application shall include an affidavit of DB Entity stating that all previous progress payments received on account of the Work have been applied on account to discharge DB Entity's legitimate obligations associated with prior Applications for Payment.

The amount of retention with respect to progress payments will be as stipulated in the Agreement.

13.03 Progress Payments

Owner will, after receipt of each application for payment, either make payment or return the application to DB Entity, indicating in writing Owner's reasons for refusing to make payment. In the latter case, DB Entity may make the necessary corrections and resubmit the application.

Owner may refuse to make the whole or any part of any payment if, in Owner's opinion, it would be incorrect to make such payment because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment previously made, to such extent as may be necessary in Owner's opinion to protect Owner from loss because:

- The Work is defective, or completed Work has been damaged, requiring correction or replacement;
- The Contract Price has been reduced by written amendment or change orders;
- Owner has been required to correct defective Work or complete Work in accordance with Article 12; or
- Owner has actual knowledge of any of the events enumerated in Article 15.
- DB Entity fails to comply with the SBE requirements as stated in the Contract;
- DB Entity fails to submit the required insurance policy declaration page as stated in the Contract;
- DB Entity fails to comply with progress schedule updates in keeping with general requirements.

Reduction in Payment: Owner may refuse to make the whole or any part of any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any previous payment, to the extent that is reasonably necessary to protect Owner from loss because:

- Claims have been made against Owner on account of DB Entity's performance or furnishing of the Work; or
- Liens have been filed in connection with the Work, except where DB Entity has delivered a specific Bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
- There are other items entitling Owner to a set off against the amount for which application is made; or
- Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraph 14.02.A or if DB Entity is otherwise in breach.

If Owner refuses to make payment of the full amount requested by DB Entity, Owner must give DB Entity immediate written notice stating the reasons for such action and promptly pay DB Entity any amount remaining after deduction of the amount withheld. Owner shall promptly pay DB Entity the amount withheld or any adjustment thereto agreed to when DB Entity remedies the reason for such action.

13.04 *DB Entity's Warranty of Title*

DB Entity warrants and guarantees that title to all Construction, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

13.05 *Substantial Completion*

When DB Entity considers the Work ready for its intended use DB Entity shall notify Owner in writing that the Work is substantially complete (except for items specifically listed by DB Entity as incomplete) and request that Owner issue a certificate of Substantial Completion. Promptly thereafter, Owner and DB Entity shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify DB Entity in writing giving the reasons therefor. If Owner considers the Work substantially complete, Owner will prepare and deliver to DB Entity a certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a list of items to be completed or corrected before Final Acceptance ("Punch List"). Within five (5) working days after receipt of a proposed Punch List, Owner shall either (a) approve the Punch List or (b) request that certain amendments or modifications be made to the Punch List. The Parties shall meet and negotiate in good faith and shall promptly agree on and execute an amended Punch List to be completed by the Design-Builder before Final Completion is achieved. At the time of delivery of the certificate of Substantial Completion Owner will deliver to DB Entity a written determination as to division of responsibilities pending Final Acceptance between Owner and DB Entity with respect to security, operation, safety, protection of Construction, maintenance, heat, utilities, insurance and warranties and guarantees.

Owner will have the right to exclude DB Entity from the Site after the date of Substantial Completion, but Owner will allow DB Entity reasonable access to complete or correct items on the list of items to be completed.

13.06 *Partial Utilization*

Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Construction which (i) has specifically been identified in the Contract Documents, or (ii) Owner and DB Entity agree constitute a separately functioning and usable part of the Construction that can be used by Owner for its intended purpose without significant interference with DB Entity's performance of the remainder of the Construction, subject to the following:

- Owner at any time may request DB Entity in writing to permit Owner to use or occupy any such part of the Construction which Owner believes to be ready for its intended use and substantially complete. If DB Entity agrees that such part of the Work is substantially complete, DB Entity and Owner will follow the procedures of Paragraph 13.05 for that part of the Construction.
- DB Entity at any time may notify Owner in writing that DB Entity considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work.

Within a reasonable time after either such request, Owner and DB Entity shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify DB Entity in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of Paragraph 13.05 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

No use or occupancy of part of the Construction will be accomplished prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

13.07 *Final Inspection*

Upon written notice from DB Entity that the entire Work is complete, Owner will make a final inspection with DB Entity and will notify DB Entity in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. DB Entity shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

13.08 *Final Acceptance*

The following conditions shall constitute the conditions for Final Acceptance:

- All permits required under applicable Laws and/or Regulations and the Contract Documents to be obtained by DB Entity which are necessary for the continued routine operation of the Project shall be in full force and effect and certified copies of all such permits shall have been delivered to Owner.
- When DB Entity determines that it has met the conditions for Final Acceptance, it shall furnish Owner with a certified statement (in a form acceptable to Owner) evidencing that Final Acceptance has been met. If Owner is satisfied that the conditions for Final Acceptance set forth in Paragraph 13.08.A above have been achieved, it will, within twenty-one (21) days after receipt of DB Entity's certification, give written notice to DB Entity that it agrees that Final Acceptance has been achieved. Otherwise, Owner will indicate to DB Entity in writing the reasons that it disagrees that Final Acceptance has been achieved, in which case DB Entity shall make the necessary corrections and resubmit the certification.

13.09 *Final Payment*

Application for Payment.

After DB Entity has achieved Final Acceptance to the satisfaction of Owner and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, record documents (as provided in Paragraph 6.12) and other documents, DB Entity may make application for final payment following the procedure for progress payments.

The final Application for Payment shall be accompanied (unless previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of

insurance required by Paragraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to Owner) of all Liens arising out of or filed in connection with the Work.

In lieu of such releases or waivers of Liens specified in Paragraph 13.09.A.2 and as approved by Owner, DB Entity may furnish receipts or releases in full and an affidavit of DB Entity that: (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which Owner might in any way be responsible, or which in any way might result in liens or other burdens on Owner's property, have been paid, or otherwise satisfied. If any Design Subconsultant, Subcontractor or Supplier fails to furnish such a release or receipt in full, DB Entity may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

Final Payment: If Owner is satisfied that the Work has been completed and DB Entity's other obligations under the Contract Documents have been fulfilled, Owner will, within ten days after receipt of the final Application for Payment, give written notice to DB Entity that it is ready to process final payment. Otherwise, Owner will return the Application to DB Entity, indicating in writing the reasons for refusing to process final payment, in which case DB Entity shall make the necessary corrections and resubmit the Application.

Payment Becomes Due: Thirty days after the presentation to Owner of the acceptable Application for Payment and accompanying documentation, in appropriate form and substance and with Owner's notice of acceptability, the amount will become due and will be paid by Owner to DB Entity in compliance with the statutory requirements set forth in California Public Contract Code section 7107, and pursuant to Article 5 of the Agreement.

13.10 *Waiver of Claims*

The making and acceptance of final payment will constitute:

- A waiver of all claims by Owner against DB Entity, except claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 13.07, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from DB Entity's continuing obligations under the Contract Documents; and
- A waiver of all claims by DB Entity against Owner other than those previously made in writing and still unsettled.

ARTICLE 14 - SUSPENSION OF WORK AND TERMINATION

14.01 *Owner May Suspend Work*

At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to DB Entity which will fix the date on which Work will be resumed. DB Entity shall resume the Work on the date so fixed. DB Entity shall be allowed an adjustment in the Contract Price or an extension of the Contract Time(s), or both, directly attributable to any such suspension if DB Entity makes a Claim therefor as provided in Article 9.

14.02 *Owner May Terminate for Cause*

The occurrence of any one or more of the following events justifies termination for cause:

- DB Entity's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under Paragraph 2.04.A as adjusted from time to time pursuant to Paragraph 6.05).
- DB Entity's disregard of Laws or Regulations of any public body having jurisdiction.
- DB Entity's violation in any substantial way of provisions of the Contract Documents.
- Any act by DB Entity exposing Owner to liability to others for personal injury or property damage; or
- DB Entity becomes insolvent; files for federal bankruptcy protection; is adjudged a bankrupt; makes a general assignment for the benefit of creditors; or a receiver is appointed on account of DB Entity's insolvency.

If one or more of the events identified in Paragraph 14.02.A occur, Owner may, after giving DB Entity (and the surety, if any) seven days' written notice, terminate the services of DB Entity, take possession of any completed Drawings and Specifications prepared by or for DB Entity (subject to the indemnification provisions of Paragraph 3.05.A), exclude DB Entity from the Site, and take possession of the Work and of all DB Entity's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by DB Entity (without liability to DB Entity for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid DB Entity but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case DB Entity shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by Owner arising out of or resulting from completing the Work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) such excess will be paid to DB Entity. If such costs, losses and damages exceed such unpaid balance, DB Entity shall pay the difference to Owner. Such costs, losses and damages incurred by Owner will be incorporated in a Change Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed.

Notwithstanding Paragraph 14.02.B, DB Entity's services will not be terminated if DB Entity begins, within seven days of receipt of notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

Where DB Entity's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against DB Entity then existing or which may thereafter accrue. Any retention or payment of moneys due DB Entity by Owner will not release DB Entity from liability.

Notwithstanding the notice periods provided in this Paragraph 14.02, in the event of an emergency, Owner shall have the right to immediately, and without notice to DB Entity, take over and protect the Site by whatever means it deems appropriate. Owner will endeavor to provide DB Entity notice of such action within 24 hours after its occurrence.

In no event shall any delay in Completion arising prior to issuance of a notice of termination for cause through the time such condition or violation shall have ceased or been cured be excused, nor shall DB Entity be relieved of liability for Liquidated Damages relating thereto.

Upon termination, DB Entity shall provide Owner with all Work Product, whether or not such documents are final or draft documents.

14.03 *Owner May Terminate for Convenience*

Owner may, at any time, with or without reason, terminate this Agreement and compensate DB Entity only for the Work and Services rendered to the date of termination and all reasonable costs incurred by DB Entity as a result of such termination (including in the termination of subcontracts, vendor agreements and in demobilization), which cannot be mitigated or eliminated through commercially reasonable efforts by DB Entity. Written notice by Owner shall be sufficient to stop further performance of services by DB Entity. Notice shall be deemed given when received by the DB Entity or no later than three (3) Business Days after the day of mailing, whichever is sooner. In the event that Owner terminates this Agreement pursuant to this section, Owner shall compensate DB Entity for work completed to date.

In any such termination for the convenience of Owner, DB Entity shall be paid for work completed in accordance with the Contract Documents prior to receipt of the notice of termination, and for termination settlement costs that in Owner's sole discretion relate to commitments which had become firm prior to the termination. DB Entity shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination. DB Entity shall justify its claims as requested by Owner with thorough, accurate records and data.

Notwithstanding the provisions of Paragraphs 14.03.A and 14.04.B above, in the event that Owner elects to terminate this Contract under Section 8.5 of the Agreement as a result of the failure of the Parties to reach an agreement on the Contract Price Proposal, then the following shall apply:

Owner's termination will be effective upon DB Entity's receipt of notice from Owner, provided, however, that Owner may set the effective date of termination at a time up to thirty (30) days later than otherwise provided to allow DB Entity to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project documents in orderly files.

DB Entity's sole and exclusive relief for such termination shall be limited to the monies due under the Design-Build Agreement, and DB Entity shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

For the avoidance of doubt, upon terminating DB Entity, Owner shall have the right to use the Work Product to complete the Project, on a design-build, design-bid-build or any other basis, with any entity of its choosing.

14.04 *DB Entity May Suspend or Terminate for Cause*

If Owner fails to pay undisputed amounts owed to DB Entity within forty-five (45) days of the date such payment is due under the Agreement, DB Entity's remedies shall be as follows:

- DB Entity is entitled to suspend the Work within five (5) days of delivering a written notice to Owner that DB Entity will suspend the Work as a result of Owner's failure to pay undisputed amounts due. If DB Entity does suspend the Work and claims that the suspension has affected the cost or time of performance, it shall be entitled to proceed in accordance with the remedies set forth in Article 15.
- DB Entity is entitled to terminate this Agreement if a suspension for Owner's nonpayment continues for more than one hundred eighty (180) consecutive days. The termination shall become effective if, after such 180-day period, Owner fails to cure the nonpayment within twenty (20) days of its receipt of a notice from DB Entity that it intends to terminate the Agreement as a result of Owner's failure to pay undisputed amounts due. If DB Entity does terminate the Agreement, such termination shall be treated as if Owner had terminated the whole of the Work in accordance with Paragraph 14.03.A above.

If DB Entity elects to suspend the Work as a result of Owner's failure to act under the circumstances described in Section 8.6 of the Agreement, DB Entity shall provide Owner with ten (10) days advance written notice of its intent to suspend the Work. If Owner has not taken action under Section 8.5 of the Agreement within such 10-day period, and DB Entity does suspend the Work and claims that the suspension has affected the cost or time of performance, it shall be entitled to proceed in accordance with the remedies set forth in Article 15.

Other than as specifically set forth in Paragraphs 14.04.A and 14.04.B above, DB Entity shall have no rights to suspend or terminate this Agreement for any reason, and shall be obligated to continue performing in a diligent manner and without delay.

ARTICLE 15 - CLAIMS AND DISPUTE RESOLUTION

15.01 *General*

Claims and disputes under the Contract include disagreements, claims, counterclaims, matters in question, and differences of opinion between Owner and DB Entity, regarding the Work and modifications or changes to the Work. Disputes may involve interpretation of Contract Documents, acceptability of the Work, costs and/or time for performance.

The procedures specified herein shall be the sole and exclusive procedures for the resolution of disputes between Owner and DB Entity arising out of or relating to this Contract. The Parties will participate in good faith in the procedures specified in this Article 15.

All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this Article 15 are pending. The Parties will take such action, if any, required to effectuate such tolling.

In the event any dispute occurs under this Contract which cannot be readily resolved, it shall be referred to the appropriate executives of Owner and DB Entity for negotiation and resolution as described below.

In the event of a dispute between the parties described in this Article, pending resolution of the dispute(s), DB Entity agrees to and shall continue the Work diligently to completion conditioned only on Owner's payment of undisputed amounts. If the dispute is not resolved, DB Entity agrees it will not stop, delay, or hinder progress of the Work, but shall continue the Work diligently to completion conditioned only on Owner's payment of undisputed amounts.

15.02 *Notice*

Notice: Written notice stating the general nature of each claim, dispute, or other matter shall be delivered by DB Entity to Owner immediately, but in no event later than ten (10) days after the start of the event giving rise thereto. Notice of the amount or extent of the claim, dispute, or other matter with supporting data shall be delivered to Owner within thirty (30) days after the start of such event (unless Owner allows additional time for DB Entity to submit additional or more accurate data in support of such claim, dispute, or other matter.) A claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 11.01. A claim for an adjustment in Contract Time(s) shall be prepared in accordance with the provisions of Paragraph 11.02. Each claim shall be accompanied by DB Entity's written statement that the adjustment claimed is the entire adjustment to which DB Entity believes it is entitled as a result of said event. In its claim DB Entity must provide justification for each line item of DB Entity's claim including but not limited to specifying the section of the terms and conditions which provides an entitlement to the claim.

Owner's decision: Owner will render a formal decision in writing within sixty (60) days after receipt of the last submittal of DB Entity, if any. Owner's written decision on such claim, dispute, or other matter will be final and binding upon Owner and DB Entity unless an appeal from Owner's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in this Article 15. Owner may issue unilateral change orders as referenced in Paragraph 9.04.A.3.

15.03 *Meet and Confer*

If the claimant disputes the Owner's written response, or the Owner fails to respond within the time prescribed, the claimant may so notify the Owner, in writing, either within 15 days of receipt of the Owner's response or within 15 days of the Owner's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the Owner shall schedule a meet and confer conference within 30 days for settlement of the dispute.

Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

15.04 *Litigation*

The parties hereto agree that all actions or proceedings arising in connection with this agreement shall be tried and litigated exclusively in the state and federal courts of competent jurisdiction located in the County of San Mateo, State of California or in the Federal District Court in the Northern District of California. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this agreement in any jurisdiction other than that specified in this paragraph. DB Entity agrees to waive any objections to venue or jurisdiction in the County of San Mateo, State of California or in the Federal District Court in the Northern District of California, for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this agreement.

15.05 *Auditing of Claims*

All claims filed by DB Entity shall be subject to audit at any time following the filing of the claim whether or not such claim is the subject of litigation. The audit and review of records may be performed by Owner or its consultants. Such right of audit shall include the records of DB Entity and its Design Sub-consultants, Subcontractors and Suppliers. The audit may begin on 10 days' notice to DB Entity, Design Sub-consultants, Subcontractors, or Suppliers. DB Entity, Design Sub-consultants, Subcontractors and Suppliers shall be required to cooperate with the auditors and provide such information and records as are necessary for analysis of the claim.

15.06 *Costs for Dispute Resolution*

Each party will bear its own costs, including but not limited to attorney's fees, incurred as a result of any claim process and dispute resolution process contained in this Article 15. Notwithstanding the above, Owner shall have the right to recover its costs, including attorney's fees, to the extent that these General Conditions provides Owner with such right.

ARTICLE 16 - MISCELLANEOUS

16.01 *Giving Notice*

All notices, demands, or other communications to DB Entity under this Contract shall be in writing and shall be deemed received if sent by certified mail, return receipt requested.

All notices to Owner under this Contract shall be in writing. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if (i) given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required,; (ii) sent by overnight delivery service, or facsimile transmission; or (iii) sent via email return receipt required, addressed as follows:

District

West Bay Sanitary District
500 Laurel Street
Menlo Park, CA 94025
ATTN: District Manager

DB Entity
[insert]

Any notice personally given or sent by facsimile or email transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

All correspondence to Owner under this Contract shall reference Owner's Contract Number.

16.02 Computation of Times

When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

16.03 Cumulative Remedies

The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by:

- Laws or Regulations; or
- any special warranty or guarantee; or
- other provisions of the Contract Documents.

The provisions of Paragraph 16.03.A will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

16.04 Survival of Obligations

All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive Final Acceptance, final payment, and termination or completion of the Contract.

16.05 Controlling Law

The laws of the state of California shall govern all aspects of this Contract.

16.06 Truth-In-Negotiation

DB Entity warrants that all bid line items are true, complete and accurate and include all costs, overhead, profit and all other amounts associated with such items and may be relied upon by Owner

when making additions or deductions to the Contract Price. DB Entity further warrants that all cost and pricing data provided to Owner during the term of the contract shall be complete, accurate and current when provided. Should there be any changes in the cost and pricing data previously submitted, DB Entity shall notify and provide the new information to Owner immediately. Owner shall be entitled to issue an appropriate change order to adjust the Contract Price and Contract Time(s) based on correcting inaccurate or incomplete information provided by DB Entity.

Despite any provisions in the Contract Documents to the contrary, any amounts paid by Owner to DB Entity in excess of that to which it is entitled under the Contract Documents shall be reimbursed by DB Entity to Owner. The making of final payment to DB Entity shall not be a waiver of Owner's right to reimbursement from DB Entity nor shall it discharge DB Entity's obligation to refund the overpayment. The terms of this Paragraph B shall survive Owner's making final payment.

DB Entity shall insert a provision containing all the requirements of this Paragraph 16.06 in all contracts between DB Entity and all DB-Related Entities, altering the section only as necessary to identify properly the contracting parties.

16.07 Notice to Other Agencies

DB Entity shall notify all public and private entities or agencies in accordance with any and all ordinances, laws, agreements, licenses, and any other directions of construction activity, disruption of access or services. Owner shall not be responsible for any such notification.

16.08 No Conflict with Laws Or Regulations

The duties, obligations, criteria or procedure imposed by these General Conditions and the rights and remedies made available are in addition to, and are not to be construed in any way as a limitation of any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, except that in the event that a specific part or detailed requirement of a provision, criterion or procedure in these General Conditions and a specific part or detailed requirement of a provision, criterion or procedure imposed or available by Laws or Regulations are in conflict the specific part or detailed requirement of Laws and Regulations shall govern. All other specific parts or detailed requirements in the provisions, criteria or procedures of the applicable Laws or Regulations and these General Conditions not in conflict shall remain in full force and effect and be read with the controlling specific part or detailed requirement.

16.09 Advertising

No advertising shall be permitted upon any part of the Site or structures located on the Site. News or press releases pertaining to the services, work product(s), or performance of DB Entity under this Contract or the Project to which it relates shall be at the sole discretion of Owner.

16.10 Non-Solicitation

DB Entity shall not directly or indirectly, or through any other person, agency, company or organization solicit employees of Owner to undertake employment with it, its parent company, or any subsidiary company or any affiliated company during the performance of this Contract and for a period of one (1) year thereafter (the "non-solicitation period"). DB Entity acknowledges that actual or

threatened violations of this Paragraph may give rise to irreparable injury to Owner, inadequately compensable in damages and, therefore, Owner may seek and obtain injunctive relief against the breach or threatened breach of DB Entity's obligations and undertakings thereunder, in addition to any other legal remedies which may be available. This Paragraph 16.10 will survive the termination of this Agreement. Violation of this Paragraph 16.10 during the non-solicitation period will be deemed a material breach of contract.

16.11 *Records*

DB Entity shall maintain records and Owner shall have inspection and audit rights as follows:

Maintenance of Records: DB Entity shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this Contract including supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of five years from completing performance and receiving final payment under this Contract.

Examination of Records: Owner or its designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this Contract. Such examination may be made only within five (5) years from the date of final payment under this Contract and upon reasonable notice, time and place. Records which relate to any litigation, appeals or settlements of claims arising from performance under this Contract shall be made available until a final disposition has been made of such litigation, appeals or claims.

Cost and Pricing Data: DB Entity, by executing this Contract, certifies to truth in negotiation, specifically, that wage rates and other factual unit costs supporting the consideration are accurate, complete, and current at the time of contracting. DB Entity agrees that Owner may adjust the consideration for this Contract to exclude any significant sums by which the consideration was increased due to inaccurate, incomplete, or non-current wage rates and other actual unit costs. Owner shall make any such adjustment within one (1) year following the termination of this Contract.

Applicability to Authorized Agents: In the event that any of the Work is delegated by DB Entity, DB Entity hereby agrees to include in any such Contract a provision requiring such counterparty to agree to the same requirement for records retention, inspection and audit rights as set forth in this Paragraph 16.11.

Pursuant to California Statutes any part of the Work which include building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, water treatment facility, or other structure, must be maintained in a confidential manner and secured by DB Entity and parties associated with projects assigned under the Contract. Review by any unauthorized provider or outside/third party not performing work necessary for the assigned work order is prohibited. This Paragraph shall survive the expiration or termination of this Contract.

DB Entity and parties associated with projects assigned under the Contract shall complete, comply with and furnish to Owner a signed copy of a plan and specification request form, prior to obtaining such documents for bidding purposes.

16.12 *Public Access*

DB Entity shall allow public access to all Project documents and materials in accordance with the provisions of California Government Code Section 6250 et seq. Should DB Entity assert any exemptions to the requirements of California Government Code Section 6250 et seq. and related statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon DB Entity.

16.13 *Standards of Compliance*

DB Entity hereby assures that no person shall be excluded on the grounds of race, color, creed, national origin, handicap, age, or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under this Contract. DB Entity shall take all measures necessary to effectuate these assurances.

DB Entity warrants that it has not employed or retained any person, other than a bona fide employee working solely for DB Entity, to solicit or secure this Contract. Further, DB Entity warrants that it has not paid or agreed to pay any person, other than a bona fide employee working solely for DB Entity, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the awarding or making of this Contract. For breach of this provision, Owner may terminate this Contract without liability and, at its discretion, deduct or otherwise recover the full amount of such fee, commission, percentage, gift, or other consideration.

16.14 *DB Entity is an Independent Contractor*

DB Entity shall be considered an independent contractor and neither party shall be considered an employee or agent of the other party. Nothing in this Contract shall be interpreted to establish any relationship other than that of independent contractor between the parties and their respective employees, agents, subcontractors, or assigns during or after the performance on this Contract. Both parties are free to enter into contracts with other parties for similar services. Owner shall not pay DB Entity staff any direct remuneration, expense reimbursement or compensation of any kind and DB Entity's staff shall not be eligible for any benefit programs Owner offers to its employees. All benefits available to DB Entity's staff shall be exclusively provided by DB Entity. DB Entity shall provide all billing, collection, payroll services and tax withholding, among other things, for all DB Entity staff performing services under this Contract.

16.15 *No Right to Assign*

DB Entity shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this Contract without the prior written consent of Owner. Any attempted assignment in violation of this Paragraph shall be null and void.

16.16 *No Right to Pledge*

DB Entity shall not pledge Owner's credit or make Owner a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

16.17 *No Right to Employment Benefits*

DB Entity expressly understands and agrees that DB Entity, its officers, agents, and employees, are not entitled to any employment benefits from Owner. DB Entity expressly and voluntarily waives and agrees not to make any claim to participate in any of Owner's employee benefits or benefit plans should DB Entity or any of its officers, agents, or employees be adjudicated for any reason to be an employee of Owner.

16.18 *Void or Unenforceable Provisions Entire Agreement*

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and DB Entity, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

16.19 *Counterparts*

This Agreement and all amendments to it may be executed in counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one document binding all the Parties hereto.

16.20 *Nondiscrimination*

DB Entity and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employee because of gender, sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability, mental disability, medical condition, age, marital status, and denial of medical and family care leave or pregnancy disability leave. DB Entity and its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act and associated regulations.

16.21 *Entire Agreement*

The Contract Documents states the entire understanding between the parties and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. DB Entity recognizes that any representations, statements or negotiations made by Owner staff or Owner consultants do not suffice to legally bind Owner in a contractual relationship unless they have been reduced to writing, approved, and signed by an authorized Owner representative. This Contract shall, as of the Effective Date of the Agreement, bind the parties, their assigns, and successors in interest.

END OF DOCUMENT

EXHIBIT 4

PREVAILING WAGE CERTIFICATION

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours' notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project.

Date: _____

Name of DB Entity: _____

Signature: _____

Print Name: _____

Title: _____

EXHIBIT 5

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

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

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

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

Date: _____

Name of DB Entity: _____

Signature: _____

Print Name: _____

Title: _____

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

EXHIBIT 6

ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION

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

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

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

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

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

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

Date: _____

Name of DB Entity: _____

Signature: _____

Print Name: _____

Title: _____

EXHIBIT 7

PERFORMANCE BOND WEST BAY SANITARY DISTRICT

KNOW ALL PERSONS BY THESE PRESENTS:

That _____, as Principal, hereinafter called Contractor, and _____, as Surety of Sureties, hereinafter called "Surety," are held firmly bound unto the West Bay Sanitary District, as Obligee, hereinafter called "District," in the sum of _____ (\$_____), for which payment Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, a certain written Agreement, dated _____, 2017, was made and executed by and between the District, as Owner, and the Contractor, which agreement is hereinafter called the Contract and is by reference made a part hereof.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Contractor shall well and faithfully keep and perform *all* the covenants and agreements of Contract, and all alterations, modifications and extensions thereof, by the Contractor to be kept and performed, and shall fully complete all of the work described in the Contract, and all alterations, modifications and extensions thereof, and shall save and hold harmless the District from any and all loss of damage arising out of the failure of the Contractor and/or any and all subcontractors, to fulfill the Contract, and all alterations, modifications and extensions thereof, and shall fully reimburse and pay to the District all outlay and costs which the District may incur in making good any default of the Contractor and/or subcontractors, and in replacing and/or making good any defective material or faulty material or workmanship in the work of the Contractor and/or any and all subcontractors, which may be discovered within one (1) year subsequent to the completion and acceptance of the work provided for in the Contract, then the above obligation shall be void; otherwise, it shall be and remain in full force and effect.

It is expressly covenanted and agreed by and between the Contractor and the Surety that the liability of the Contractor and the Surety shall at all times, and under all circumstances, be co- extensive, and that the Surety shall not be discharged, released or exonerated from liability under this bond, in whole or in part, by an alteration and/or modification of the Contract, whether notice thereof is given the Surety or not, and that the Surety shall be bound thereby, and also bound by any departure or deviation on the part of the District from the terms of the Contract.

It is further expressly covenanted and agreed that in the event that more than one Surety is obligated hereunder, then, in that event, the co-Sureties, bind themselves in the above stated sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of them, and for all other purposes each Surety binds itself, jointly and severally with the Contractors for the payment of such above stated sum only to the extent of the amount set forth opposite the Surety's name

in Appendix A to this bond, which Appendix A is attached hereto and by this reference made a part hereof.

No change or alteration or modification of the Contract or of the work required thereunder shall release or exonerate any Surety or Sureties on the bond.

This bond shall remain in full force and effect notwithstanding that the Contract or any applicable law or statute of the State of California shall be held to be invalid.

IN WITNESS WHEREOF, the Contractor and the Surety or Sureties have hereunto signed their names this _____ day of _____, 2017.

Contractor

Signature

Surety

Attorney-in-Fact

EXHIBIT 8

LABOR AND MATERIALS PAYMENT BOND WEST BAY SANITARY DISTRICT

KNOW ALL PERSONS BY THESE PRESENTS:

That _____, as Principal, hereinafter called "Contractor," and _____, as Surety, hereinafter called "Surety," are held and firmly bound unto the West Bay Sanitary District as Obligee, hereinafter called District, for the use and benefit of all persons and laborers of every class performing any work or labor upon or bestowing skill or other necessary services or furnishing materials, provisions, provender or other supplies to be used or consumed in, or furnishing equipment or power contributing to the work described in the agreement hereinafter mentioned, or in any alteration, modification or extension thereof, which persons and laborers are hereinafter called Claimants, in the amount of _____ (\$ _____), for which payment, well and truly to be made, Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, a certain written agreement hereinafter called the "Contract," dated _____, 2017, was made and executed by and between the District, as Owner, and the Contractor, which agreement is hereinafter called the Contract and is by reference made a part hereof.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Contractor shall promptly make payment to all Claimants for all labor and material used or reasonably required for use in the performance of the Contract, or any alteration, modification or extension thereof, whether the Contract, or any alteration, modification or extension thereof, is determined to be void, voidable or otherwise, or for any amount due under the Unemployment Insurance Act of the State of California with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the California Franchise Tax Board from the wages of employees of the Contractor and/or any and all subcontractors pursuant to California Revenue and Taxation Code Section 18806 with respect to such work or labor, then this obligation shall be void; otherwise, it shall be and remain in full force and effect.

The Contractor and Surety hereby jointly and severally agree with the District that every Claimant who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last said Claimant's work or labor was done or performed or materials were furnished by such Claimant, may sue on this bond for the use of such Claimant, prosecute the suit to final judgment for such sum or sums as may be justly due Claimant, and have execution thereon. The District shall not be liable for payment of any costs or expenses of any such suit. No suit or action shall be commenced hereunder by any Claimant:

(a) Unless Claimant, other than a Claimant having a direct contract with the Contractor, shall have given written notice to any two of the following: The Contractor, the District or the Surety, within ninety (90) days after such Claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered or certified mail, postage prepaid in an envelope addressed to the Contractor, District, or Surety, at any place where its office is regularly maintained for the transaction of business, or by personal service.

(b) After the expiration of seven months from the date of recordation of a Notice of Completion or Notice of Cessation if such notice is recorded pursuant to Civil Code Sections 3092 or 3093; or, if no such Notice of Completion or Notice of Cessation is recorded, after nine months from the date of completion or cessation of the work.

The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith herewith, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claims for the amount of such lien be presented under and against this bond.

It is further expressly covenanted and agreed that in the event that more than one Surety is obligated hereunder, then, in that event, the co-Sureties bind themselves in the above stated sum only to the extent of the amount set forth opposite each Surety's name in Appendix A to this bond, which Appendix A is attached hereto and by this reference made a part hereof.

IN WITNESS WHEREOF, the Contractor and the Surety and/or Sureties have hereunto signed their names this _____ day of _____, 2017.

Contractor

Signature

Surety

Attorney-in-Fact

EXHIBIT 9

INSURANCE REQUIREMENTS

As part of the consideration of this Agreement, Contractor agrees to purchase and maintain at its sole cost and expense during the life of the construction of the Project, and for five (5) years thereafter, insurance coverage against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

- A. **Commercial General Liability (CGL)**: Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations with limits of no less than Five Million Dollars (\$5,000,000) per occurrence for bodily injury, personal injury and property damage. If a general aggregate limit applies, either the aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit.
- B. **Automobile Liability**: Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits of no less than Five Million Dollars (\$5,000,000) per accident for bodily injury and property damage.
- C. **Workers' Compensation**: In accordance with the provisions of the California Labor Code, Contractor is required to be insured against liability for Workers' Compensation or to undertake self-insurance. Statutory Workers' Compensation and Employers' Liability of at least \$1,000,000 shall cover all Contractor's staff while performing any work incidental to the performance of this agreement.

Contractor is required to be insured for coverage for benefits under the United States Longshoremen's and Harbor Workers' Compensation Act, and/or the Jones Act, for any work on, over, or near any navigable waters.
- D. **Contractor's Pollution Legal Liability**: Contractor's Pollution Legal Liability with limits no less than One Million Dollars (\$1,000,000) per occurrence or claim, and Two Million Dollars (\$2,000,000) policy aggregate.
- E. **Builder's Risk** (Course of Construction) insurance utilizing an “All Risk” (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.
- F. **Professional Liability**: Professional Liability (Errors and Omission) Insurance appropriate to the Consultant's profession, with limit no less than One Million Dollars (\$1,000,000) per occurrence or claim and Two Million Dollars (\$2,000,000) aggregate to cover all services rendered by the Consultant pursuant to this Agreement.

If the Contractor maintains higher coverage limits than the amounts shown above, then the District requires and shall be entitled to coverage for the higher coverage limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.

OTHER INSURANCE PROVISIONS

Each insurance policy shall contain, or be endorsed to contain, the following five (5) provisions:

1) *Additional Insured Status*

The West Bay Sanitary District, SHGCC, and their respective officers, employees, and agents (collectively the “Additional Insured”), shall be covered as additional insureds on the Commercial General Liability and the Automobile Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. Additional Insured coverage shall be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as Insurance Services Office Form CG 20 10 11 85). A copy of the endorsement evidencing that the Additional Insured have been added as an additional insured on the policy, must be attached to the certificate of insurance.

2) *Subcontractors*

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that the District is an additional insured on insurance required from subcontractors. For Commercial General Liability coverage subcontractors shall provide coverage with a format at least as broad as Insurance Services Office form CG 20 38 04 13.

3) *Notice of Cancellation*

A provision that coverage will not be cancelled or subject to reduction without written notice given to the West Bay Sanitary District, 500 Laurel Street, Menlo Park, CA 94025, Attn. District Manager.

4) *Primary Coverage*

For any claims related to this contract, the Contractor’s insurance coverage shall be primary insurance as respects the Additional Insured. Any insurance or self-insurance maintained by the Additional Insured shall be excess of the Contractor’s insurance and shall not contribute with it.

5) *Waiver of Subrogation*

Contractor hereby agrees to waive rights of 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 affect this waiver of subrogation. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of the District for all work performed by the Contractor, its employees, agents and subcontractors.

ACCEPTABILITY OF INSURERS

All insurance coverage shall be placed with insurers that have a current rating from AM Best of no less than A: VII; and are admitted insurance companies in the State of California. All other insurers require prior approval of the District.

COVERAGE LIMITS SPECIFICATIONS

Approval of the insurance by District or acceptance of the certificate of insurance by District shall not relieve or decrease the extent to which the Contractor may be held responsible for payment of damages resulting from Contractor's services or operation pursuant to this Agreement, nor shall it be deemed a waiver of District's rights to insurance coverage hereunder.

If, for any reason, Contractor fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. District, at its sole option, may terminate this Agreement and obtain damages from the Contractor resulting from said breach. Alternately, District may purchase such required insurance coverage, and without further notice to Contractor, District may deduct from sums due to Contractor any premium costs advanced by District for such insurance.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either: the Contractor shall cause the insurer to reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the District guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

EVIDENCE OF COVERAGE

Contractor must provide evidence that it has secured the required insurance coverage before execution of this agreement. A Certificate of Insurance supplied by the District or the appropriate ACORD and Insurance Services Office forms evidencing the above shall be completed by Contractor's insurer or its agent and submitted to the District prior to execution of this Agreement by the District.

Contractor shall furnish the District with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the District before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

EXHIBIT 10

ADDITIONAL FORMS