

# GOVERNANCE COMMITTEE FOR THE MONTEREY PENINSULA WATER SUPPLY PROJECT

California American Water • Monterey County Board of Supervisors  
Monterey Peninsula Regional Water Authority • Monterey Peninsula Water Management District

This meeting has been noticed according to the Brown Act rules. This agenda was posted on September 11, 2015.

## **Governance Committee Members:**

*California American  
Water*

*Robert MacLean  
Alt. – Rich Svindland*

*Monterey Peninsula  
Regional Water Authority*

*Jason Burnett, Chair  
Alt. - Bill Kampe*

*County of Monterey*

*David Potter  
Alt. - Simon Salinas*

*Monterey Peninsula  
Water Management  
District*

*Robert S. Brower, Sr.  
Vice Chair  
Alt. – Jeanne Byrne*

## **Staff Contact:**

*David J. Stoldt, MPWMD  
Arlene Tavani, MPWMD*

## **AGENDA**

### **REGULAR MEETING**

### **Monterey Peninsula Water Supply Project Governance Committee**

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**Wednesday, September 16, 2015, 2 PM**

Monterey Peninsula Water Management District, Conference Room,  
5 Harris Court, Building G., Monterey, CA

#### **Call to Order/Roll Call**

#### **Pledge of Allegiance**

#### **Public Comments**

*Anyone wishing to address the Committee on matters not listed on the agenda that are within the subject jurisdiction of the Committee, may do so during Public Comments. The public may comment on any other items listed on the agenda at the time they are considered by the Committee. Please limit your comment to 3 (three) minutes.*

#### **Presentations – Public Comment will be Received**

1. Progress Report from California-American Water on the Monterey Peninsula  
Pg. 1 Water Supply Project Including Updates on Production from Test Slant Well;  
Desalination Project Design; and Design and Procurement of Conveyance  
Facilities

#### **Action Items – Public Comment will be Received**

2. Review California American Water Notification #9 – Draft Request for  
Pg. 3 Proposals (RFP) and Draft Construction Contract Monterey Peninsula Water  
Supply Project Source Water Slant Wells – Develop a Recommendation to  
California American Water Concerning the RFP and Contract
3. Adopt Minutes of August 26, 2015 Governance Committee Meeting  
Pg. 175

#### **Discussion Items – Public Comment will be Received**

4. Suggest Items to be Placed on Future Agendas

#### **Adjournment**

After staff reports have been distributed, if additional documents are produced by the Governance Committee and provided to a majority of the committee members regarding any item on the agenda, they will be available at the Monterey Peninsula Water Management District (MPWMD) office during normal

business hours, and posted on the Governance Committee website at <http://www.mpwmd.net/GovernanceCommittee/GovernanceCmte.htm>.

Documents distributed at the meeting will be made available in the same manner. Upon request, a reasonable effort will be made to provide written agenda materials in appropriate alternative formats, or disability-related modification or accommodation, including auxiliary aids or services, to enable individuals with disabilities to participate in public meetings. A reasonable effort will also be made to provide translation services upon request. Please submit a written request, including your name, mailing address, phone number and brief description of the requested materials and preferred alternative format or auxiliary aid or service by 5:00 PM on Monday, September 14, 2015. Requests should be sent to the Board Secretary, MPWMD, P.O. Box 85, Monterey, CA, 93942. You may also fax your request to the Administrative Services Division at 831-644-9560, or call 831-658-5600.

**Monterey Peninsula Water Supply Project Governance Committee**

**Meeting Date:** September 16, 2015

**Presentations**

**Agenda Item:** 1. **Progress Report from California-American Water on the Monterey Peninsula Water Supply Project Including Updates on Production from Test Slant Well; Desalination Project Design; and Design and Procurement of Conveyance Facilities**

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**Summary:** The progress report will be presented at the meeting by Ian Crooks, Engineering Manager for California American Water.

**Recommendation:** No action required.

**Exhibits:** None





## Monterey Peninsula Water Supply Project Governance Committee

**Meeting Date:** September 16, 2015

### Action Items

**Agenda Item:** 2. Review California American Water Notification #9 – Draft Request for Proposals (RFP) and Draft Construction Contract Monterey Peninsula Water Supply Project Source Water Slant Wells – Develop a Recommendation to California American Water Concerning the RFP and Contract

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**Summary:** Cal-Am intends to issue a request for proposals (“RFP”) for the procurement of one or more contracts, valued in excess of \$1 million, relating to the construction of the source water slant wells. According to the Agreement to Form the Monterey Peninsula Water Supply Project Governance Committee, Section V.D., Category B.1, the Governance Committee may review and make recommendations relating to the qualifications and selection criteria to be included in the RFP. Under Category C.2, the committee may review and issue recommendations concerning the contract terms contained in the draft construction contract.

Attached as **Exhibit 2-A** is California-American Water Company Notification (CAN) #9 submitted pursuant to the terms of the Governance Committee Agreement. Also attached as **Exhibit 2-B** is the Monterey Peninsula Water Supply Project Request for Proposals for the Construction of Source Water Slant Wells (includes draft construction contract). The related technical specifications, drawings, and geotechnical reports are available for viewing on the MPWSP website [www.watersupplyproject.org](http://www.watersupplyproject.org) under documents/procurement.

**Recommendation:** The committee should review CAN #9 and the associated documents and provide comments to Cal-Am on the RFP and contract. A written recommendation should be submitted to Cal-Am by September 21, 2015.

### Exhibits:

**2-A** California American Water Company Notification #9  
**2-B** Monterey Peninsula Water Supply Project Request for Proposals for the Construction of Source Water Slant Wells (includes draft construction contract)

**Additional attachments available for review on MPWSP website [www.watersupplyproject.org](http://www.watersupplyproject.org)**  
 MPWSP Subsurface Source Water Slant Wells, Design Documents, Supplemental General Conditions and Technical Specifications, September 3, 2015, including Appendices A through E and Drawings





**MONTEREY PENINSULA WATER SUPPLY PROJECT  
GOVERNANCE COMMITTEE**

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**CAL-AM NOTIFICATION # 9**

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**TO: Jason Burnett, Chair, MPWSP Governance Committee**  
**FROM: Ian Crooks, Engineering Manager, California American Water**  
**DATE: September 11, 2015**  
**RE: Cal-Am Notification # 9 – Draft Request for Proposals and Draft  
Construction Contract - MPWSP Source Water Slant Wells**

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This Cal-Am Notification is submitted to you pursuant to, and in compliance with, Section V.B. of the Agreement to Form the Monterey Peninsula Water Supply Project Governance Committee (the “Agreement”), dated March 8, 2013, as revised November 5, 2013, entered into by and among the Monterey Peninsula Regional Water Authority (“MPRWA”), the Monterey Peninsula Water Management District (“MPWMD”), the County of Monterey (“County”), and the California-American Water Company (“Cal-Am”). Capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

Cal-Am intends to issue a request for proposals (“RFP”) for the procurement of one or more Contracts, valued in excess of \$1 million, relating to the construction of the source water slant wells. Pursuant to Section V.D., Category B.1., of the Agreement, the Governance Committee may recommend qualifications and selection criteria to be included in the RFP for such Contract. Additionally, pursuant to Section V.D., Category C.2., of the Agreement, prior to Cal-Am’s commencement of negotiations with a selected contractor relating to a construction contract, the Governance Committee may review and issue recommendations concerning contract terms relating to such Contract.

Cal-Am has determined these matters are ripe for presentation to, and recommendation by, the Governance Committee. It is Cal-Am’s current intent to issue the RFP and draft construction contract described above on or about September 25, 2015. The Governance Committee may: (1) under Category B.1, review and make recommendations relating to the qualifications and selection criteria to be included in the RFP; and, (2) under

Category C.2, review and issue recommendations concerning the contract terms contained in the draft construction contract.

Pursuant to Section V.B. of the Agreement, the Governance Committee shall issue its recommendations, if any, to Cal-Am no later than September 21, 2015. The recommendations should be in writing and sent to Ian Crooks of Cal-Am at [ian.crooks@amwater.com](mailto:ian.crooks@amwater.com).

**MONTEREY PENINSULA WATER  
SUPPLY PROJECT**

**REQUEST FOR PROPOSALS**

**FOR THE**

**CONSTRUCTION OF SOURCE WATER SLANT WELLS**

Issue Date: September 25, 2015

Due Date: October 23, 2015



**CALIFORNIA  
AMERICAN WATER**

Pacific Grove, California

**Monterey Peninsula Water Supply Project  
Request for Proposals for the Construction of Source Water Slant Wells**

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Request for Proposals for the Construction of Source Water Slant Wells**

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**Monterey Peninsula Water Supply Project  
Request for Proposals for the Construction of Source Water Slant Wells**

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**ATTACHMENTS**

**A. PROPOSAL FORMS**

Proposal Form 1	Transmittal Letter
Proposal Form 2	Non-Collusion Affidavit
Proposal Form 3	Disclaimer Statement
Proposal Form 4	Key Personnel
Proposal Form 5	Proposal Manager
Proposal Form 6	Financial Capacity Data
Proposal Form 7	Surety Letter of Intent to Issue a Performance Bond
Proposal Form 8	Surety Letter of Intent to Issue a Payment Bond
Proposal Form 9	Insurance Letter of Intent
Proposal Form 10	Preliminary Project Schedule, Scheduled Construction Date, and Scheduled Acceptance Date
Proposal Form 11	Acceptance of the Contract
Proposal Form 12	Form of Proposal Bond
Proposal Form 13	Price Escalator Indices

**B. DRAFT CONSTRUCTION CONTRACT**

**C. BID SCHEDULES**



**Monterey Peninsula Water Supply Project  
Request for Proposals for the Construction of Source Water Slant Wells**

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**SECTION 1**

**INTRODUCTION**

**1.1. EXECUTIVE SUMMARY**

California-American Water Company (“CAW”) through this Request for Proposals (“RFP”) is soliciting sealed Proposals from respondents (“Proposers”) for a contract to construct certain source water slant wells (“Project”) associated with the Monterey Peninsula Water Supply Project (the “MPWSP”).

This Project is a central component of the MPWSP which is described in Section 2. The purpose of the MPWSP is to replace a significant portion of the existing water supply from the Carmel River, as directed by the State Water Resources Control Board (“SWRCB”). CAW is proposing a three-pronged approach to replace the water supply reductions ordered by the SWRCB. The three prongs consist of: (1) desalination, (2) groundwater replenishment (“GWR”), and (3) aquifer storage and recovery (“ASR”).

The Project consists of drilling, developing and outfitting source water slant wells (“Wells”). The Project excludes: (1) the related civil and electrical work to connect and power the Wells; and (2) the desalination plant and conveyance facilities.

CAW, the Monterey Peninsula Regional Water Authority, the Monterey Peninsula Water Management District, and the County of Monterey have formed an oversight committee (the “Governance Committee”) to ensure efficient and effective public input into the development and operation of the MPSWP. The Governance Committee was formed pursuant to an agreement of the Governance Committee members dated March 8, 2013 (the “Governance Committee Agreement”).

Additional information concerning the MPWSP history, the Project Site conditions, background technical and environmental documents, the Governance Committee Agreement, and public outreach are available on the MPWSP website at [www.watersupplyproject.org](http://www.watersupplyproject.org) (the “MPWSP Website”).

CAW expects to enter into one or more contracts for the Project (the “Contract(s)”) with the Proposer(s) that submit(s) the most advantageous Proposal(s) as determined by CAW with input from the Governance Committee.

This RFP provides background information for the Project, a description of the overall procurement process, the Proposal submission requirements, and the evaluation criteria that will be used to select a firm to perform the Contract. A draft Contract is included with this RFP. Unless otherwise defined in this RFP, all capitalized words, abbreviations and terms used herein shall have the meanings that will be set forth in the draft Contract.

**Monterey Peninsula Water Supply Project  
Request for Proposals for the Construction of Source Water Slant Wells**

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## **1.2. PROPOSAL**

**IN ORDER TO BE CONSIDERED RESPONSIVE TO THIS RFP, PROPOSERS SHALL PROVIDE ALL REQUESTED INFORMATION IN ACCORDANCE WITH THE REQUIREMENTS OF THIS RFP.**

CAW is soliciting a detailed Proposal with specific forms and textual requirements from the Proposers. Proposals shall comply with the submittal requirements for Proposals outlined in Section 4 of this RFP. Proposers shall provide adequate information with respect to its proposed construction management and construction methods in order to demonstrate that: (1) the Project can be completed within the Project schedule; (2) the Project will be constructed in accordance with the Contract; and (3) the completed Project will meet the standards for acceptance in accordance with the draft Contract.

Each firm interested in participating in the RFP process shall: (1) designate one individual as its Proposal Manager who will be responsible for all communications during the RFP process; (2) complete Proposal Form 5, Proposal Manager; and (3) submit the completed form in hard copy or electronic copy to Lori Girard and Ian Crooks at the following address:

CALIFORNIA AMERICAN WATER  
511 FOREST LODGE ROAD, SUITE 100  
PACIFIC GROVE, CA 93950  
Attn: Lori Girard, Corporate Counsel; Ian Crooks, Engineering Manager  
[lori.girard@amwater.com](mailto:lori.girard@amwater.com); [ian.crooks@amwater.com](mailto:ian.crooks@amwater.com)

If the form is submitted via email, please include the following reference in the subject line: "MPWSP Source Water Slant Wells RFP – Proposal Manager."

A firm's Proposal Manager shall be the single point of contact with CAW for questions, inquiries, clarifications, and correspondence (including addenda) during the entire RFP process. Any substitution of a firm's Proposal Manager during the RFP process shall be made in writing and submitted in accordance with the above requirements.

## **1.3. PROPOSAL SUBMITTAL**

Proposals shall be submitted and received by CAW, pursuant to Section 4 of this RFP, **NO LATER THAN 3:00 P.M., PACIFIC DAYLIGHT TIME ("PDT"), ON OCTOBER 23, 2015**. All Proposals shall be submitted in sealed packages and in accordance with the requirements of Section 4 of this RFP.

By submitting a Proposal, Proposers acknowledge and agree to the following conditions:

**Monterey Peninsula Water Supply Project  
Request for Proposals for the Construction of Source Water Slant Wells**

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- All Proposals submitted in response to this RFP will become the property of CAW and will be subject to disclosure as and to the extent provided in Section 3 of this RFP.
- CAW's selection of a Proposal shall not waive or limit any assumptions of risk, provision of indemnity, or other obligations of the Contractor under the Contract, as may be executed between a Proposer and CAW.
- Proposers shall comply with the communications protocol set forth in Section 3 of this RFP with respect to all communications concerning this RFP.
- Proposals shall comply with all requirements of Section 4 of this RFP. Failure to comply with Section 4 of this RFP may result in a Proposer being deemed unresponsive by CAW.
- The qualification of the Proposers to receive this RFP and provide a Proposal does not waive or abridge CAW's right to find that any Proposer or Proposal is non-responsive to the requirements of this RFP or to find that a Proposer is less qualified than another Proposer and have their evaluation scoring reflect such finding.
- After selection of a Proposal, the selected Proposer shall be required to execute the Contract following the conclusion of successful negotiations with the selected Proposer.

Draft as of 9/11/15  
Monterey Peninsula Water Supply Project  
Request for Proposals for the Construction of Source Water Slant Wells  
**SECTION 2**

**GENERAL INFORMATION**

**2.1. PURPOSE OF SOLICITATION**

CAW is soliciting Proposals to perform the construction work for the Project as required by the draft Contract. The construction work described in this paragraph is referred to herein as the “Work.”

CAW intends to select one or more qualified Proposer(s) that provides CAW the benefits discussed below and that best meets CAW’s objectives set forth in Section 2.2 of this RFP. CAW will select the most advantageous Proposal(s) by applying the evaluation criteria contained in Section 5 of this RFP to the Proposals.

CAW expects that any firm it contracts with will: (a) be efficient; (b) demonstrate that its construction management and construction methods are cost-effective; (c) have an optimal Project schedule; (d) provide a clear assignment of responsibilities through a single contracting entity (for each component of work); and (e) possess an exceptional safety record.

**2.2. MPWSP BACKGROUND AND OBJECTIVES**

CAW has served the Monterey Peninsula since it acquired properties from California Water & Telephone Company in 1966. CAW’s Monterey service area is located in the semi-arid central California coastal area that is currently entirely dependent on local rainfall for its water supply; imported water is not an available option. By reason of its geography and rainfall patterns, the area is prone to severe droughts. Wells located along the Carmel River that draw water from the Carmel River Aquifer are the primary source of water for CAW. An additional source of water for CAW is a network of eight wells located in the Seaside Basin, which CAW shares with a number of users and purveyors.

The CAW Monterey service area, also known as the Monterey County District, includes six incorporated cities, the Monterey Airport District, the unincorporated areas of Carmel Highlands, Carmel Valley, and Pebble Beach, and other unincorporated areas in Monterey County. The City of Marina, unincorporated Castroville, and other areas of unincorporated Monterey County lie north of the CAW service area. The MPWSP is needed to replace existing supplies that are constrained by recent legal decisions affecting the Carmel River and Seaside Groundwater Basin water resources: SWRCB Order No. WR 95-10 (“Order 95-10”) and the Monterey County Superior Court adjudication of water rights in the Seaside Groundwater Basin. Both rulings reduce CAW’s use of its two primary sources of supply for the Monterey County District and provide the most immediate impetus for the MPWSP. In addition, in October 2009, the SWRCB issued a Cease and Desist Order (“CDO”) claiming that CAW had not complied with Order 95-10, requiring CAW to terminate unauthorized diversions from the Carmel River, and that these diversions constitute a trespass of water. The CDO imposed a deadline of December 31, 2016, for CAW to reduce its diversion of water from the Carmel River by approximately 70%.

The MPWSP is the result of a multi-year planning effort that has considered several different proposed projects and various related documents. Since 1989, several options have been

proposed that proponents have hoped would meet the water supply needs of the Monterey Peninsula and address the impacts on the Carmel River underlying Order 95-10, as well as the Seaside Basin adjudication. The objectives that were considered during development of the MPWSP are as follows:

- Satisfy CAW's obligations to meet the requirements of Order 95-10;
- Diversify and create a reliable drought-proof water supply;
- Protect the Seaside Groundwater Basin for long-term reliability;
- Protect the local economy from the effects of an uncertain water supply;
- Minimize water rate increases by creating a diversified water supply portfolio;
- Minimize energy requirements and greenhouse gas emissions per unit of water delivered to the extent possible;
- Provide facilities that can accommodate sea level changes;
- Explore opportunities for regional partnerships; and
- Provide flexibility to incorporate alternative water supply sources, such as GWR.

CAW submitted an application to the California Public Utilities Commission ("CPUC") for the MPWSP in April 2012. As part of this application, an Environmental Impact Report ("EIR") will be prepared by the CPUC pursuant to the California Environmental Quality Act ("CEQA"). The EIR will analyze and assess the potential environmental impacts of the MPWSP. The MPWSP consists of several distinct components: a source water intake system consisting of slant wells; a 9.6 mgd desalination plant; a brine discharge system; water conveyance pipelines and storage facilities; and an ASR system. In addition, the Monterey Regional Water Pollution Control Agency ("PCA") is pursuing a 3,500 acre foot per year GWR project that if implemented will reduce the size of the MPWSP's desalination plant from 9.6 mgd to 6.4 mgd.

The CPUC, as the Lead Agency under CEQA, is actively working on the EIR and issued the Draft EIR ("DEIR") in April 2015, and plans to issue the Final EIR ("FEIR") once the public review period is completed. A final decision by the CPUC certifying the FEIR and approving the entire MPWSP is expected by Q4 2016. Following approval by the CPUC, CAW expects to obtain coastal development permits by Q2 2017. With the permitting approvals progressing and the CDO date approaching, CAW would like to have the Contractor(s) for the Project in place so as to begin preconstruction activities for the Project, which may include planning, resource development, permitting, and value engineering, as soon as possible.

## **2.3. PROJECT DESCRIPTION**

### **2.3.1 Generally**

The Contractor will be asked to provide all necessary construction, commissioning, start-up and testing services to bring the Project described in this section of this RFP on-line. The Contractor will be responsible for obtaining some of the permits necessary to begin construction of the Project which will be identified in the draft Contract. Permits that relate to the entire MPWSP, such as the Coastal Development Permit, will not be the responsibility of the Contractor; however, certain information from the Contractor will be required to assist CAW in obtaining other permits necessary to begin construction of the Project.

## Request for Proposals for the Construction of Source Water Slant Wells

**2.3.2 Project Components**

The Project, which is part of the Seawater Intake System described in the DEIR, will include up to ten subsurface Wells (up to eight active and two on standby) located at the coast that will draw seawater from beneath the ocean floor for use as source water for the MPWSP desalination plant. All Wells will be constructed in the active mining area of the CEMEX sand mining facility located in Marina, California. Proposers should be aware that a test slant well has been constructed and is operating as part of a pilot program. The test slant well may be converted into a production well as part of this Project. The location and orientation (azimuth) of each Well is designed to result in a minimum of pumping interference between Wells when the Seawater Intake System is operating. The Wells are to be constructed with an upper 18-inch stainless steel well casing and well screen and a lower 12-inch well stainless steel well casing and well screen. The Wells will be operated on a rotational schedule to ensure that the Well components are kept in an optimal operating condition.

**2.3.3 Other Non-Project MPWSP Components**

Simultaneously with the implementation of the Project, CAW will separately implement significant desalination infrastructure that is necessary for the MPWSP to operate commercially. These improvements include the related civil and electrical work to connect and power the Wells, as well as construction of the conveyance facilities and desalination plant. CAW anticipates that construction of many of these improvements will commence at approximately the same time when all permits are issued. The Project components are required to be completed prior to the time that the desalination plant will be ready for acceptance testing. An anticipated schedule for implementation of the MPWSP components is provided below:

	<u>Start</u>	<u>Finish</u>
<b>MPWSP PROJECT</b>	4/23/2012	4/30/2019
File Application with CPUC	4/23/2012	Complete
Permitting	4/23/2012	Q1-Q2 2017
Design	3/25/2013	Q3 2016 – Q1 2017
CPUC Approval	4/23/2012	Q4 2016
Coastal Commission Approval	4/23/2012	Q1-Q2 2017
Feedwater Test Slant Well	4/23/2012	Complete
Desalination Plant Procurement	2012	Complete
Conveyance Facilities Procurement	2015	Q4 2015
Source Water Slant Wells Procurement	Q3 2015	Q4 2015
Construction / Startup / Operation	Q2-Q3 2017	Q4 2018 – Q2 2019

## Request for Proposals for the Construction of Source Water Slant Wells

**2.4. AVAILABLE REPORTS AND MATERIALS**

Certain Project, Project Site-related, and relevant background information are available for review by the Proposers at the MPWSP Website. The following documents are (or will be) available for review on the MPWSP Website:

- Governance Committee Agreement
- MPWSP DEIR, April 2015
- Project procurement documents, drawings, specifications, and other material

**2.5. ACCURACY OF RFP AND RELATED DOCUMENTS; RELIANCE ON ORAL COMMENTS**

Except as specifically set forth in the draft Contract, CAW neither makes any representation or warranty with respect to nor assumes any responsibility for the appropriateness, completeness or the accuracy of this RFP or any of the related documents, addenda or information provided in connection with this RFP, including the available reports and materials provided on the MPWSP Website. Under no circumstances shall a Proposer to this RFP rely on verbal statements made on behalf of CAW or any of their respective agents, employees, contractors, advisors or consultants. To the best of its ability, CAW has tried to provide timely and up-to-date information; however, CAW cannot guarantee the accuracy or completeness of all data provided. Thus, Proposers are cautioned to use their best judgment in determining how to use the data and information provided, and whether or not further independent research and due diligence is required for the preparation of their Proposals and the subsequent delivery of the Work under the Contract. Except as specifically provided in the Contract, no information derived from any part of the foregoing documents, this RFP or from CAW or any of their respective agents, employees, contractors, advisors or consultants shall relieve the Contractor from any risk or from fulfilling all terms of the Contract.

**2.6. PROJECT SITE****2.6.1 Project Site Description**

The Project Site is located on CEMEX property in Marina, California. Refer to the MPWSP website and the draft Contract for additional details and information about the Project Site.

**2.6.2 Other Work at Project Site**

Other work related to the Project will be performed at the Project Site prior to and during construction of the Project. The related work and the corresponding responsibilities of CAW and the Contractor are described in the draft Contract.

**2.6.3 Project Site Access during the Proposal Period**

Upon request, CAW may provide an optional tour of the Project area to Proposers. If provided, CAW will send written notification of the meeting location and other logistical information

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following a request for tour. During the tour, Proposers may ask questions limited to those regarding the Project Site locations, and CAW may provide responses. All such questions will be recorded by CAW personnel, and any responses will be issued in writing in an addendum to all Proposers. Only official addenda issued by CAW are binding.

**2.7. SCOPE OF WORK**

The required scope of Work is set forth in detail in the draft Contract and is summarized in Section 2.3 and below.

**2.7.1 Basic Performance Requirements**

The Contract will require the Contractor to provide a quality assurance and quality control plan prior to beginning the construction of the Project and adhere to that plan during construction. In performing the Work, the Contractor shall comply with the Contract, which includes all requirements of applicable law.

**2.7.2 Environmental Compliance**

The Contractor will be required to conduct its construction activities consistent with the FEIR and such that no action or inaction on the part of the Contractor will result in non-compliance with any mitigation requirements or environmental and cultural constraints and stipulations included in permits, easements and other grants of access to property owned by federal and state governments and by private concerns. The Contractor will be required to prepare and implement strategies to mitigate impacts as required and otherwise comply with all applicable mitigation requirements. The DEIR was issued in April 2015 and certification of the FEIR is expected by Q4 2016. For purposes of preparing their Proposals, Proposers will be required to review the mitigations in the DEIR and submit proposals based on the applicable environmental mitigation measures set forth in the DEIR. The environmental mitigation measures contained in the FEIR for the MPWSP will, if needed, be incorporated into the Contract as a Change Order following issuance of the FEIR.

**2.7.3 Construction**

The Contractor will have full responsibility for construction of the Project, including safety of the Project Site and the Work and all means and methods of construction.

The Contractor will be required to be PICS certified prior to execution of the Contract with CAW. PICS is a third party safety program auditing firm that CAW uses to evaluate contractor safety programs. There is a fee associated with PICS membership that is the responsibility of the Contractor. To sign up or learn more, Proposers may visit the following web-site: <http://www.picsauditing.com/>. The Contractor will be required to perform all Work in compliance with the Contract, including all environmental and other stipulations, conditions and mitigation requirements set forth in the various requirements and permits, approvals and grants of rights to CAW property access and use. The Contractor will be required to provide for the observation of its Work by CAW and regulatory agencies. All Work will be required to conform to the requirements set forth in the draft Contract.



**Request for Proposals for the Construction of Source Water Slant Wells****2.7.4 Acceptance Testing**

The Contractor will be required to successfully complete acceptance testing of the Project as set forth in the draft Contract.

**2.7.5 Quality Management**

To help ensure that a comprehensive and effective construction quality management plan is implemented by the Contractor to achieve CAW objectives and that the contractual requirements pertaining to quality are met, certain minimum requirements for the construction quality control are set forth in the draft Contract. The Contractor must provide a construction quality management plan meeting the minimum requirements of the Contract prior to beginning construction.

**2.8. DRAFT CONTRACT****2.8.1 Purpose and Scope**

The scope of work described in this section is reflected in the draft Contract. The draft Contract shall serve as the intended form of the contract between CAW and the Contractor. Specific information from the selected Proposal(s) will be incorporated into the final Contract including, but not limited to, pricing and the Contract Times.

The Contract will contain the entire agreement between the parties with respect to the Work.

**2.8.2 Proposed Changes to the Draft Contract**

Proposers may request changes to the terms and conditions of the draft Contract (excluding technical specifications and drawings) in writing during the Proposal process. Proposers are encouraged to submit any such requests in advance of the pre-Proposal meeting as described in Section 3.1.1. Following the pre-Proposal meeting, CAW may issue an addendum which reflects any changes to the draft Contract that CAW is willing to accommodate.

CAW requests Proposers to base their Proposals on the terms and conditions set forth in the draft Contract as amended by any addendum. Acceptance of the terms and conditions of the draft Contract will be a factor in the evaluation of Proposals, as detailed under Section 5 of this RFP. CAW recognizes, however, that Proposals may be conditioned on the mutual resolution of particular issues.

To the extent that a Proposer intends to condition its Proposal on particular changes to the draft Contract, such changes shall be identified through submission of a markup version of the draft Contract in a Microsoft Word document using track changes. Proposers are cautioned that significant deviations from the terms and conditions set forth in the draft Contract may result in fewer or no points being awarded to the Proposer under the business terms and conditions evaluation criterion. In addition, to the extent that proposed changes to the terms and conditions substantially change the nature of the transaction or the scope of Work, CAW may reject the Proposal in its sole discretion as non-responsive to the requirements of this RFP.

In evaluating proposed terms and conditions, CAW will assume that the Proposer's markup includes all suggested changes and that the Proposer accepts all terms and conditions that are not specifically addressed in the tracked changes draft. Except with respect to changes in law occurring between the Proposal date and the effective date of the Contract, CAW does not intend to discuss or negotiate any issue, term or condition that is not specifically identified in the Proposer's markup. If the Proposer selected for negotiations raises any such issue, term or condition, CAW reserves the right to suspend or terminate negotiations with the selected Proposer and to commence negotiations with the next highest ranked Proposer. The process for the negotiation of the Contract is further described in Section 3.11 of this RFP.

## **2.9. UTILIZATION OF WOMEN, MINORITY, AND DISABLED VETERAN OWNED BUSINESS ENTERPRISES**

CAW has established a combined women, minority and disabled veteran owned business enterprises ("WMDVBE") non-mandatory participation goal for the Project of twenty-five percent (25%) of the Contract Price in accordance with CPUC General Order 156. In contribution to this goal, the Contractor must make a good faith effort to employ WMDVBE subcontractors for any subcontracted portion of the Work, and must report to CAW any WMDVBE utilization during the term of the Contract. If a Proposer believes that due to the nature of the Work and the specific skills and certifications required to perform the Work it cannot meet this goal, the Proposer should provide an explanation for its inability to do so in its Proposal.

## **2.10. UTILIZATION OF LOCAL CONTRACTORS AND SUPPLIERS**

CAW acknowledges the benefit that the local community receives through utilization of local contractors, laborers, and suppliers. In recognition of this benefit, the Contractor must make a good faith effort to employ qualified individuals who are, and have been for at least one year out of the three years prior to the opening of proposals, residents of Monterey County, San Benito County, or Santa Cruz County in sufficient numbers to achieve a goal of at least fifty percent of the Contractor's total construction work force, including any subcontractor work force (with the exception of specialty subcontractor items), measured in labor work hours, is comprised of residents of such counties. Prior to commencing Work, the Contractor must submit to CAW the anticipated local resources utilization percent and plan, and report performance of the plan to CAW during the term of the Contract. If a Proposer believes that due to the nature of the Work and the specific skills and certifications required to perform the Work it cannot meet this goal, the Proposer should provide an explanation for its inability to do so in its Proposal.

## **2.11. LABOR COMPLIANCE AND PREVAILING WAGE**

Proposers must comply with all applicable requirements of the California Labor Code, the Department of Fair Employment and Housing regulations set forth in CCR, title 2, sections 8101 *et seq.* Proposer Nondiscrimination and Compliance (2 CCR §§ *et seq.*), and with all applicable federal labor requirements.

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CAW has the responsibility for financing the Project. CAW anticipates that a portion of the funding will come from the State's revolving loan program. Prevailing wages must be paid on projects receiving such funding. Proposers, therefore, will be required to pay prevailing wages.

Pursuant to Section 1773 of the California Labor Code, the general prevailing wage rates in the county in which the construction is to be performed is determined by the Director of the California Department of Industrial Relations ("DIR"). The general prevailing wage rates for this Project are available from the DIR's website at <http://www.dir.ca.gov>, copies of which are on file at the offices of CAW and are available to any interested party upon request. Future effective general prevailing wage rates, which have been predetermined and are on file with the DIR, are referenced but not printed in the general prevailing wage rates.

The Project may be subject to a statutory requirement to adopt and enforce a labor compliance program for the monitoring and enforcement of prevailing wage requirements.

**2.12. EQUAL EMPLOYMENT OPPORTUNITY**

Proposers shall not, in connection with the RFP, the Proposal or the Contract, discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status or disability. Proposers shall take affirmative action to ensure that neither employees nor applicants for employment are discriminated against on the basis of race, color, religion, sex, national origin, age, marital status, ethnic group identification, sexual orientation, residence or disability. The areas requiring such affirmative action shall include, but not be limited to, the following: layoffs or terminations; pay rates or any other form of compensation; employment; job assignments; promotions; demotions; transfers; recruitment or recruitment advertising; and selection for training, including apprenticeships, pre-apprenticeships and on-the-job training.

**2.13. LICENSING REQUIREMENTS**

Proposers, including all major participants of a Proposer's team, shall possess all licenses applicable to the Project at the time of Proposal submittal. No Proposer may propose on work of a kind for which Proposer is not properly licensed, and any such proposal received will be rejected. The Proposal shall contain evidence that the Proposer, including all major participants, is properly licensed in accordance with the laws of the State of California. Subcontractors that are not major participants must be licensed no later than the time of execution of a subcontract with the Contractor. All joint ventures must have a joint venture license in compliance with Sections 7029 and 7029.1 of the California Business and Professions Code prior to execution of the Contract.

**2.14. EXAMINATION OF CONTRACT DOCUMENTS AND PROJECT SITE****2.14.1 Proposer's Responsibilities**

It is the responsibility of each Proposer before submitting a Proposal to:

1. Examine, with appropriate care and diligence, the RFP (including any addenda), and material posted on the MPWSP Website and inform itself with respect to any

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and all conditions that may in any way affect the amount or nature of its Proposal or the performance of the Work, if Proposer enters into the Contract with CAW. The Transmittal Letter (Proposal Form 1) includes an acknowledgment that Proposer has received and reviewed all materials posted thereon. Any failure of Proposer to so examine and inform itself shall be at Proposer's sole risk, and CAW will provide no relief for any error or omission thereto;

2. Become familiar with the Project Site and the general, local or other conditions that may affect cost, progress, performance or furnishing of the Work;
3. Become familiar with and satisfy all applicable law that may affect cost, progress, performance or furnishing of the Work; and
4. Promptly notify CAW of all conflicts, errors, ambiguities, or discrepancies that Proposer has discovered in the RFP.

**2.14.2 Site Visits**

Proposers may visit the Project Site as described in Section 2.6.3.

**2.15. SECURITY FOR PERFORMANCE**

The Contractor will be required to provide the following security for performance in connection with the Project: payment and performance bonds each in an amount equal to the Contract Price.

**2.16. PROPOSAL BOND**

Each Proposal shall include a cashier's check, certified check, or a bond (the "Proposal Bond") made payable to the "California-American Water Company," in an amount equal to at least ten percent (10%) of the proposed Contract Price. CAW will not consider any Proposal unless one of the forms of Proposer's security is enclosed therewith. If Proposer's security is a Proposal Bond, it must be executed using Proposal Form 12.

Each Proposal Bond will be retained until the Contract has been fully executed, after which the Proposal Bond for each unsuccessful Proposer, except those Proposal Bonds which have been forfeited, will be returned to the respective Proposers. The Proposal Bond for the successful Proposer shall be returned at such time as Proposer has satisfied all conditions of execution set forth in the Contract.

The Proposal Bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California, with a rating of A- or better and a Financial Size Category of VIII or better by A.M. Best Company.

Proposer understands and agrees that CAW shall have the right to draw on the Proposal Bond in its entirety if the Proposer:

1. withdraws, repudiates or otherwise indicates in writing that it will not meet all or any part of its commitments made in its Proposal;

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2. is selected for negotiation of the Contract, but fails to negotiate in good faith, or otherwise fails to meet the conditions of award and execution as set forth in this RFP; or
3. the occurrence of any other forfeiture event or condition set forth in the Proposal Bond.

Each Proposer, by submittal of its Proposal, shall be deemed to have agreed to the foregoing.

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**SECTION 3**

**DESCRIPTION OF PROCUREMENT PROCESS**

**3.1. PROCUREMENT PROCESS SCHEDULE**

A summary schedule of the major activities associated with this procurement process is presented below. This procurement schedule is based on CAW's intent to execute a Contract to be effective in early January of 2016.

<b>RFP Process</b>	<b>Date</b>
RFP and draft Contract issued to Pre-qualified Respondents	September 25, 2015
Mandatory RFP Pre-Proposal meeting	October 1, 2015
Written questions and comments on RFP and draft Contract due	October 8, 2015
CAW issues addendum to RFP, with revised draft Contract if any, and distributes answers to written questions	October 15, 2015
Project Proposals due	October 23, 2015
Selection of preferred Proposer(s)	November 13, 2015
Final draft Contract and all Proposals to Governance Committee for recommendation	December 8, 2015
Governance Committee meeting	December 16, 2015
Contract execution	Early January 2016

Proposers are encouraged, but not required, to submit written questions or comments on the RFP or draft Contract in advance of the pre-Proposal meeting with CAW in order to facilitate discussion. Where written comments or submittals are required, all such documents shall be submitted no later than 3:00 p.m. PDT on the day specified. CAW reserves the right to modify any or all of the above dates at its sole discretion at any time during this procurement process.

**3.1.1 Pre-Proposal Meeting**

As set forth in the schedule included in Section 3.1 above, CAW will hold a pre-Proposal meeting with all qualified Proposers. This meeting is intended to, among other things, allow Proposers to raise questions or comments on the RFP or draft Contract. Following the meeting, CAW will issue an addendum to reflect any changes to the RFP or draft Contract. Proposers are encouraged to submit information regarding any proposed changes at least three business days in advance of the meeting in order to maximize the value of the discussions at the meeting.

### 3.2. SELECTION COMMITTEE

The Selection Committee, which is comprised of individuals selected by CAW, will review and evaluate the Proposals submitted and select the most advantageous Proposer(s) based upon the criteria detailed in Section 5 of this RFP.

### 3.3. CAW RIGHTS AND OPTIONS

This RFP constitutes an invitation to submit Proposals for the Project to CAW. CAW reserves, holds without limitation and may exercise, in its sole discretion, the rights as set forth below. Such rights are in addition to and shall not serve to limit any of the specific rights and conditions set forth in this RFP. By responding to this RFP, Proposers acknowledge and consent to the following CAW rights:

1. CAW reserves the right to waive any defect, technicality or any other minor informality or irregularity in any Proposal.
2. CAW reserves the right to eliminate any Proposer that submits an incomplete or inadequate response, or is not responsive to the requirements of this RFP, or is otherwise deemed to be unqualified during any stage of the procurement process.
3. CAW reserves the right to prepare and issue such amendments and addenda to this RFP prior to the deadline for receipt of all Proposals, including any amendments or addenda that may expand or cancel any portion or all of the work described in this RFP.
4. CAW reserves the right to receive questions concerning this RFP from Proposers and to provide such questions, and CAW's responses, if any, to all Proposers.
5. CAW reserves the right to request clarifications of information submitted in the Proposals.
6. CAW reserves the right to modify or terminate the procurement process by written notice to the Proposers for any reason whatsoever.
7. CAW reserves the right to change or alter the schedule for any events associated with this procurement process upon notice to the Proposers, including, without limitation, the date for receipt of Proposals or any other deadlines and dates set forth in this RFP.
8. CAW reserves the right to issue subsequent RFPs.
9. CAW reserves the right to conduct investigations with respect to the experience of any team member included in a Proposal and to request additional evidence to support any such information.
10. CAW reserves the right to visit and examine any of the facilities referenced in the Proposals and to observe and investigate the operations of such facilities.

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11. CAW reserves the right to interview one or more of the Proposers, in CAW's sole discretion, in order to obtain clarification of information provided by the Proposer.
12. CAW reserves the right to amend the Work described in the draft Contract, at any time, to omit Work therein or to include Work not currently contemplated therein.
13. CAW reserves the right to determine the selected Proposer(s) with whom to negotiate the Contract.
14. CAW reserves the right to discontinue negotiations with the selected Proposer(s) and commence negotiations with the next ranked Proposer(s).
15. CAW reserves the right to enter into, or decline to enter into, the Contract with the selected Proposer(s) following negotiations.
16. CAW reserves the right, for any reason, to decide not to award a Contract as a result of this procurement process.
17. CAW reserves the right to decide on the most appropriate method for Project implementation, which may include discontinuation of this procurement process and development of the Project via another process elected by CAW.

**3.4. EXPENSE OF PROPOSAL PREPARATION**

CAW accepts no liability for the costs and expenses incurred by the Proposers in responding to this RFP, responding to clarification requests and attending discussion meetings, preparing any re-submittals, attending potential interviews and negotiations, and any other activities included as part of this procurement process. Each Proposer that enters into the procurement process shall prepare the required materials and submittals at its own expense and with the express understanding that it cannot make any claims whatsoever for reimbursement from CAW or from any of its employees, advisors or representatives for the costs and expenses associated with the process, including, but not limited to, costs of preparation of the Proposal, loss of anticipated profits, loss of opportunity or for any other loss, cost or expense.

**3.5. ADDENDA TO RFP**

During the period provided for the preparation of Proposals, CAW may issue addenda clarifying or modifying this RFP. Such addenda will be numbered consecutively and will be distributed to each Proposer's duly designated Proposal Manager. All RFP addenda will be issued by, or on behalf of, CAW and will constitute a part of this RFP. A list of addenda will be kept on the MPWSP Website. CAW recommends that prior to submitting its Proposal, a Proposer should contact the Procurement Contact (defined below) to verify the number and subject of the addenda that have been issued. The Proposer shall be responsible for obtaining all addenda prior to submitting a Proposal.



### 3.6. COMMUNICATIONS PROTOCOL

To ensure fairness during the procurement process, until the Contract is executed or all Proposals are rejected, Proposers and their employees, representatives and agents shall not contact any CAW employee (other than the Procurement Contact); any CAW representative, agent or subcontractor; any County of Monterey official, representative or staff member; any Monterey Peninsula Regional Water Authority official, representative, technical advisory committee member or staff member; or any Monterey Peninsula Water Management District official, representative or staff member on any matter relating to the Project, the MPWSP or this procurement process. Proposers, however, may contact, discuss with, or inquire of any permitting agency, including those identified above, about the Project or the MPWSP but only for the limited purpose and within the limited scope of obtaining information relating to the permitting requirements for the Project. Failure to adhere to these requirements may result in disqualification from the procurement process.

All formal questions regarding interpretations or clarification of the meaning of any part of this RFP or other documents provided by CAW shall be made in writing or by email to Lori Girard and Ian Crooks (the "Procurement Contact") at the following address:

CALIFORNIA AMERICAN WATER  
511 FOREST LODGE ROAD, SUITE 100  
PACIFIC GROVE, CA 93950  
Attn: Lori Girard, Corporate Counsel; Ian Crooks, Engineering Manager  
[lori.girard@amwater.com](mailto:lori.girard@amwater.com); [ian.crooks@amwater.com](mailto:ian.crooks@amwater.com)

The Proposers shall submit questions and requests for clarifications no later than 3:00 p.m. PDT on the date indicated in Section 3.1 of this RFP. All questions and clarification requests shall be in writing, and Proposers are encouraged to submit such questions and clarification requests in advance of the above deadline. Only answers issued by formal written addenda shall be binding upon CAW. Oral and other interpretations or clarifications shall not be binding and Proposers shall not rely on any such responses.

### 3.7. USE OF TECHNICAL INFORMATION

By submitting a Proposal, Proposers agree that regardless of whether CAW awards the Contract, CAW shall have the right to use (or permit the use of) all information submitted pursuant to this RFP, including the data, information, concepts and ideas contained therein, without any requirement of providing compensation to the Proposer, for all purposes associated with the continued development, implementation, or operation of the Project. Notwithstanding the foregoing, other than the use of data, information, concepts and ideas contained in the selected Proposer's Proposal for the Project, CAW agrees that any such use of Proposals by CAW without the applicable Proposer's consent shall be at the sole risk of CAW.

**Request for Proposals for the Construction of Conveyance Facilities****3.8. INFORMATION DISCLOSURE TO THIRD PARTIES**

Per section V(D) of the Governance Committee Agreement, at the appropriate time CAW will provide the Governance Committee a copy of all responsive Proposals received, except for any proprietary information provided by Proposers submitting responsive Proposals. This may be accomplished by posting the Proposals on the MPWSP Website. If a Proposer identifies proprietary information in its Proposal, CAW will use reasonable efforts to hold in confidence such proprietary information. Notwithstanding the foregoing, CAW will not be responsible or liable in any way for any losses that the Proposer may suffer from the disclosure of information or materials to third parties. Any proposed pricing shall not be considered proprietary information.

CAW will notify the Proposer of any requests under applicable law to disclose any information identified by a Proposer as proprietary. However, it is the responsibility of the Proposer, as the real party in interest, to defend its basis for exemption from disclosure of such information in accordance with applicable law.

**3.9. CAW RIGHT TO EXAMINE REFERENCE FACILITIES**

CAW may examine any of the facilities referenced in the Proposals. CAW strongly desires not to travel outside of the United States in order to examine a facility. Proposers should therefore identify creative ways for CAW to view facilities (e.g., by means of a video conference, video tape, etc.). The intent of such an examination would be, among other things, to observe and investigate the facility's ongoing quality with respect to operations and maintenance, to observe the quality of construction, to obtain the owner's perspective of how well the Proposer team worked with the owner throughout the project, to evaluate specific equipment or processes used in that project, and to determine whether there were problems encountered during start-up and acceptance of the selected facility.

**3.10. EVALUATION AND RANKING OF PROPOSALS**

The Selection Committee will evaluate the Proposals in the manner set forth in Section 5 of this RFP. The results of the evaluation will be a selection of the most advantageous Proposer.

The Selection Committee will: (i) review the Proposals; and (ii) rank the Proposals using the criteria detailed in Section 5 of this RFP.

The evaluation of the technical and financial qualifications shall be based on the Proposals received in compliance with this RFP and an analysis of other publicly available information with respect to the Proposers. CAW may conduct such investigations, interviews, and site visits as it deems necessary to assist in the evaluation of any Proposal, and to establish to CAW's satisfaction with the responsibility, qualifications, and financial ability of any Proposer.

**3.11. NEGOTIATION OF CONTRACT**

The Proposer(s) selected for negotiations shall be determined based upon the evaluation and ranking of the Proposals by the Selection Committee consistent with the requirements set forth in this RFP.

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Proposers are reminded that, pursuant to Section 2.8 of this RFP, acceptance of any suggestions included in the Proposer's mark-up of the draft Contract submitted by the Proposer is at CAW's sole discretion and that CAW does not intend to discuss or negotiate any issue, term or condition that is not specifically identified therein. At any time during the negotiation process, CAW may decide that it is in CAW's best interests to terminate negotiations with the selected Proposer(s). In such event, CAW may elect to commence negotiations with the next highest ranked Proposer(s), to terminate this procurement, or to re-solicit proposals under this, or a different, RFP. As shown on the schedule set forth in Section 3.1, CAW does not intend to have an extended period of negotiation.

Following the negotiation of the Contract(s) and review of the Contract(s) by the Governance Committee pursuant to the Governance Committee Agreement, CAW intends to execute the Contract(s).

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**SECTION 4**

**PROPOSAL REQUIREMENTS**

**4.1. OVERVIEW OF SUBMISSION REQUIREMENTS AND CRITERIA FOR PROPOSALS**

Proposers shall submit a fully developed Proposal in accordance with the instructions provided in this Section.

Proposals shall meet or exceed the construction requirements provided in the Contract.

Proposers shall provide the information requested in this RFP in accordance with the format and content requirements outlined in this Section. Failure of the Proposer to provide all of the requested information and to provide it in the requested format may result in CAW, in its sole discretion, determining that the Proposal is non-responsive to the requirements of this RFP.

**4.2. PROPOSAL FORMAT**

Each Proposal shall be spiral bound (or similar, such as 3-ring binders) and shall consist of four sections in accordance with the format outlined below. Narrative pages shall be 8-1/2 inches by 11 inches, printed single or double sided and typed with a minimum 11-point font (unless otherwise stated). Diagrams and figures may be printed on 11-inch by 17-inch paper. All descriptive text on diagrams and figures must be easily readable; 10-point font is acceptable as long as it is easily readable. Proposers shall incorporate graphics (*e.g.*, process flow diagrams and drawings) as necessary to clearly present their Proposals. A clear and concise presentation of information is encouraged within the size limitations established for the Proposal. Proposals shall be in the English language.

Failure of the Proposer to organize the information as required by this Section of this RFP may result in rejection of the Proposal by CAW, in its sole discretion, deeming the Proposal unresponsive to the requirements of the RFP. Proposers may reduce the repetition of identical information within the several sections of Proposals by making the appropriate cross-references to other sections of their Proposals and Proposal Forms.

The complete Proposal format requirements are outlined as follows:

**Section 1.0 Executive Summary**

- A. Proposal Form 1: Transmittal Letter
- B. Executive Summary
- C. Proposal Form 2: Non-Collusion Affidavit
- D. Proposal Form 3: Disclaimer Statement

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**Section 2.0 Project Team Information**

- A. General Project Team Information
- B. Proposal Form 4: Key Personnel
- C. WMDVBE Utilization
- D. Local Resources Utilization
- E. Reference Facilities
- F. Proposal Form 6: Financial Capacity Data
- G. Proposal Form 7: Surety Letter of Intent to Issue a Performance Bond
- H. Proposal Form 8: Surety Letter of Intent to Issue a Payment Bond
- I. Proposal Form 9: Insurance Letter of Intent
- J. Additional Financial Information

**Section 3.0 Technical Proposal**

- A. Proposal Form 10: Preliminary Project Schedule, Scheduled Construction Date, and Scheduled Acceptance Date

**Section 4.0 Business and Price Proposal**

- A. Summary of Business and Price Proposal
- B. Bid Schedules
- C. Proposal Form 11: Acceptance of Contract
- D. Proposal Form 12: Form of Proposal Bond
- E. Proposal Form 13: Price Escalator Indices

**4.3. PROPOSAL SUBMISSION****4.3.1 Proposal Deadline**

All Proposals, including all attachments, shall be delivered in a sealed package addressed to:

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CALIFORNIA AMERICAN WATER  
511 FOREST LODGE ROAD, SUITE 100  
PACIFIC GROVE, CALIFORNIA 93950  
Attn: Lori Girard, Corporate Counsel

The Proposal shall include the following information on the outside of the envelope(s) or box(es): (1) Name of Proposer and (2) "MPWSP – Proposal for Construction of Source Water Slant Wells". Proposals will not be opened publicly.

The Proposals, including applicable Proposal Forms, shall be signed and acknowledged by the Proposer in accordance with the instructions herein. Proposals shall be delivered to and be received by CAW at the above address **on or before 3:00 pm PDT on October 23, 2015**. Any Proposal received after that time may be returned unopened to the Proposer.

**4.3.2 Number of Copies**

One original, three (3) hard copies, and two (2) sets of two (2) CD-ROMs or thumb drives (one CD-ROM or thumb drive for proprietary information, if any, and one CD-ROM or thumb drive for the balance of the Proposal including all pricing information) of each Proposal shall be submitted. All Proposals shall be complete, with all requested information, data and attachments. One copy of the Proposal must be clearly marked as the original and must contain the original signature forms and other original documents. The remaining copies of the Proposal may be reproductions and Proposers shall number each hard copy in sequential order on the upper right corner of each cover. The original shall be accompanied by electronic version thereof with all files in Microsoft Word® or Portable Document Format ("PDF"), as appropriate, with any drawings and diagrams presented in PDF. The typed, hardbound Proposals shall take precedence over the electronic version in the event of any inconsistencies between the two formats.

**4.4. PROPOSAL CONTENTS**

The Proposer shall provide the appropriate information in accordance with the content and format requirements set forth in each of the following submission subsections.

Proposers are advised that, if selected, as part of the Contract negotiation phase, portions of the information contained in its Proposal will be included or integrated into the Contract, as negotiated by the parties based on the RFP and Proposal.

**4.4.1 Section 1.0: Executive Summary****A. Proposal Form 1: Transmittal Letter**

Each Proposal must include one fully executed and notarized Transmittal Letter from the Proposer representing, among other things, that: (1) the Proposer has completely reviewed and understands and agrees to be bound by the requirements of this RFP and has received all addenda; and (2) no potential exists for any conflict of interest or unfair advantage. Such letter commits the Proposer, if selected, to carry out the provisions of the Proposal. The Transmittal Letter shall be submitted on the Proposer's letterhead in the form of Proposal Form 1 and signed by a representative of the Proposer who is empowered to sign such material and to commit the

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Proposer to the obligations contained in the Proposal (the “Designated Signatory”). The Certificate of Authorization (Attachment 1 to the Transmittal Letter) attesting to such authorization must also be submitted with the Transmittal Letter. If the Proposer is a partnership, the Proposal shall be signed by one or more of the general partners. If the Proposer is a corporation, an authorized officer shall sign his or her name and indicate his or her title beneath the full corporate name. If the Proposer is a joint venture, each firm in the joint venture shall sign the Transmittal Letter. If the Proposer is a limited partnership or a limited liability company, the Proposal shall be executed by the managing partner(s) or managing member thereof. Anyone signing the Proposal or any Proposal Form as agent must file with it legal evidence of his or her authority to execute such Proposal or Proposal Form. The Designated Signatory shall sign all forms that require the signature of the Proposer. The Transmittal Letter must also contain a listing of all firms that are part of the Proposer’s Project team (Attachment 2 to the Transmittal Letter) and a listing of all applicable licenses (Attachment 3 to the Transmittal Letter). A summary of the role for each member of the Proposer’s Project team shall be included.

**B. Executive Summary**

The Proposer shall submit an executive summary detailing the key aspects of the Proposal. The executive summary should include a clear statement of the Proposer’s understanding of the RFP, identify the Proposer’s key team members and their respective roles with respect to the proposed Project, briefly describe the proposed processes, and summarize the other significant aspects of the Proposal noting how the Proposer meets the requirements of the RFP and the Contract. The executive summary shall include the following charts and diagrams:

- Project Team (8½” x 11”, 1 page)
- Description of Project Delivery (8½” x 11”, 1 page)
- Preliminary Proposed Schedule (8½” x 11”, 1 page)
- Equipment Requirements and Site Layout Plan (8½” x 11”, 1 page or 11” x 17”, 1 page)

**C. Proposal Form 2: Non-Collusion Affidavit**

Proposers shall complete and sign Proposal Form 2, which acknowledges that the Proposal has been made and submitted in good faith and without collusion or fraud.

**D. Proposal Form 3: Disclaimer Statement**

Proposers shall be responsible for independently verifying the accuracy of all the information contained in the RFP. Proposers shall complete and sign Proposal Form 3 which releases CAW and CAW Representatives (as defined therein) from any and all claims arising from any information contained in or otherwise provided in connection with this RFP, except as otherwise specifically provided in the Contract.

**4.4.2 Section 2.0: Project Team Information****A. General Project Team Information**

The Proposal shall include a description of the Proposer, *i.e.*, the form of business structure (corporation, partnership, joint venture, etc.) that is proposed to serve as the contracting party. A Project organization chart is required which shall include a full-page diagram of the legal relationships between all parties of the Proposer's Project team and a clear description of the ownership structure of all Project team members. If the Proposer is a partnership or a joint venture, all members of the Proposer shall be listed.

The Proposal shall identify the portions of the Project that will be undertaken directly by the Proposer and what portions of the Project will be subcontracted, if any, and to which firms (collectively, "Significant Subcontractors"). The Project organization chart shall also show all Key Personnel (identified on Proposal Form 4, below) and lines of authority.

The Proposer shall also identify any other entity, including, without limitation, any corporation, partnership, firm, joint venture, or individual to which the Proposer intends to assign material responsibilities under the Contract. At a minimum, the Proposal shall identify the parties that will undertake the various roles required to perform the Work.

The proposed contractual relationships between the Proposer and all major partners and Significant Subcontractors relative to the various phases of the Project (*e.g.* construction, commissioning) shall be outlined in the Proposal. CAW reserves the right to request copies of such contracts as part of the Proposal review process.

In addition, Proposers shall indicate the current workload of the key Project team members and shall provide a description of how the Project team will manage the workload in a manner that will assure the timely, cost-effective delivery of the Work.

**B. Proposal Form 4: Key Personnel**

The Proposer shall complete Proposal Form 4 for all Key Personnel, which shall include the following individual team members (as applicable):

1. Executive and Program Leadership;
2. Overall Project Manager;
3. Construction Superintendent;
4. Safety Manager;
5. QA/QC Manager;
6. Commissioning Manager.



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Additional forms may be provided for other Key Personnel critical to completion of the Project. Where one individual or team member performs several functions, information shall be provided on immediate subordinates. The Proposers shall demonstrate that the Key Personnel include the appropriate mix of skills and disciplines, that there shall be assurance of continuity throughout performance of the Work, and that there is definitive authority vested in the appropriate individuals to fully execute the Project. The Proposer shall submit a statement attesting to the Proposer's commitment to keep the individuals so identified for the duration of the intended role in the Project for each individual. This commitment is to last as long as each individual remains in the employ of the Proposer, subject only to unavoidable personal circumstances affecting the Key Personnel. The Proposal shall identify where Key Personnel will be located during the execution of the Project.

**C. WMDVBE Utilization**

As described in Section 2.9 of this RFP, CAW has established a combined women, minority and disabled veteran owned business enterprises ("WMDVBE") non-mandatory participation goal for the Project of twenty-five percent (25%) of the Contract Price in accordance with CPUC General Order 156. In contribution to this goal, the Contractor must make a good faith effort to employ WMDVBE subcontractors for any subcontracted portion of the Work, and must report to CAW any WMDVBE utilization during the term of the Contract. As part of its Proposal, the Proposer must describe its anticipated utilization percent and plan. If a Proposer believes that due to the nature of the Work and the specific skills and certifications required to perform the Work, it cannot meet the goal, the Proposer should explain its inability to so do in its Proposal.

**D. Local Resources Utilization**

As described in Section 2.10 of this RFP, CAW acknowledges the benefit that the local community receives through utilization of local contractors, laborers, and suppliers. In recognition of this benefit, the Contractor must make a good faith effort to employ qualified individuals who are, and have been for at least one year out of the three years prior to the opening of proposals, residents of Monterey County, San Benito County, or Santa Cruz County in sufficient numbers to achieve a goal of at least fifty percent of the Contractor's total construction work force, including any subcontractor work force (with the exception of specialty subcontractor items), measured in labor work hours, is comprised of residents of such counties. As part of its Proposal, the Proposer must describe its anticipated local resources utilization percent and plan and must report to CAW any local resources utilization during the term of the Contract. If a Proposer believes that due to the nature of the Work and the specific skills and certifications required to perform the Work it cannot meet the goal, the Proposer should explain its inability to so do in its Proposal.

**E. Reference Facilities**

Proposers shall describe a minimum of three (3) reference facilities constructed by Proposer since January 1, 2005 with as much detail as necessary to show that the Proposer has the experience necessary to perform the Work. CAW may choose as part of the RFP process to visit any of the reference facilities identified by the Proposer in its Proposal. For each reference facility, the Proposer shall provide at least the following information, as applicable:

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1. the name and location;
2. the name, address, and telephone number of client contact;
3. the owner of the facility or system;
4. if regulated, the name, address, and telephone number of the regulator;
5. a description of the services performed;
6. the applicability and relevance of the reference facility to the Work;
7. a description of facilities, including design, size and capacity;
8. the history of operations, including start-up date and years of service; and
9. key contact information.

**F. Proposal Form 6: Financial Capacity Data**

Proposers shall complete and provide Proposal Form 6. Proposal Form 6 shall be completed separately by the Proposer and signed by an authorized official of the Proposer. The Proposer shall attach any additional financial information requested in Proposal Form 6, including audited financial statements and associated footnotes. If any information requested on Proposal Form 6 is not available, Proposers shall provide an explanation as to the absence of such information. As required in Proposal Form 6, the Proposer shall provide independently audited financial statements for the preceding three fiscal years and their most recently available quarterly financial statements and may request such financial information be treated confidentially in accordance with Section 3.8 of this RFP. Audited financial statements shall be presented in U.S. dollars and shall include the auditor's report, income statements, balance sheets, cash flow statements, accompanying footnotes and any required supplementary information. These statements shall be presented in U.S. dollars and shall be prepared in accordance with GAAP, including all relevant notes. CAW will accept statements prepared in accordance with a different financial standard (e.g., IAS or European GAAP). However, such statements shall be presented in U.S. dollars, shall include all relevant notes in English and shall be accompanied by a general description of the differences between the principles under which the reports have been prepared and GAAP. If the Proposer does not file financial statements separately from its parent company, CAW will accept financial statements prepared for internal reporting purposes along with the parent's financial statements. If the Proposer is a special purpose entity ("SPE") or if the Proposer intends to utilize a SPE, then the Proposer shall provide at least three years of financial statements of the shareholders or partners of the SPE and, as applicable, the articles of incorporation, deed of partnership or articles of organization of the SPE.

If the Proposer is required to make periodic filings with the Securities and Exchange Commission ("SEC"), the Proposer shall submit any filings it has made since January 1, 2012. This would include filings on Form 10-K and supporting documents, all quarterly reports filed with the SEC on Form 10-Q since the last 10-K was filed, and all reports filed with the SEC on Form 8-K since the last 10-K or 10-Q was filed, whichever is later.

**G. Proposal Form 7: Surety Letter of Intent to Issue a Performance Bond**

Proposal Form 7 shall be duplicated and provided on the official letterhead of the Proposer's surety company. The Proposer must provide a surety company that complies with the requirements set forth in the draft Contract. Proposal Form 7 acknowledges, among other things, that the Proposer's surety company intends to issue a Performance Bond in favor of CAW as security for the performance of the Contractor's Work obligations under the Contract, as negotiated between the parties based on the RFP and Proposal.

The Performance Bond shall be issued by a surety company who is admitted to transact surety insurance in the State of California. The Performance Bond shall be in an amount equal to the Contract Price. Additional details regarding the Performance Bond requirements are provided in the draft Contract. CAW has determined that a dual obligee bonding arrangement is not appropriate for this Project.

**H. Proposal Form 8: Surety Letter of Intent to Issue a Payment Bond**

Proposal Form 8 shall be duplicated and provided on the official letterhead of the Proposer's surety company. The Proposer must provide a surety company that complies with the requirements set forth in the draft Contract. Proposal Form 8 acknowledges, among other things, that the Proposer's surety company intends to issue a Payment Bond in favor of CAW as security for the performance of the Contractor's payment obligations in connection with the performance of the Work under the Contract, as negotiated between the parties based on the RFP and Proposal.

The Payment Bond shall be issued by a surety company who is admitted to transact surety insurance in the State of California. The Payment Bond shall be in an amount equal to the Contract Price. Additional details regarding the Payment Bond requirements are provided in the draft Contract.

**I. Proposal Form 9: Insurance Letter of Intent**

Proposal Form 9 shall be duplicated and provided on the official letterhead of the Proposer's insurance company. The Proposer must provide an insurance company that complies with the requirements set forth in the draft Contract. The Insurance Letter of Intent acknowledges that the Proposer's insurance company intends to furnish the required insurance set forth in the Contract, as negotiated between the parties based on the RFP and Proposal.

**J. Additional Financial Information**

In order to demonstrate the financial capacity to perform the Work, each Proposer shall discuss any recent, current, or anticipated changes in the Proposer's method of conducting business, including mergers and acquisitions, take-over or divestitures. Proposers shall state whether there are or may possibly be any events or changes that might significantly alter the financial condition of the Proposer. This could include any material lawsuits or litigation, significant permit exceedances, and material contract disputes for other projects developed or operated by the

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Proposer or any Significant Subcontractor. Note, responses under this section of the RFP that are subject to knowledge qualifiers should reflect the knowledge of the Proposer and any Significant Subcontractor. Additionally, discuss any material financial disclosures, contingent liabilities (including operating performance guarantees for other entities) adjustments, and extraordinary expense items that have been disclosed over the past three-year period. For purposes of this paragraph and this RFP, “material” refers to any litigation or contract dispute determined to be material by the entities’ external auditors for financial statement disclosure or financial statement adjustment. Proposers shall include all such material information requested in this paragraph in this section of its Proposal.

In addition, in this section of the Proposal, Proposers may provide any other information of the Proposer that would assist CAW in evaluating the Proposer’s financial capabilities and long-term financial strength in accordance with Section 5 of this RFP.

**4.4.3 Section 3.0: Technical Proposal**

This section of the Proposal shall present the technical aspects of the Proposer’s plan to provide the Work. Each Proposer shall provide a description of the proposed Project and the information necessary to convey a clear understanding of the proposed systems and equipment, as well as a description of the approach to the performance of the Work in accordance with the requirements set forth in this Section. The Proposer’s technical submission shall be in sufficient detail so that CAW can ascertain the Proposer’s ability to comply with the performance and quality level requirements set forth in the draft Contract. The organization of the technical information submitted shall be in a format that can be easily incorporated into the final Contract.

Each Proposer shall include the following information in the Technical Proposal section (for additional information, refer to the Technical Specifications posted on the MPWSP Website):

<b>DESCRIPTION</b>	<b>TECHNICAL SPECIFICATIONS SECTION</b>
Filter packing procedure	33 21 13.C
Construction and drilling equipment to be provided	33 21 13.A
Method for collecting representative formation samples	33 21 13.A
Filter pack source, physical samples and gradation (sieve analysis)	33 21 13.C
Procedure for disinfection	33 21 13.I

**A. Proposal Form 10: Preliminary Project Schedule, Scheduled Construction Date, and Scheduled Acceptance Date**

The Proposer shall provide a list of proposed major milestones, durations and completion dates for major activities important to procurement, permitting, construction, and commissioning

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activities in Proposal Form 10. The list shall start with the first major milestone and end upon final completion and shall clearly indicate the extent to which the Proposer has included float in the schedule. These major milestones, activity durations, and completion dates will comprise the preliminary Project schedule. The Proposer shall provide copies of this preliminary Project schedule in both written and electronic formats with the Proposal. The level of detail shall be summary level for major procurement, construction, commissioning and acceptance testing activities in accordance with the requirements specified in Proposal Form 10.

**B. Safety Performance**

The Proposal shall describe the Proposer's approach for ensuring safety at the Project Site is given a high priority. The Proposer shall provide its OSHA ORIR and MSHA ratings for the past three (3) years.

**4.4.4 Section 4.0: Business and Price Proposal**

This section of the Proposal shall present the business and pricing aspects of the Proposal. While CAW anticipates entering into the Contract with the selected Proposer(s) in accordance with the schedule set forth in Section 3 of this RFP, it is possible that the execution of the Contract will be delayed due to unforeseen circumstances. The following subsections outline the information that shall be included in the Proposer's business and price submission.

**A. Summary of Business and Price Proposal**

Proposers shall provide a summary of the key aspects of its business and price proposal with reference to the applicable Proposal Forms and bid schedules, including the bid schedules discussed below and the Proposal Forms required above with respect to the financial capacity of the Proposer.

**B. Attachment C: Bid Schedules**

Attachment C consists of two (2) bid schedules: a schedule for a total of seven (7) wells and a schedule for a total of nine (9) wells. The Proposer must complete and submit both bid schedules.

The bid schedule prices shall include all costs for performing the corresponding Work. The bid schedule prices shall also include the costs associated with the required insurance, performance bond and payment bond, as well as any other costs associated with the Work necessary to achieve final completion. Proposers shall propose their bid schedule prices with the understanding that there is no intention on the part of CAW to request further "best and final offers."

The total Contract Price and each line item price shall be inclusive of all applicable taxes (including California sales taxes on purchases of materials at the applicable tax rate). The Contractor will be responsible for paying all such taxes in accordance with applicable law.

**C. Proposal Form 11: Acceptance of Contract**

The Proposer shall complete Proposal Form 11 by agreeing to all of the terms and conditions of the draft Contract except for those suggested changes submitted as an attachment to Proposal Form 11. As indicated in Section 2.8.2 of this RFP, while CAW requests Proposers to base their Proposals on the terms and conditions set forth in the draft Contract included with this RFP, CAW recognizes that Proposals may be conditioned on the mutual resolution of specific issues identified in Proposal Form 11. Any requested changes that are conditions of the Proposal must be clearly identified as such. Please refer to Sections 2.8 and 3.11 of this RFP for a discussion concerning CAW's expectations concerning the Contract and the negotiation process.

**D. Proposal Form 12: Form of Proposal Bond**

Proposal Form 12 shall be duplicated and provided on the official letterhead of the Proposer's surety company. The Proposer must submit an executed Proposal Bond in an amount equal to 10% of the proposed Contract Price and that complies with the requirements of Section 2.17.

**E. Proposal Form 13: Price Escalator Indices**

The Proposer shall complete Proposal Form 13 by providing at least one and no more than five indices that it proposes to use as the Price Escalator as described in the draft Contract. The Proposer shall also include the corresponding percentage to be used for each index, totaling 100%. The indices provided will be included in the Contract following successful negotiation.

**4.5. PROPOSAL FORMS GENERALLY**

To be deemed responsive to this RFP, Proposers shall provide all the requested information and complete all details provided in the Proposal Forms attached to this RFP. All Proposal Forms shall be completed in ink or typewritten and submitted in accordance with the instructions set forth in this Section 4 of this RFP.

The Proposal Forms require Proposer-specific information to be inserted in order to be properly completed. Once the Proposer is selected, certain Proposal-specific information submitted in their Proposal and the Proposal Forms may be included as part of the Contract, as appropriate.

Electronic versions of the Proposal Forms in Microsoft Word® format will be provided to Proposers upon request.

## SECTION 5

### EVALUATION OF PROPOSALS

#### 5.1. EVALUATION OF PROPOSALS

Proposals will be evaluated by the Selection Committee based on the Proposer's ability to meet the performance requirements of this RFP and the Contract in a cost-effective manner. All Proposals must be complete and in conformance with the submission requirements established in this RFP.

Proposals will first be individually evaluated for completeness and for conformance with the requirements set forth in this RFP. Any Proposal that the Selection Committee determines is incomplete or otherwise not in conformance with the submission requirements of this RFP may be deemed non-responsive and thereby rejected in its entirety by the Selection Committee. Alternatively, in its discretion, CAW may request that a Proposer submit any information necessary to make its Proposal complete and/or in conformance with requirements. Proposals deemed responsive and in conformance with the submission requirements of this RFP will be evaluated by the Selection Committee through the application of the evaluation criteria to the Proposal, as described in Section 5.2 of this RFP.

#### 5.2. EVALUATION CRITERIA

The specific criteria to be used by the Selection Committee in the evaluation of the Proposals include both technical criteria and business/financial criteria. Technical criteria are allotted a total of 40 points (out of 100) and include: (1) Project Delivery, (2) Safety, (3) Construction Management, (4) Experience with similar projects, and (5) Schedule each as further detailed below. Business and Financial criteria are allotted a total of 60 points (out of 100) and include (1) Cost Effectiveness (*i.e.*, price), (2) Financial Qualifications, and (3) Business Terms and Conditions, as further detailed below.

##### 5.2.1 Weighting of Evaluation Criteria

The specific weighting for each evaluation criterion is as follows:

<b>Technical Criteria</b>	<b>40 points</b>
<ul style="list-style-type: none"> <li>- Project Delivery (including WMDVBE and Local Resources Utilization )</li> <li>- Safety</li> <li>- Construction Management</li> <li>- Experience with similar projects</li> <li>- Schedule</li> </ul>	

**Business and Financial Criteria** **60 points**

- Cost Effectiveness of Proposal
- Business Terms and Conditions
- Proposer Financial Qualifications

**Total** **100 points**

**5.2.2 Technical Criteria**

Proposers shall be evaluated based upon the Proposer's ability to successfully implement the proposed Work and to meet CAW's desired schedule for the implementation of the Project. The Selection Committee will conduct an assessment of the Proposer's schedule and approach for construction management.

Proposer's approach to project planning, purchasing, coordination of subcontractors, and sequencing and managing the construction activities to meet the schedule will be evaluated, as well as the expertise and management capability to integrate the required expertise of the Project team members for the overall benefit of the Project. Particular attention will also be given to the Proposer's understanding and inclusion in the schedule of the requirements necessary to procure equipment, construct and develop the Project, and conduct acceptance testing. Proposers will also be evaluated on their WMDVBE and Local Resources Utilization. CAW will evaluate the Proposer's approach to avoiding adverse environmental impacts, protecting natural resources, and mitigating environmental impacts. Evaluating the Proposal with respect to Project delivery also includes an assessment of current and projected workloads of the Proposer, and the Proposer's ability to meet the construction schedule for the proposed Project. The Proposer's approach to construction management and scheduling the construction, commissioning, start-up and acceptance test activities will also be evaluated.

Safety experience rating for the last three years shall also be considered in this evaluation.

**5.2.3 Business and Financial Criteria**

**Terms and Conditions**

CAW will evaluate the extent to which the Proposer accepts the terms and conditions set forth in the draft Contract included with this RFP or otherwise proposes terms and conditions that are more favorable to CAW than the terms and conditions set forth in the draft Contract. Suggested changes, including, particularly, changes that are indicated to be conditions of the Proposal, will be carefully considered and evaluated to determine whether the suggested changes, taken as a whole, would result in a less favorable Contract to CAW. Proposers are reminded that proposed changes to the terms and conditions that are conditions of the Proposal and that substantially change the nature of the transaction or the scope of work may result in the rejection of a Proposal as non-responsive to the requirements of this RFP, notwithstanding the relative weight assigned to the proposed business terms and conditions in this RFP.



### Financial Qualifications

CAW will evaluate the financial strength and qualifications of the Proposer based on the financial information provided as required by this RFP.

The overall relative financial strength of the Proposer shall be assessed based on the criteria referenced above. This evaluation shall include a careful consideration of the adequacy of the Proposer's financial resources backing the performance of all of the Proposer's obligations under the Contract. Accordingly, this evaluation shall focus on the following key factors:

- The financial capacity of the Proposer to assure the full and timely performance of the Contractor's obligations under the Contract;
- The clarity of the roles, responsibilities and risk allocation among the Proposer's team;
- The Proposer's ability to provide a Performance Bond and Payment Bond in accordance with the draft Contract;
- Support for liability assumption by the Proposer as set forth in the draft Contract;
- The trailing financial performance of the Proposer, with specific consideration of company size, tangible net worth, liquidity, leverage, profitability, and cash flow; and
- The presence or absence of material changes in the financial condition of the Proposer, which, in the opinion of CAW, could affect the Proposer's ability to meet the obligations of the Contract over the term of the Contract.

**ATTACHMENT A**  
**PROPOSAL FORMS**

DRAFT

Draft as of 9/11/15  
Monterey Peninsula Water Supply Project  
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**PROPOSAL FORM 1**

**TRANSMITTAL LETTER**

(to be typed on Proposer’s Letterhead)

[Date]

[  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_]

Re: Monterey Peninsula Water Supply Project - Source Water Slant Wells

Dear Sir/Madam:

\_\_\_\_\_ (the “Proposer”) hereby submits its Proposal in response to the Monterey Peninsula Water Supply Project Request for Proposals for the Construction of Source Water Slant Wells (the “RFP”) issued by California-American Water Company (“CAW”) on XXXX XX, 2015, as amended.

As a duly authorized representative of the Proposer, I hereby certify, represent, and warrant, on behalf of the Proposer team, as follows in connection with the Proposal:

1. The Proposer acknowledges receipt of the RFP and the following addenda:

<u>No.</u>	<u>Date</u>
_____	_____
_____	_____
_____	_____

2. The submittal of the Proposal has been duly authorized by, and in all respects is binding upon, the Proposer. Attachment 1 to this Transmittal Letter is a Certificate of Authorization which evidences my authority to submit the Proposal and bind the Proposer.

3. All information and statements contained in the Proposal are current, correct and complete, and are made with full knowledge that CAW will rely on such information and statements in selecting the most advantageous Proposal to CAW and executing the Contract.

4. Attachment 2 to this Transmittal Letter sets forth the Proposer’s Project team and identifies each team member’s proposed role with respect to the Project. Attachment 3 to this Transmittal Letter provides licensing information for each Project team member.

## Request for Proposals for the Construction of Source Water Slant Wells

5. Proposal Form 7 evidences the intent of \_\_\_\_\_, the Proposer's qualified surety company, to issue the Performance Bond as security for the performance of the Proposer's Work obligations under the Contract, as negotiated between the parties based upon the RFP and the Proposal.
6. Proposal Form 8 evidences the intent of \_\_\_\_\_, the Proposer's qualified surety company, to issue the Payment Bond as security for the performance of the Proposer's Work payment obligations under the Contract, as negotiated between the parties based upon the RFP and the Proposal.
7. Proposal Form 9 evidences the intent of \_\_\_\_\_, the Proposer's qualified insurer, to provide the insurance required under the Contract, as negotiated between the parties based upon the RFP and the Proposal.
8. Neither the Proposer nor any Project team member is currently suspended or debarred from doing business in the State of California;
9. There is no action, suit or proceeding, at law or in equity, before any court or similar governmental body, against the Proposer, wherein an unfavorable decision, ruling or finding would have a materially adverse effect on the ability of the Proposer to perform their respective obligations under the Contract or the other transactions contemplated hereby, or which, in any way, would have a materially adverse effect on the validity or enforceability of the obligations proposed to be undertaken by the Proposer, or any Contract or instrument entered into by the Proposer in connection with the transactions contemplated hereby.
10. No corporation, partnership, individual or association, officer, director, employee, manager, parent, subsidiary, affiliate or principal shareholder of the Proposer has been adjudicated to be in violation of any state or federal anti-trust or similar statute within the preceding five years, or previously adjudged in contempt of any court order enforcing such laws.
11. The Proposer and all Project team members have reviewed all of the engagements and pending engagements of the Proposer and all Project team members and no potential exists for any conflict of interest or unfair advantage.
12. No person or selling agency has been employed or retained to solicit the award of the Contract under an arrangement for a commission, percentage, brokerage or contingency fee or on any other success fee basis, except bona fide employees of the Proposer.
13. The principal contact person who will serve as the interface between CAW and the Proposer for all communications is:

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

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PHONE: \_\_\_\_\_  
FAX: \_\_\_\_\_  
EMAIL: \_\_\_\_\_

- 14. The key technical and legal representatives available to provide timely response to written inquiries submitted and to attend meetings requested by CAW are:

Technical Representative:

NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
  
PHONE: \_\_\_\_\_  
FAX: \_\_\_\_\_  
EMAIL: \_\_\_\_\_

Legal Representative:

NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
  
PHONE: \_\_\_\_\_  
FAX: \_\_\_\_\_  
EMAIL: \_\_\_\_\_

- 15. The Proposer has carefully examined all documents constituting the RFP and the addenda thereto.
- 16. The Contract in the form issued with this RFP is agreed to, except where changes have been requested in Proposal Form 11 and such changes have been indicated as conditions of the Proposal.
- 17. If selected, the Proposer agrees to negotiate in good faith to enter into a Contract that reflects the substantive terms and conditions of the RFP and the Proposal.
- 18. The Proposer has submitted all Proposal Forms and bid schedules and such Proposal Forms and bid schedules are a part of this Proposal.

Having carefully examined the RFP and all other documents bound therewith, together with all addenda thereto, all information made available by CAW, and being familiar with the Project (as described in the RFP and the Contract) and the various conditions affecting the work, the Proposer hereby offers to furnish all labor, materials, supplies, equipment, facilities and services which are necessary, proper or incidental to carry out such work as required by and in strict accordance with the RFP and the Proposal, all for the prices set forth in the submitted bid schedules.

Draft as of 9/11/15  
Monterey Peninsula Water Supply Project  
Request for Proposals for the Construction of Source Water Slant Wells

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

\_\_\_\_\_  
Name of Designated Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

*Note: If this Proposal is being submitted by a corporation, the Proposal shall be executed in the corporate name by the president or other corporate officer with authority to bind the corporation, and the corporate seal shall be affixed and attested to by the clerk. A certificate of the secretary of the corporation evidencing the officer's authority to execute the Proposal shall be attached.*

*If this Proposal is being submitted by a joint venture or general partnership, it shall be executed by all partners, and any partner that is a corporation shall follow the requirements for execution by a corporation, as set forth above.*

*If this Proposal is being submitted by a limited partnership or a limited liability company, it shall be executed by the managing partner(s) or managing member thereof, and such shall also submit proof of authority to so execute the Proposal, in a form satisfactory to CAW. Any partner or member that is a corporation shall follow the requirements for execution by a corporation, as set forth above.*

(Use State-Appropriate form for Notary Public)

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me appeared [DESIGNATED SIGNATORY], who is [INSERT TITLE] of [INSERT PROPOSER], a [INSERT STATE AND

**Request for Proposals for the Construction of Source Water Slant Wells**

TYPE], personally known to me to be the person described in and who executed this Transmittal Letter and acknowledged that she/he signed the same freely and voluntarily for the uses and purposes therein described.

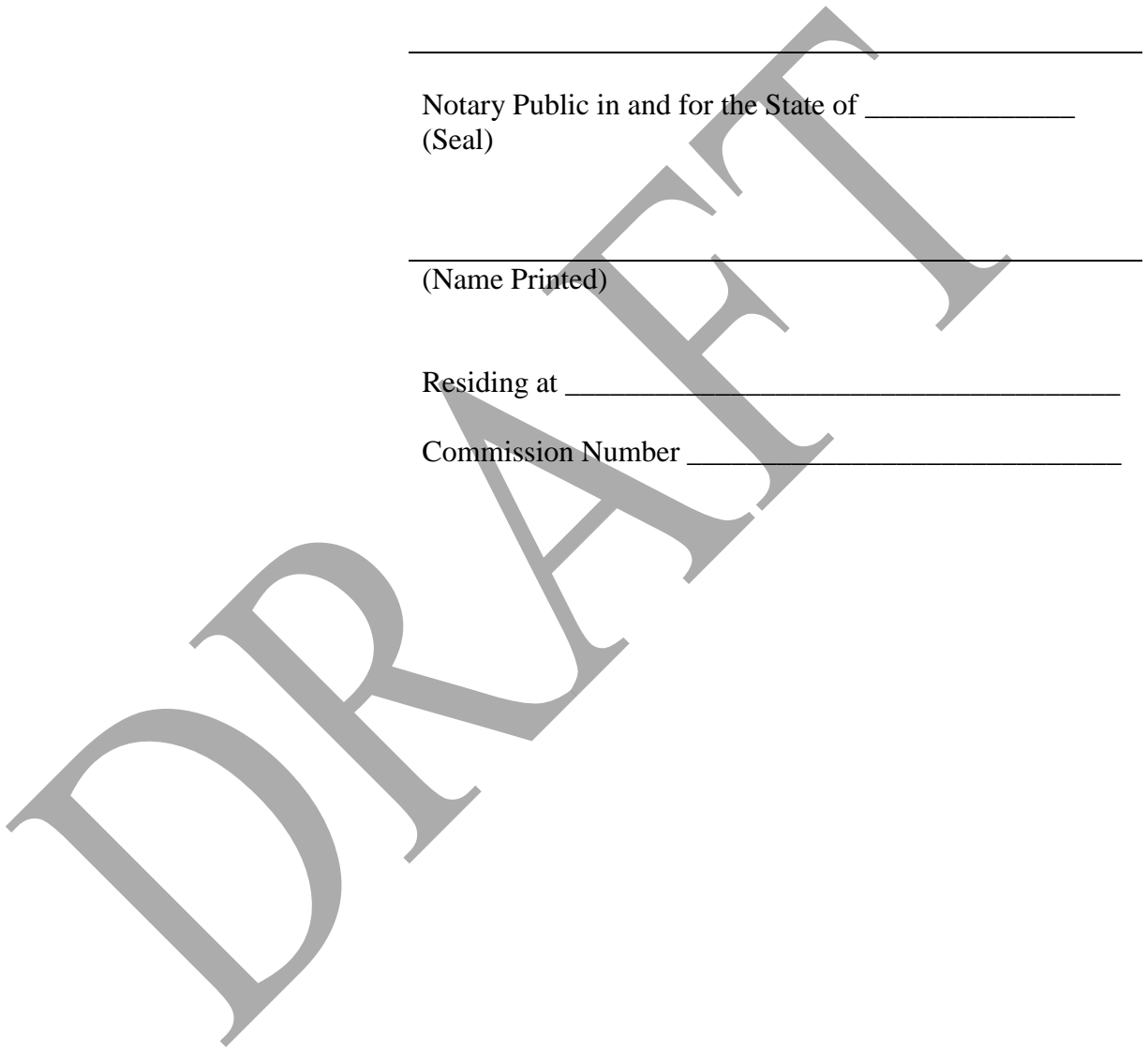
In witness thereof, I have hereunto set my hand and affixed my official seal the day and year last written above.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
(Seal)

\_\_\_\_\_  
(Name Printed)

Residing at \_\_\_\_\_

Commission Number \_\_\_\_\_



Draft as of 9/11/15  
Monterey Peninsula Water Supply Project  
Request for Proposals for the Construction of Source Water Slant Wells  
Attachment 1

**CERTIFICATE OF AUTHORIZATION\***

I, \_\_\_\_\_, a resident of [INSERT CITY] in the State of [INSERT STATE], DO HEREBY CERTIFY that I am the Clerk/Secretary of [INSERT PROPOSER NAME], a [corporation] duly organized and existing under and by virtue of the laws of [INSERT STATE]; that I have custody of the records of such [corporation]; and that as of the date of this certification, [INSERT DESIGNATED SIGNATORY NAME] holds the title of [INSERT TITLE] of the [corporation], and is authorized to execute and deliver in the name and on behalf of the [corporation] the Proposal submitted by the [corporation] in response to the Monterey Peninsula Water Supply Project Request for Proposals for the Construction of Source Water Slant Wells, issued by California-American Water Company on XXXX XX, 2015, as amended; and all documents, letters, certificates and other instruments which have been executed by such officer on behalf of the [corporation] in connection therewith.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the [corporate] seal of the [corporation] this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

(Affix Seal Here)

\_\_\_\_\_  
Clerk/Secretary

*\* Note: Separate certifications shall be submitted if more than one corporate officer has executed documents as part of the Proposal. Proposers shall make appropriate conforming modifications to this Certificate in the event that the signatory's address is outside of the United States.*



Draft as of 9/11/15  
Monterey Peninsula Water Supply Project  
Request for Proposals for the Construction of Source Water Slant Wells  
Attachment 2

PROJECT TEAM MEMBER LIST

Proposals shall identify the names and roles of the Proposer and any Significant Subcontractors and all other Project team members identified to date:

NAME:

ROLE:

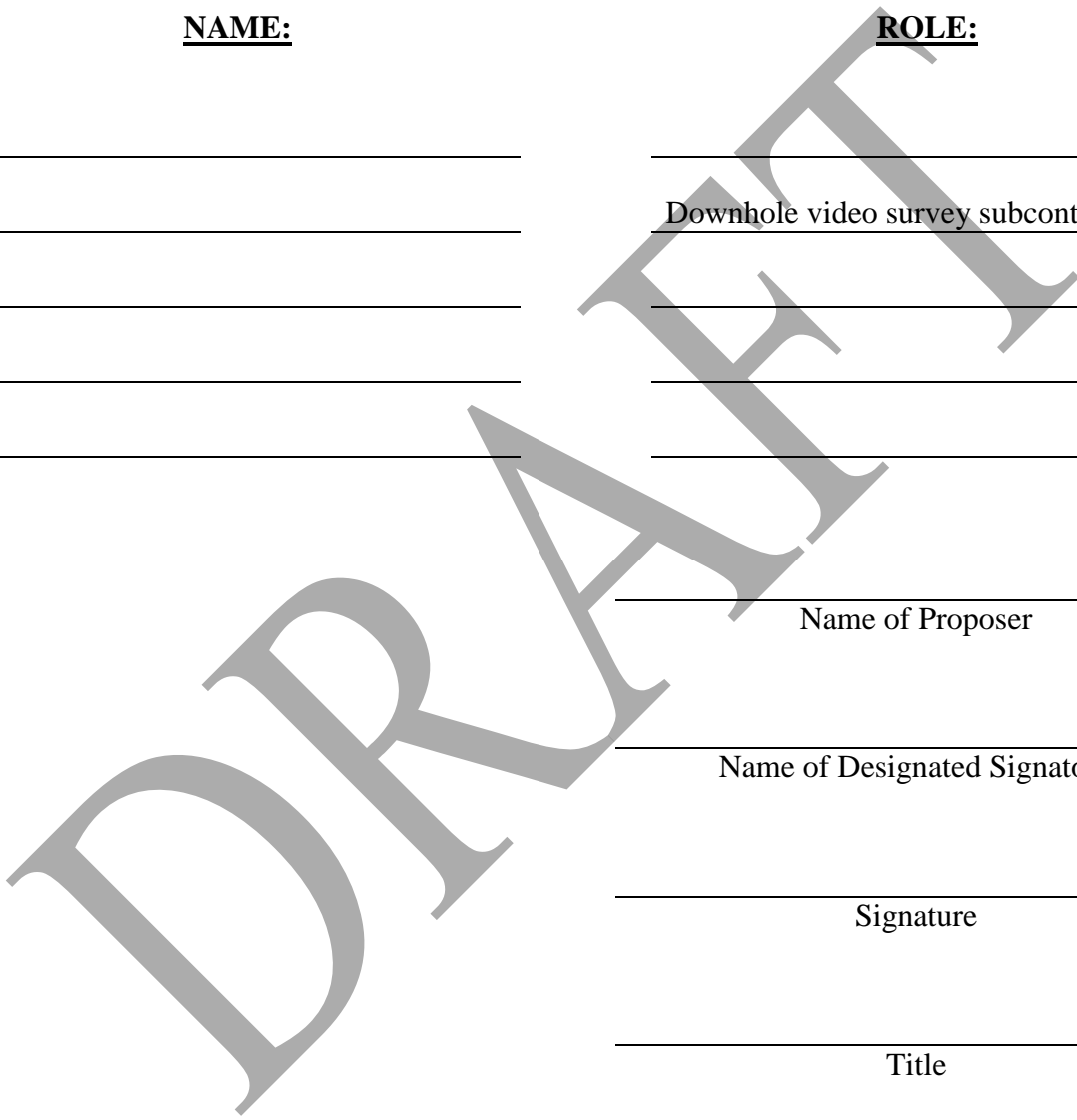
_____	_____
_____	Downhole video survey subcontractor
_____	_____
_____	_____
_____	_____

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

\_\_\_\_\_  
Name of Designated Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title







Draft as of 9/11/15  
Monterey Peninsula Water Supply Project  
Request for Proposals for the Construction of Source Water Slant Wells

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me appeared [DESIGNATED SIGNATORY], who is [INSERT TITLE] of [INSERT PROPOSER], a [INSERT STATE AND TYPE], personally known to me to be the person described in and who executed this Transmittal Letter and acknowledged that she/he signed the same freely and voluntarily for the uses and purposes therein described.

In witness thereof, I have hereunto set my hand and affixed my official seal the day and year last written above.

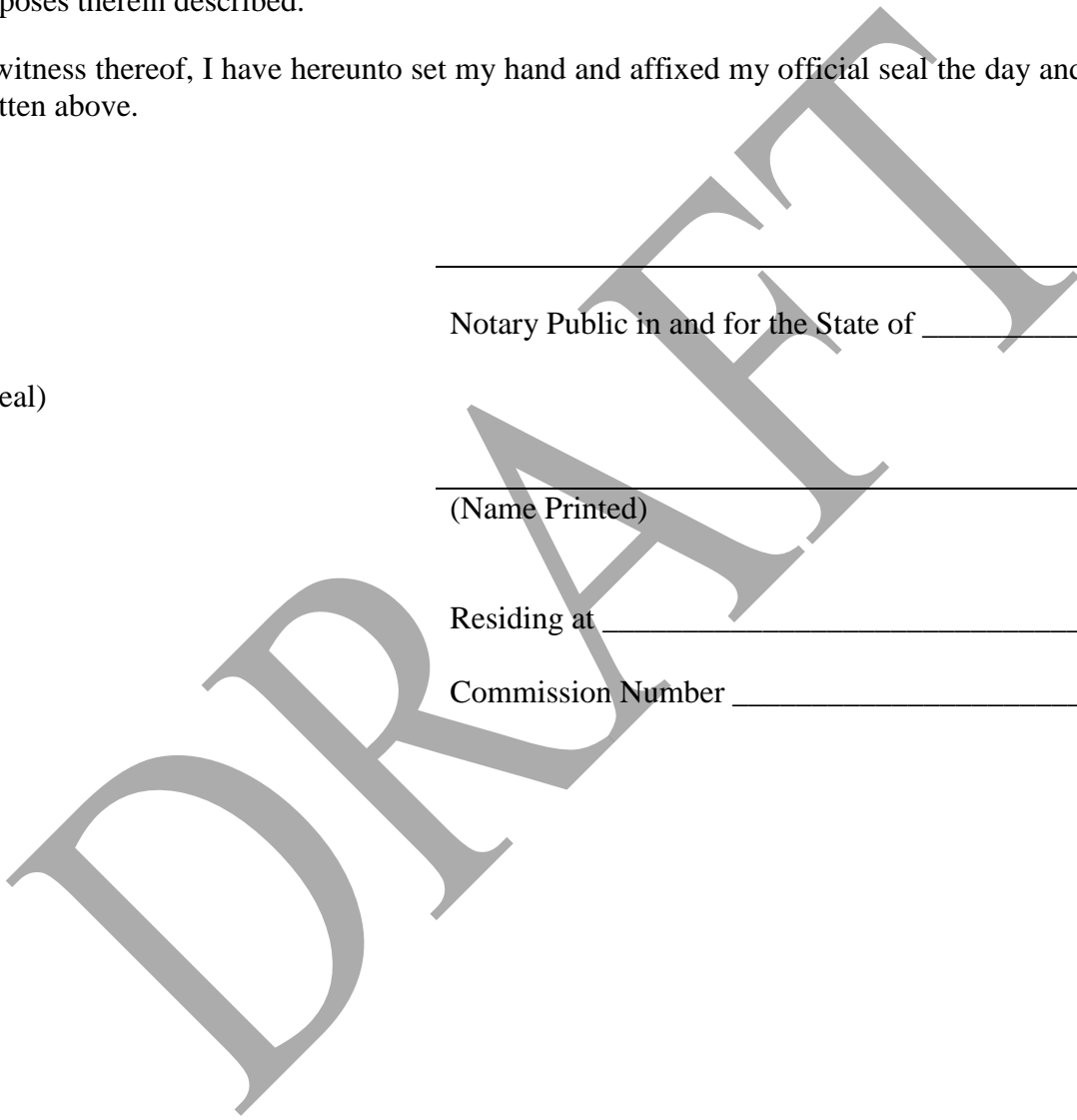
\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_

(Seal)

\_\_\_\_\_  
(Name Printed)

Residing at \_\_\_\_\_

Commission Number \_\_\_\_\_



Draft as of 9/11/15  
Monterey Peninsula Water Supply Project  
Request for Proposals for the Construction of Source Water Slant Wells  
**PROPOSAL FORM 3**

**DISCLAIMER STATEMENT**

The information contained in or otherwise provided in connection with the Monterey Peninsula Water Supply Project Request for Proposals for the Construction of Source Water Slant Wells (the "RFP") issued by California-American Water Company ("CAW") on XXXX XX, 2015, as amended, has been prepared by CAW and, while such information is believed to be accurate and reliable, except as otherwise expressly set forth in the RFP, CAW makes no representation as to such accuracy or reliability. In no way shall any such information constitute a representation or warranty by CAW or any of its officials, employees, agents, consultants, attorneys, representatives, contractors, or subcontractors (the "CAW Representatives"). The Proposer hereby releases and forever discharges CAW and the CAW Representatives from any and all claims which such Proposer has, had or may hereafter have arising out of any information contained in or otherwise provided in connection with the RFP. Any party who intends to submit a response to this RFP is specifically invited to independently verify the accuracy of the information contained herein.

DRAFT

\_\_\_\_\_

Name of Proposer

\_\_\_\_\_

Name of Designated Signatory

\_\_\_\_\_

Signature

\_\_\_\_\_

Title

Draft as of 9/11/15  
Monterey Peninsula Water Supply Project  
Request for Proposals for the Construction of Source Water Slant Wells  
**PROPOSAL FORM 4**

**KEY PERSONNEL<sup>1</sup>**

*(Copy and complete this form for Key Personnel. Attach additional pages along with organizational charts as needed)*

**General Information**

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

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

Year employed by firm: \_\_\_\_\_ years

Total Professional Experience: \_\_\_\_\_ years

Professional Registration and Licenses (type/number/state/year)<sup>2</sup> \_\_\_\_\_

**Project-Specific Information**

Title/Assignment \_\_\_\_\_

Description of Role/Responsibilities: \_\_\_\_\_

<b>Commitment<sup>3</sup></b>	<b>Permitting</b> _____ %	<b>Construction</b> _____ %
	_____	<b>Startup and Testing:</b> _____ %

Footnotes:

<sup>1</sup> Proposers shall duplicate this form for all Key Personnel. Refer to subsection 4.4.2 of the RFP for a list of the minimum personnel for which this form shall be completed.

<sup>2</sup> Where applicable, key construction personnel must provide either: (1) proof of current California licensure; or (2) if not currently licensed in California, a detailed plan to obtain a required California license no later than the effective date of the Contract.

<sup>3</sup> Commitment indicates the amount of time (in percent) that the individual would be available to work on the Project during the construction, start-up and testing phases of the Project. Indicate by "N/A" where the individual is not proposed to be involved in a particular phase of the Project.

**PROPOSAL FORM 5**  
**PROPOSAL MANAGER**

**Name of Firm:**

**Firm's Proposal Manager:**  
**Name:**

**Title:**

**Address:**

**Telephone No.:**

**Email address:**

**Deliver or email this form to:**

CALIFORNIA AMERICAN WATER  
Attention: Lori Girard, Corporate Counsel; Ian Crooks, Engineering Manager  
511 Forest Lodge Road, Suite 100  
Pacific Grove, CA 93950

[lori.girard@amwater.com](mailto:lori.girard@amwater.com); [ian.crooks@amwater.com](mailto:ian.crooks@amwater.com)

**PROPOSAL FORM 6**  
**FINANCIAL CAPACITY DATA**

Provide information requested for the Proposer.  
This form may be duplicated if necessary.

Name of Company: \_\_\_\_\_

**Section I Financial Data Summary**

	<b><u>FY 2012</u></b>	<b><u>FY2013</u></b>	<b><u>FY2014</u></b>
<b>Income Statement</b>			
Operating Revenues			
Operating Expenses			
Depreciation and Amortization			
Earnings Before Tax (EBT)			
Earnings Before Interest and Taxes (EBIT)			
Net Income			

**Balance Sheet**

Current Assets			
Other Assets			
Intangible Assets			
Total Assets			
Current Liabilities			
Total Long-Term Debt			
Other Liabilities			
Total Liabilities			
Net Worth			
(Total Assets – Total Liabilities)			
Tangible Net Worth			
(Total Assets – Total Liabilities – Intangible Assets)			

**Statement of Cash Flow**

Total Cash Flow			
Cash Flow from Operations			
Cash Flow from Financing Activities			
Cash Flow from Investing Activities			

**Section II Financial Ratios**

**FY 2012**      **FY2013**      **FY2014**



**Liquidity Measures**

Current Ratio  
 (Current Assets/Current Liabilities)  
 Quick Ratio  
 (Current Assets-Inventory/Current Liabilities)  
 Working Capital as a % of Revenue  
 (Current Assets-Current Liabilities/Revenue)


**Leverage Measures**

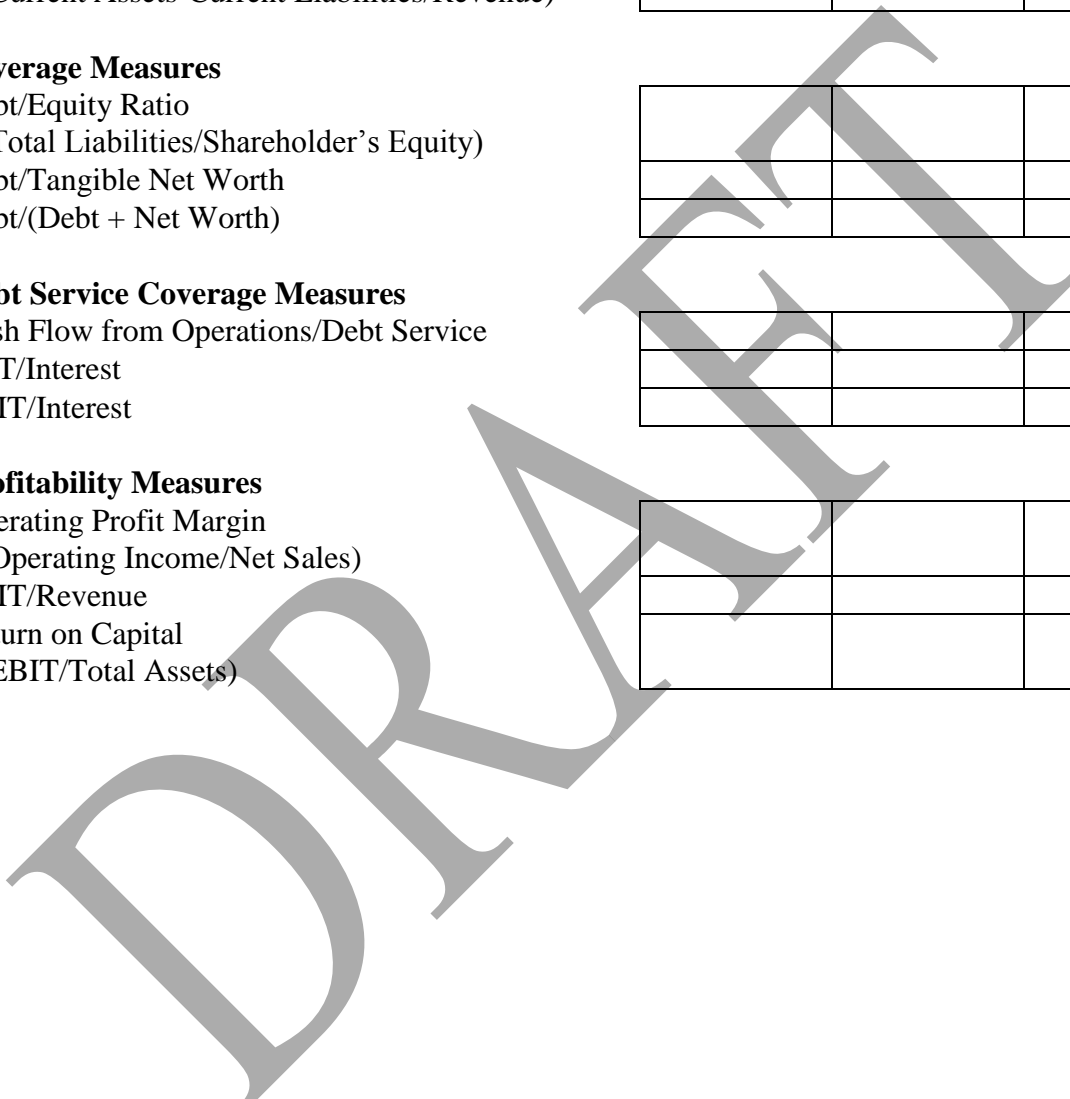
Debt/Equity Ratio  
 (Total Liabilities/Shareholder's Equity)  
 Debt/Tangible Net Worth  
 Debt/(Debt + Net Worth)


**Debt Service Coverage Measures**

Cash Flow from Operations/Debt Service  
 EBT/Interest  
 EBIT/Interest


**Profitability Measures**

Operating Profit Margin  
 (Operating Income/Net Sales)  
 EBIT/Revenue  
 Return on Capital  
 (EBIT/Total Assets)

**Section III Credit Rating Summary<sup>1</sup>**

**Bond Ratings**  
 (please list all bond issues within the last three years with issue date and rating

	<u>Moody's</u>	<u>Standard &amp; Poors'</u>	<u>Fitch</u>	<u>Dun &amp; Bradstreet</u>	<u>Value Line</u>
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					

**Credit and Other Ratings (please list all credit and other ratings within the last two years along with date of rating):**

	<u>Rating Date</u>	<u>Name of Rating Agency</u>
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Footnote:

<sup>1</sup> In the event that no credit rating is available for the Proposer from a nationally recognized rating agency, then the Proposer, as applicable, shall provide:

- (a) a current (30 days or less) Dun & Bradstreet report (or an independent report of similar quality and content) attached to this Proposal Form; and
- (b) a narrative discussion of the long-term credit strength of the Proposer.

Proposers shall also provide an explanation or state the reasons that no such credit rating from a nationally recognized credit rating agency is available.

**Section IV Other Financial Information**

Please provide the Proposer’s audited financial statements for the past 3 fiscal years, including auditor’s opinion, footnotes and other required supplementary information as well as the Proposer’s most recently available quarterly statements pursuant to Section 4 of the RFP.

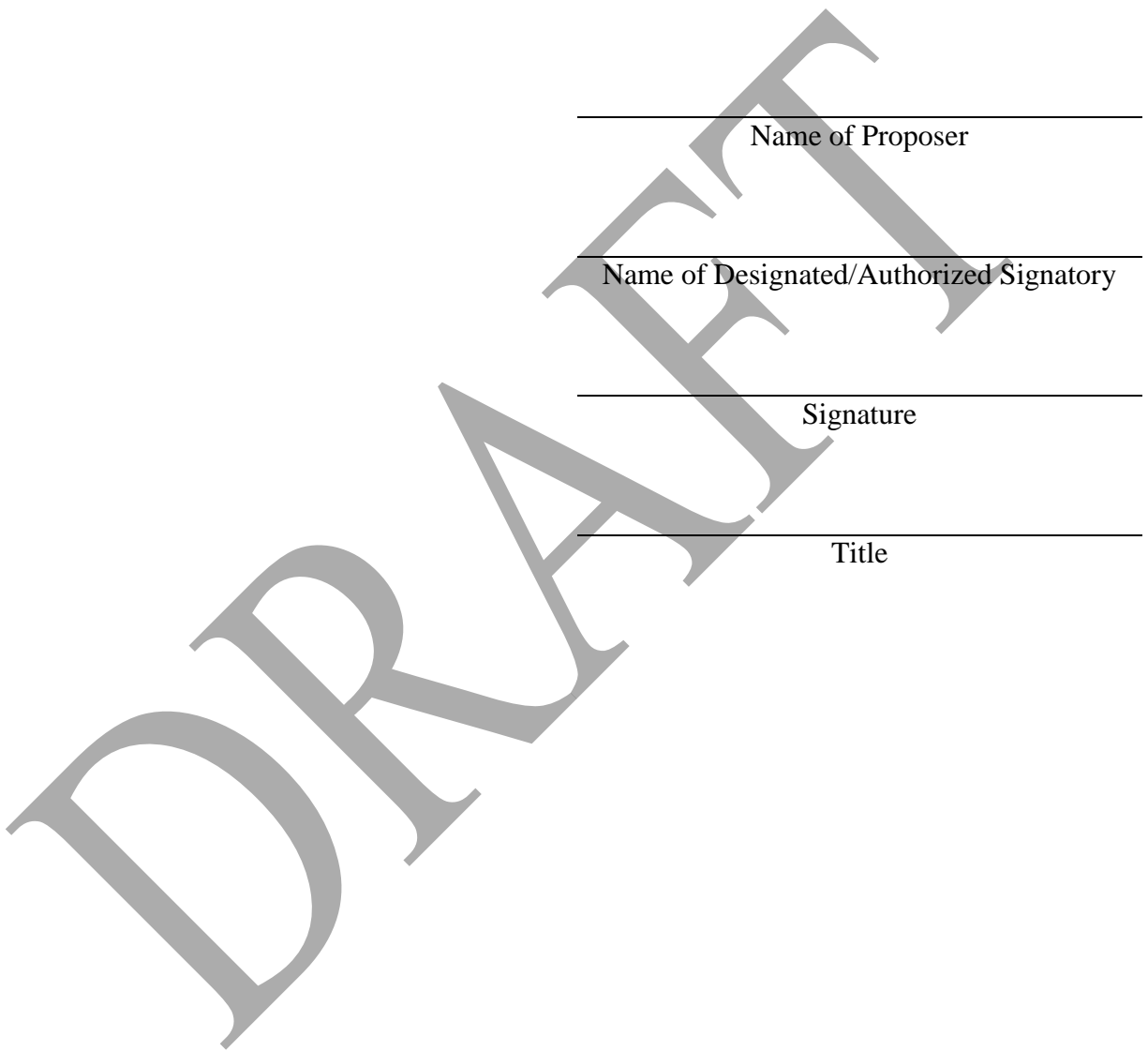
*Note: All data is to be provided in U.S. Dollars and in English.*

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

\_\_\_\_\_  
Name of Designated/Authorized Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title



**PROPOSAL FORM 7**

**SURETY LETTER OF INTENT TO ISSUE A PERFORMANCE BOND**

(to be typed on Surety’s Letterhead)

[Date]

[  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_]

Re: Monterey Peninsula Water Supply Project Source Water Slant Wells

\_\_\_\_\_ (the “Proposer”) has submitted herewith a Proposal in response to the Monterey Peninsula Water Supply Project Request for Proposals for the Construction of Source Water Slant Wells (the “RFP”) issued by California-American Water Company (“CAW”) on XXXX XX, 2015, as amended. The RFP requires the successful Proposer to enter into a Contract to construct the Project, if the Proposer is approved by CAW for final negotiations and execution of the Contract.

The Surety hereby certifies that, subject to its review of the final terms and conditions of the Contract, it intends to issue on behalf of the Proposer, as security for the performance of the Proposer’s obligations under the Contract, as negotiated between the parties based on the Proposal and the RFP, a Performance Bond meeting the requirements of the draft Contract in an amount equal to the Contract Price (plus a reasonable amount to be determined by the parties for any estimated Contract Price adjustments) for the benefit of CAW, in the event the Proposer is selected for final negotiations and execution of the Contract.

\_\_\_\_\_  
Name of Surety

\_\_\_\_\_  
Name of Authorized Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Monterey Peninsula Water Supply Project  
Request for Proposals for the Construction of Source Water Slant Wells

**PROPOSAL FORM 8**

**SURETY LETTER OF INTENT TO ISSUE A PAYMENT BOND**

(to be typed on Surety’s Letterhead)

[Date]

[  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_]

Re: Monterey Peninsula Water Supply Project Conveyance Facilities

\_\_\_\_\_ (the “Proposer”) has submitted herewith a Proposal in response to the Monterey Peninsula Water Supply Request for Proposals for the Construction of Source Water Slant Wells (the “RFP”) issued by California-American Water Company (“CAW”) on XXXX XX, 2015, as amended. The RFP requires the successful Proposer to enter into a Contract to construct the Project, if the Proposer is approved by CAW for final negotiations and execution of the Contract.

The Surety hereby certifies that, subject to its review of the final terms and conditions of the Contract, it intends to issue on behalf of the Proposer as security for the performance of the Proposer’s payment obligations in connection with its construction obligations under the Contract as negotiated between the parties based on the Proposal and the RFP, a Payment Bond meeting the requirements of the draft Contract in an amount equal to the Contract Price for the benefit of CAW in the event the Proposer is selected for final negotiations and execution of the Contract.

\_\_\_\_\_  
Name of Surety

\_\_\_\_\_  
Name of Authorized Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Draft as of 9/11/15  
Monterey Peninsula Water Supply Project  
Request for Proposals for the Construction of Source Water Slant Wells  
**PROPOSAL FORM 9**

**INSURANCE LETTER OF INTENT**

(to be typed on Insurance Company’s Letterhead)

[Date]

[  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_]

Re: Monterey Peninsula Water Supply Project Source Water Slant Wells

\_\_\_\_\_ (the “Proposer”) has submitted herewith a Proposal in response to the Monterey Peninsula Water Supply Project Request for Proposals for the Construction of Source Water Slant Wells (the “RFP”) issued by California-American Water Company (“CAW”) on July xx, 2015, as amended. The RFP requires the Selected Proposer to enter into a Contract to construct the Project if the Proposer is approved by CAW for final negotiations and execution of the Contract.

The Insurance Company hereby certifies that, subject to its review of the final terms and conditions of the Contract, it intends to provide all required insurance set forth in the draft Contract, as negotiated between the parties based on the Proposal and the RFP, in the event the Proposer is selected for final negotiations and execution of the Contract.

\_\_\_\_\_  
Name of Insurance Company

\_\_\_\_\_  
Name of Authorized Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

## PROPOSAL FORM 10

### PRELIMINARY PROJECT SCHEDULE, SCHEDULED CONSTRUCTION DATE AND SCHEDULED ACCEPTANCE DATE

The Proposer shall submit a preliminary Project schedule with the Proposal that includes important construction activities and milestones from issuance of the Notice to Proceed through final completion. This preliminary Project schedule shall be submitted in both written and electronic formats. The level of detail shall be in summary level for major procurement and construction activities. Major milestones throughout the construction period shall be included.

The preliminary Project schedule shall consist of, but not be limited to, the following:

- (i) Important procurement activities and milestones
- (ii) Important construction activities and milestones
- (iii) Important developing, commissioning and testing milestones
- (iv) It shall indicate the sequence of Work and the time of starting and completing each part.

In addition, the Proposer shall summarize and provide a list of proposed major milestones and completion dates including, but not limited to:

- Issuance of Pre-Mobilization Notice
- Issuance of Notice to Proceed
- Expected delivery of all materials and equipment
- Date of construction commencement
- Completion of well
- Developing well
- Commissioning and testing
- Substantial Completion Date
- Acceptance test
- Date of acceptance
- Date of Completion and readiness for final payment

The Proposer shall use the following format to provide this information:

<b>TABLE 10-1 MAJOR ACTIVITIES AND MILESTONES<sup>1</sup></b>		
<b>ACTIVITY NUMBER</b>	<b>ACTIVITY/MILESTONE</b>	<b>DATE<sup>2</sup></b>

---

Name of Proposer

---

Name of Designated Signatory

---

Signature

---

Title

---

Footnotes:

<sup>1</sup> List each major activity and milestone separately.

<sup>2</sup> Indicate the end of activity or date milestone achieved.



Draft as of 9/11/15  
Monterey Peninsula Water Supply Project  
Request for Proposals for the Construction of Source Water Slant Wells  
**PROPOSAL FORM 11**

**ACCEPTANCE OF THE CONTRACT**

Proposer agrees to all of the provisions of the draft Contract except as expressly provided in the track changes or redline version of the draft Contract that is attached to this Proposal Form.

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

\_\_\_\_\_  
Name of Designated Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

DRAFT

Draft as of 9/11/15

**Monterey Peninsula Water Supply Project  
Request for Proposals for the Construction of Source Water Slant Wells  
PROPOSAL FORM 12**

**FORM OF PROPOSAL BOND**

KNOW ALL PERSONS BY THESE PRESENTS, that the [INSERT NAME OF PROPOSER] \_\_\_\_\_, as the “Principal” and [INSERT NAME OF THE SURETY] \_\_\_\_\_, as (“Surety”), a corporation duly organized under the laws of the State of \_\_\_\_\_, having its principal place of business at \_\_\_\_\_, and authorized as a surety in the State of California, are hereby jointly and severally held and firmly bound unto California-American Water Company (the “Obligee”), in the penal sum of ten percent of the proposed Contract Price (the “Bonded Sum”), the payment of which we each bind ourselves, and our heirs, executors, administrators, representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal is herewith submitting a proposal (the “Proposal”) to provide construction, commissioning, start-up and testing services for Monterey Peninsula Water Supply Project Construction of Source Water Slant Wells (the “Project”) through a Contract (the “Contract”), which Proposal is incorporated herein by this reference and has been submitted pursuant to the Project’s request for proposals dated as of [INSERT DATE] (as amended or supplemented, the “RFP”);

NOW, THEREFORE,

1. The condition of this Proposal Bond is such that it shall be null and void upon the occurrence of any of the following events:
  - (a) The Principal's receipt of written notice from the Obligee that (i) the Obligee will not award the Contract pursuant to the RFP, or (ii) the Obligee has awarded and received the executed Contract and other required documents, and does not intend to award the Contract to the Principal;
  - (b) The Principal’s performance of all its obligations under the RFP in connection with award of the Contract;
  - (c) The failure of the Obligee to award the Contract to the Principal within 180 days after the Proposal due date; or
  - (d) The failure of the Obligee and the Principal to finalize a Contract that is satisfactory to the Obligee after attempting in good faith to do so.
2. If the Principal fails to satisfy the foregoing conditions for release set forth in paragraph 1 above, or if the Principle withdraws its Proposal in a manner that is not permitted by the RFP, or is awarded the Contract but fails to meet the requirements for finalizing or executing the Contract, then the Principal and the Surety hereby agree to pay to the Obligee the full Bonded Sum as liquidated damages, and not as a penalty, within 10 days after such failure. The Principal agrees and acknowledges that such liquidated damages are reasonable in order to compensate the Obligee for damages it will incur as a result of the Principal’s failure to satisfy the obligations under the RFP to which the Principal agreed when submitting its

**Request for Proposals for the Construction of Source Water Slant Wells**

Proposal. Such damages include potential harm to the credibility and reputation of the Obligee with policy makers and with the general public, delays to the Project and additional costs of administering this or a new procurement (including legal, accounting, overhead and other administrative costs). The Principal further acknowledges that these damages would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the unique nature of the Project and the efforts required to receive and evaluate proposals for it, and the unavailability of a substitute for those efforts. The amounts of liquidated damages stated herein represent good faith estimates and evaluations as to the actual potential damages the Obligee would incur as a result of Principal's failure to satisfy the obligations under the RFP to which Principal agreed when submitting its Proposal, and do not constitute a penalty. Principal agrees to such liquidated damages in order to fix and limit Principal's costs and to avoid later disputes over what amounts of damages are properly chargeable to Principal.

3. The following terms and conditions shall apply with respect to this Proposal Bond:
  - (a) If suit is brought on this Proposal Bond by the Obligee and judgment is recovered, the Principal and Surety shall pay all costs incurred by the Obligee in bringing such suit, including, without limitation, reasonable attorneys' fees and costs as determined by the court.
  - (b) Any extensions of the time for award of the Contract that the Principal may grant in accordance with the RFP shall be subject to the reasonable approval of the Surety.
  - (c) [Note: Use in case of multiple or co-sureties or, otherwise, delete.] The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Proposal Bond, so that the Obligee will have no obligation to deal with multiple sureties hereunder. All correspondence from the Obligee to the Co-Sureties and all claims under this Proposal Bond shall be sent to such designated representative. The Co-Sureties also agree to designate a single agent for service of process with respect to any actions on this Bond, which agent shall either be a natural person or a corporation qualified to act as an agent for service of process under California law. The designated representative and agent for service of process may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Obligee designating a single new representative and/or agent, signed by all of the Co-Sureties. The initial representative shall be:

Draft as of 9/11/15  
Monterey Peninsula Water Supply Project  
Request for Proposals for the Construction of Source Water Slant Wells

SIGNED and SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Principal

By:

\_\_\_\_\_  
Surety [or Co-Surety]

By:

\_\_\_\_\_  
Attorney in Fact

By:

\_\_\_\_\_  
Co-Surety

By:

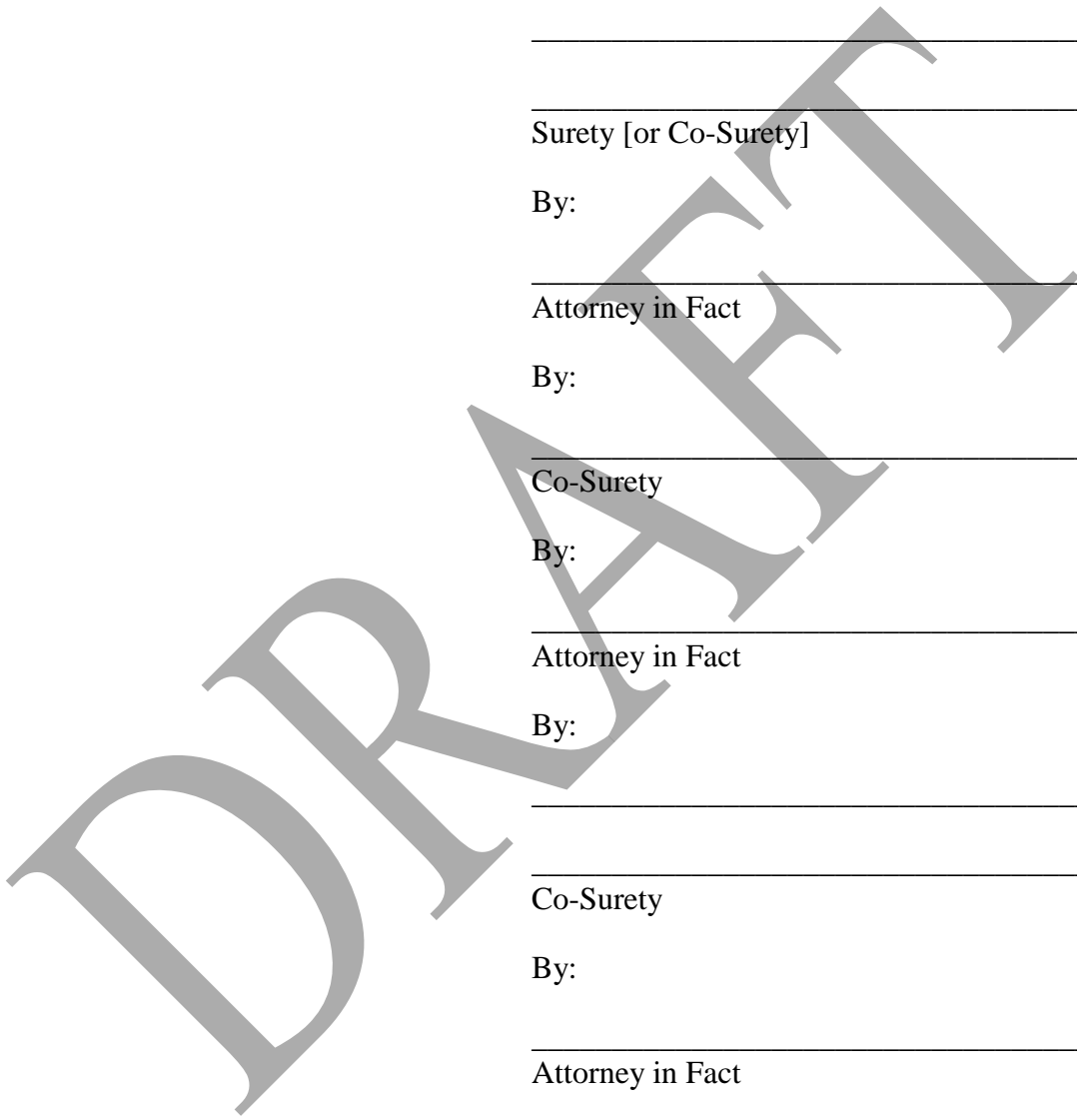
\_\_\_\_\_  
Attorney in Fact

By:

\_\_\_\_\_  
Co-Surety

By:

\_\_\_\_\_  
Attorney in Fact



Request for Proposals for the Construction of Source Water Slant Wells

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

[NOTE: Use an acknowledgement form and follow the notary requirements that apply in the applicable state.]

State of \_\_\_\_\_

County of \_\_\_\_\_

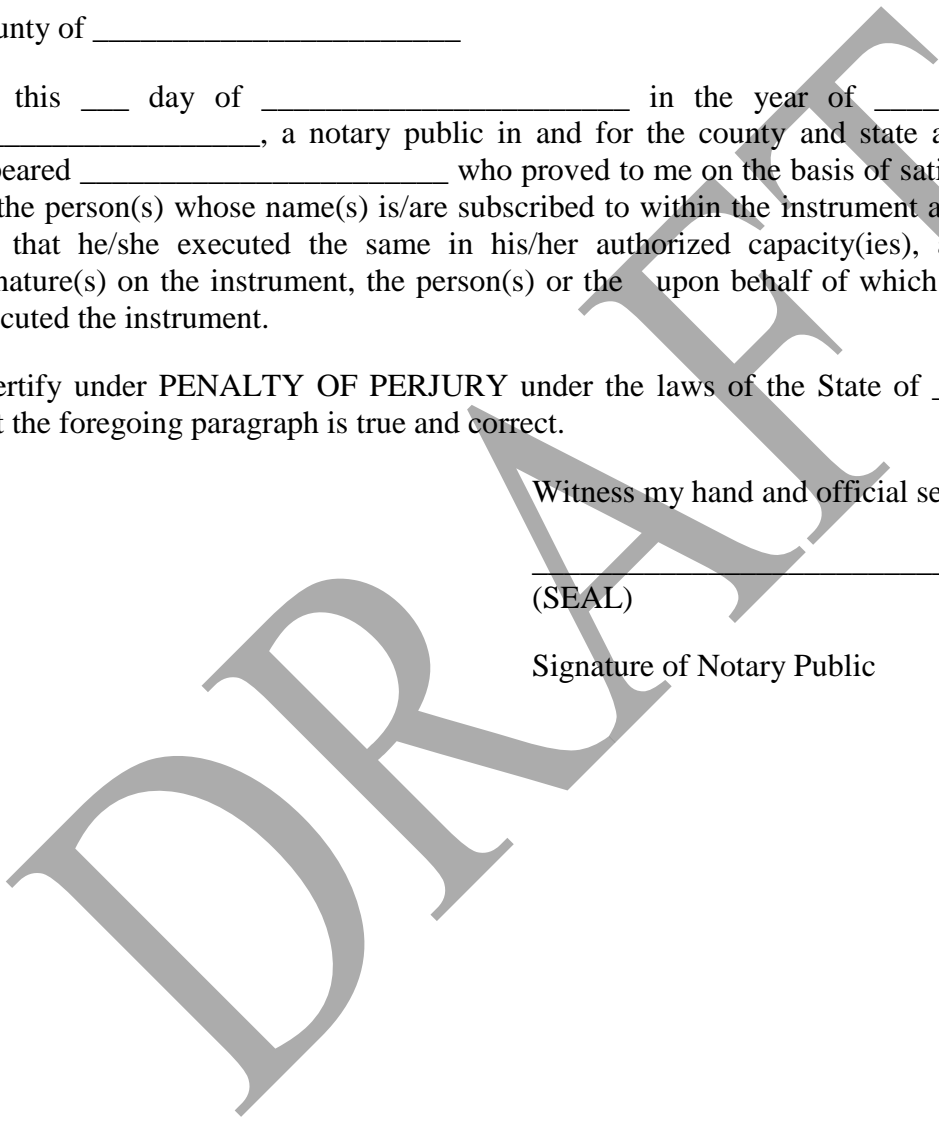
On this \_\_\_\_ day of \_\_\_\_\_ in the year of \_\_\_\_\_ before me, \_\_\_\_\_, a notary public in and for the county and state aforesaid, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies), and that by his/her signature(s) on the instrument, the person(s) or the \_\_\_\_\_ upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

Witness my hand and official seal:

\_\_\_\_\_  
(SEAL)

Signature of Notary Public



Draft as of 9/11/15  
**Monterey Peninsula Water Supply Project**  
**Request for Proposals for the Construction of Source Water Slant Wells**

**PROPOSAL FORM 13**

**PRICE ESCALATOR INDICES**

The Proposer shall include below at least one and no more than five indices that it proposes to use as the Price Escalator. The Proposer shall also include the corresponding percentage to be used for each index, totaling 100%. The indices provided will be included in the Contract following successful negotiation.

<u>Price Escalator Index</u>	<u>Percent of the Contract Price<sup>1</sup></u>

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

\_\_\_\_\_  
**Name of Designated Signatory**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Title**

<sup>1</sup> The sum of the percentages in this column shall be 100%.

**ATTACHMENT B**  
**DRAFT CONSTRUCTION CONTRACT**

**DRAFT**

## AGREEMENT

This Agreement is by and between California-American Water Company, a California Corporation (Owner), and ("Contractor").  
Owner and Contractor hereby agree as follows:

### ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**Construction of seven to nine subsurface slant wells to produce the source water supply for a desalination plant**

### ARTICLE 2 – THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**Monterey Peninsula Water Supply Project - Construction of Source Water Slant Wells**

### ARTICLE 3 – ENGINEER

3.01 The Engineer for the Project will act as the Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

3.02 The following Owner-affiliated entities or independent engineers, consultants, or managers have been retained by Owner to undertake some or all of Engineer's or Owner's authority, duties, or responsibilities under the Contract Documents:

**GEOSCIENCE Support Services, Inc.**

### ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and final completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion and Final Completion*

A. The Work shall be substantially completed within **450 days** after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions.



- B. The Work will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within **90 days** after the date when the Contract Times commence to run.

#### 4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner: (1) **\$10,000** for each day that expires after the time specified in Paragraph 4.02.A for Substantial Completion, or any extension thereof in accordance with Paragraph 12.02 of the General Conditions, until the Work is substantially complete ; and (2) **\$10,000** for each day that expires after the time specified in Paragraph 4.02.B for completion and readiness for final payment, or any extension thereof in accordance with Paragraph 12.02 of the General Conditions, until the Work is completed and ready for final payment.

### ARTICLE 5 – CONTRACT PRICE

- A. The Contract Price for all Work is **to be identified in the Notice to Proceed**, as further specified in Exhibit C, subject to any subsequent amendments.

### ARTICLE 6 – PAYMENT PROCEDURES

#### 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

#### 6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer and as otherwise specified in Paragraph 14.02 of the General Conditions. All such payments will be measured by the schedule of values established as provided in Paragraph 2.05.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
- B. Prior to Substantial Completion, progress payments will be made in an amount equal to **90%** percent of Work completed (with the balance being retainage), but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

- C. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to **95%** percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less **100%** percent of Owner's determination of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.
- D. All applications for progress payments shall be accompanied by a conditional lien release and, for payments after the first, an affidavit of payment.

#### 6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price, and any retained funds, as provided in said Paragraph 14.07.
- B. An application for final payment shall be accompanied by a conditional lien release and an affidavit of payment.

### **ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS**

- 7.01 To induce Owner to enter into this Agreement, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
  - B. Contractor 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.
  - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Contractor has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been provided pursuant to Paragraph 4.02 of the General Conditions.
  - E. Contractor has considered the information known to Contractor, information and observations obtained from visits to the Site, information commonly known to contractors doing business in the locality of the Site, the Contract Documents, and the reports and drawings identified in the Contract Documents and referred to in Paragraph 7.01.D above with respect to the effect of such information and observations on: (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Contractor's safety precautions and programs.

- F. Based on the information and observations referred to in Paragraph 7.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor 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.
- H. Contractor is prepared to comply with the applicable requirements of Owner's safety program, if any.
- I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- K. Contractor will provide Owner with a performance bond and a payment bond conforming to Article 5 of the General Conditions.
- L. To the best of its knowledge, neither the execution nor delivery of the Contract by Contractor nor the performance by Contractor of its obligations in connection with the Contract or the fulfillment by Contractor of the terms or conditions of the Contract (1) conflicts with, violates or results in a breach of any law, governmental regulation, bylaws or certificate of incorporation applicable to Contractor or (2) conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default under any of the foregoing.
- M. Contractor has determined that in performing its obligations in connection with the Contract, no potential exists for any conflict of interest or unfair advantage. Contractor shall immediately notify Owner in writing if Contractor becomes aware of any potential conflict of interest or unfair advantage that arises in connection with the Contract, including any potential perceived conflict or unfair advantage.

## ARTICLE 8 – CONTRACT DOCUMENTS

### 8.01 *Contents*

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages **AG-1** to **AG-11**, inclusive).
  - 2. General Conditions (pages **GC-i** to **GC-72**, inclusive).
  - 3. Specifications bearing the title(s): **Monterey Peninsula Water Supply Project, Subsurface Source Water Slant Wells, Design Documents, Supplemental**

**General Conditions and Technical Specifications, September 3, 2015, including Appendices A through E and Drawings**

(Note: The Specifications have been furnished by Engineer and are not attached to this Agreement)

4. Drawings bearing the title(s): **Monterey Peninsula Water Supply Project, Construction Plans for Nine Desalination Feed Water Slant Wells, September 3, 2015 consisting of 36 pages**

(Note: Drawings have been furnished by Engineer and are not attached to this Agreement).

5. Exhibits to this Agreement (enumerated as follows):
  - a. Performance bond form, identified as Exhibit A consisting of pages **A-1** through **A-2**;
  - b. Payment bond form, identified as Exhibit B, consisting of pages **B-1** through **B-2**.
  - c. Contractor's Bid identified as Exhibit C and consisting of **[insert number]** pages.
  - d. WMDVBE and Local Resources Utilization identified as Exhibit D.
  - e. List of Required Additional Insureds, identified as Exhibit G.
  - f. Insurance Requirements, identified as Exhibit H.
  - g. Project Team Member List and Key Personnel, identified as Exhibit I.
  - h. Conditional Release of Lien forms, identified as Exhibits J and K.
  - i. Affidavit of Payment to Subcontractors form, identified as Exhibit L.
6. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
  - a. Pre-Mobilization Notice.
  - b. Notice to Proceed.
  - c. Work Change Directives substantially conforming to the form attached hereto as Exhibit E.
  - d. Change Orders substantially conforming to the form attached hereto as Exhibit F.

- B. The documents listed in Paragraph 8.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 8.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

**ARTICLE 9 – MISCELLANEOUS**

9.01 *Terms*

- A. Capitalized terms used in this Agreement will have the meanings stated in the General Conditions.

9.02 *Assignment of Contract*

- A. No assignment by Contractor of any rights under or interests in the Contract will be binding on Owner without the written consent of Owner, and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge Contractor from any duty or responsibility under the Contract Documents.

9.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 *Severability*

- A. 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 Contractor, 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.

9.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 9.05:
  - 1. "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution.

2. "Fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition.
  3. "Collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels.
  4. "Coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.
- B. Contractor certifies that Contractor will conform its business dealings with Owner in accordance with the underlying principles of the Owner's Code of Ethics, a copy of which is available on the Owner's website at <http://californiaamwater.com>.

#### 9.06 Other Provisions

##### A. Government Regulations

The following clauses, where applicable, are incorporated in this Agreement by reference as if fully set out: The Equal Opportunity Clause prescribed in 41 CFR 60-1.40, the Affirmative Action Clause prescribed in 41 CFR 60-250.4, regarding veterans and veterans of the Vietnam Era, and the Affirmative Action Clause for Handicapped Workers prescribed in 41 CFR 60-741.4.

##### B. Background Check

Contractor shall conduct a background check on each of its employees prior to the employee performing any function or activity under this Agreement involving any direct customer contact, or on-site at any of the Owner's water treatment plants. As used in the Agreement, "direct customer contact" shall include but not be limited to, any activity by the Contractor's employee at or near a customer's premises. The background check conducted by Contractor shall consist of a check of at least the following: Previous employers and dates of employment; Education; Driving record; Criminal history (state and federal); References; Credit history. Prior to commencing any work under this Agreement, Contractor shall provide proof to the Owner that the requirements of this Paragraph have been met. Contractor shall make available to the Owner, upon request, the documentation and results of the background check with respect to any employee of Contractor performing any function under this Agreement involving any direct customer contact.

##### C. Project Manuals

Owner shall furnish to Contractor up to two (2) printed copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

D. Notices

Unless other specified in a specific provision of this Agreement, any notice required by the Contract Documents to be given to the Owner shall be addressed as follows:

**Ian Crooks  
California American Water  
511 Forest Lodge Road, Suite 100  
Pacific Grove, CA 93950**

Any notice required by the Contract Documents to be given to the Contractor shall be addressed as follows:

**Insert Contractor's Contact  
Insert Contractor's Street Address  
Insert Contractor's City, State and ZIP**

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E. WMDVBE Goal.

Owner has established a combined women, minority and disabled veteran owned business enterprises ("WMDVBE") non-mandatory participation goal for the Work of twenty-five percent (25%) of the Contract Price in accordance with CPUC General Order 156. In contribution to this goal, Contractor must make a good faith effort to employ WMDVBE subcontractors for any subcontracted portion of the Work, and must monitor and report to Owner any WMDVBE utilization during the term of the Contract. Contractor's WMDVBE utilization for the Work is described in Exhibit D.

F. Local Resources Goal.

Owner acknowledges the benefit that the local community receives through utilization of local contractors, laborers, and suppliers. In contribution to this goal, Contractor must make a good faith effort to employ qualified individuals who are, and have been for at least one year out of the three years prior to the opening of Proposals, residents of Monterey County, San Benito County, or Santa Cruz County in sufficient numbers so that no less than fifty percent of Contractor's total work force, including any Subcontractor work force (with exception of specialty subcontractor items), measured in labor work hours, is comprised of residents of such counties. Contractor must monitor and report to Owner any local resources utilization during the term of the Contract. Contractor's local resources utilization for the Work is described in Exhibit D.

G. Public Funding/Labor Law Compliance

1. Prevailing Wages and Labor Compliance Program. Contractor shall pay prevailing wage rates. The general prevailing wage rates for the Work are available on the California Department of Industrial Relations' website at <http://www.dir.ca.gov>, copies of which are on file at the offices of Owner and are available to Contractor or any interested party upon request. Further, the Work may be subject to a statutory requirement to adopt and enforce a labor compliance program for the monitoring and enforcement of prevailing wage requirements. Contractor shall, at no additional cost to Owner, comply with any applicable labor law and labor compliance program requirements. Contractor is responsible for all failures by Subcontractors to comply with labor compliance program requirements. Pursuant to section 1773 of the California Labor Code, the general prevailing wage rates in the county in which the Work is to be done have been determined by the Director of the California Department of Industrial Relations.

2. CWSRF Funding Responsibilities.

(a) Application and Submittals. Owner shall submit all filings, applications and reports necessary to obtain reimbursement from the Clean Water State Revolving Fund ("CWSRF") for the Project.

(b) Contractor Responsibilities. Contractor shall be responsible for cooperating with and providing reasonable assistance to Owner in all activities related to the loan agreement regarding the CWSRF loan from the State Water Resources Control Board ("SWRCB") to the Owner to partially fund the Project ("CWSRF Loan Agreement") including:



- (i) coordinating with Owner or Owner's consultant on the schedule and content of the submittals required for the CWSRF program;
- (ii) assisting Owner or Owner's consultant in developing and furnishing all necessary and reasonably required supporting material;
- (iii) supplying all data and information which may be reasonably required;
- (iv) familiarizing itself with the terms and conditions of the CWSRF program relating to construction activities and practices;
- (v) complying with the terms and conditions of the CWSRF Loan Agreement or other financing document required by the CWSRF program or by applicable law with respect to construction activities and practices;
- (vi) attending meetings, as necessary, with SWRCB and other governmental bodies; and
- (vii) taking all other actions reasonably requested by Owner in order to assist and support Owner related to the CWSRF financing for the Project.

Contractor shall take all reasonable actions necessary to comply with the conditions to disbursement of proceeds of the CWSRF Loan Agreement and to maximize Owner's eligibility to receive timely reimbursement under the CWSRF Loan Agreement. Contractor shall perform its CWSRF-related responsibilities in a manner which complies with all CWSRF program requirements.

(c) Data and Information. All data, information and action required to be supplied or taken in connection with any CWSRF financing shall be supplied and taken on a timely basis considering the CWSRF requirements at Contractor's sole cost and expense. The data and information supplied by the Contractor to the Owner or the Owner's consultant and the SWRCB in connection therewith shall be correct and complete in all material respects and shall be submitted in draft form to Owner or Owner's consultant sufficiently in advance to allow full and meaningful review and comment by Owner. Contractor shall not be entitled to any schedule or price relief or escalation which result from a delay due to the submission of materially incorrect or incomplete information. Owner reserves the right to reject, modify, alter, amend, delete or supplement any information supplied by Contractor pursuant to this Section.

#### H. Value Engineering

If requested by Owner, prior to commencement of Work Contractor shall participate in a value engineering process as determined by Owner which process shall take no longer than sixty (60) days to complete.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on the date it has been executed by OWNER (which is the Effective Date of the Agreement).

OWNER:

California-American Water Company \_\_\_\_\_

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

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

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CONTRACTOR

Insert Contractor Name \_\_\_\_\_

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

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

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

Attest: \_\_\_\_\_

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

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

Contractor's License No.: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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## GENERAL CONDITIONS

This document is a MODIFIED version of EJCDC® C-700, Copyright © 2007 by the National Society of Professional Engineers, American Society of Civil Engineers, and American Council of Engineering Companies, or is based in part on excerpts from EJCDC documents. Those portions of the text that originated in published EJCDC documents remain subject to the copyright. These General Conditions are based on the Standard General Conditions of the Construction Contract prepared by the Engineers Joint Contract Document Committee (EJCDC Doc. No. C-700, 2007 Edition). The General Conditions incorporate terms and conditions that are consistent with American Water System practices and policies. Only the General Conditions contained herein are a part of the Contract Documents for the Project.

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## GENERAL CONDITIONS

### ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

#### 1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda* – Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement* – The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
  3. *Application for Payment* – The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *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.
  5. *Bid* – The offer or proposal of a Bidder submitted on the prescribed bid schedule(s) setting forth the prices for the Work to be performed.
  6. *Bidder* – The individual or entity who submits a Bid directly to Owner.
  7. *Bidding Documents* – The Bidding Requirements and the proposed Contract Documents (including all Addenda).
  8. *Bidding Requirements* – The Request for Proposals, bid security of acceptable form, if any, and the bid schedules.



9. *Change Order* – A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
10. *Claim* – A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
11. *Contract* – The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
12. *Contract Documents* – Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price* – The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times* – The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor* – The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work* – See Paragraph 11.01.A for definition.
17. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement* – The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer* – Ian Crooks or his designee.

20. *Field Order* – A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements* – Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.
22. *Hazardous Environmental Condition* – The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
23. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws 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.
25. *Liens* – Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone* – A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
27. *Not used.*
28. *Notice to Proceed* – A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run. The notice also fixes the Contract Price by designating the number of wells to be constructed in accordance with the corresponding bid schedule included in Exhibit C.
29. *Owner* – California-American Water Company.
30. *PCBs* – Polychlorinated biphenyls.
31. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *Pre-Mobilization Notice* – A written notice given by Owner to Contractor authorizing the Contractor to commence the portion of the Work described in Bid Item 101 of the Specifications.
33. *Progress Schedule* – A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
34. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
35. *Project Manual* – The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
36. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
37. *Resident Project Representative* – The authorized representative of Engineer who may be assigned to the Site or any part thereof.
38. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
39. *Schedule of Submittals* – A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
40. *Schedule of Values* – A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
41. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
42. *Site* – Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

43. *Specifications* – That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
44. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
45. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be 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.
46. *Not used.*
47. *Not used.*
48. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.
49. *Underground Facilities* – All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
50. *Unit Price Work* – Work to be paid for on the basis of unit prices.
51. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
52. *Work Change Directive* – A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical 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 Times but is evidence that the parties expect that the

change ordered 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 Times.

## 1.02 Terminology

A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

### B. *Intent of Certain Terms or Adjectives*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.07 or any other provision of the Contract Documents.

### C. *Day*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

### D. *Defective*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - a. does not conform to the Contract Documents, or
  - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or
  - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

- d. Fails to perform to industry standards within the geographic area of the Project at any time during the Correction Period specified in Paragraph 13.07.

E. *Furnish, Install, Perform, Provide*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
  4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## ARTICLE 2 – PRELIMINARY MATTERS

### 2.01 *Delivery of Bonds, Evidence of Insurance, and Construction Quality Management Plan*

- A. *Bonds*: Before any Work at the Site is started, Contractor shall deliver to Owner such bonds as Contractor may be required to furnish pursuant to Paragraph 7.01.K of the Agreement.
- B. *Evidence of Insurance*: Before any Work at the Site is started, Contractor shall also deliver to Owner certificates of insurance (and other evidence of insurance which Owner or any additional insured may reasonably request) which Contractor is required to purchase and maintain in accordance with Article 5.
- C. *Construction Quality Management Plan*: Before any Work at the Site is started, Contractor shall also deliver to Owner a construction quality management plan meeting the minimum requirements of the Contract.

## 2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor the number of printed or hard copies of the Contract Documents specified in Paragraph 9.06.C of the Agreement. Additional copies will be furnished upon request at the cost of reproduction.

## 2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the day indicated in the Notice to Proceed. The Notice to Proceed will be accompanied by a no-cost Change Order memorializing the fixing of the Contract Price. Owner will not issue a Notice to Proceed until Contractor has delivered the bonds, evidence of insurance, and construction quality management plan referenced in Paragraph 2.01. Unless otherwise agreed to in writing by Owner and Contractor, a Notice to Proceed may be given at any time within 730 days after the Effective Date of the Agreement. Except as specifically provided in Paragraphs 2.04.B and 2.04.C below, Owner shall not have any obligations or duties to Contractor under the Agreement until the Contract Times commence to run.

## 2.04 *Starting the Work*

- A. Except as specifically provided in Paragraphs 2.04.B and 2.04.C below, Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.
- B. After execution of the Agreement by Owner and Contractor, Contractor shall perform the Pre-Construction Planning activities as directed by Owner and contemplated by Bid Item 100 as set forth in Exhibit C and the Specifications. Owner shall not be liable or responsible for the payment of more than the bid item allowance for Bid Item 100.
- C. Owner will issue the Notice to Pre-Mobilize a minimum of 180 days prior to the day the Notice to Proceed is issued. If Owner issues the Notice to Proceed less than 180 days prior to issuance of the Notice to Proceed, Contractor may make a Claim for an adjustment of the Contract Times in accordance with Paragraphs 10.05.A and 12.02.B, but, Contractor shall not be entitled to an adjustment in the Contract Price. Prior to issuance of the Notice to Proceed, Owner shall not be liable or responsible for the payment of more than \$500,000.00 for Bid Item 101. If and when the Notice to Proceed is issued, Contractor may submit an Application for Payment for any remaining costs incurred under Bid Item 101 prior to issuance of the Notice to Proceed.



## 2.05 *Preliminary Schedules*

- A. *Submission of Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified by Owner or Engineer in writing or at the Preconstruction Conference), Contractor shall submit to Engineer for timely review:
1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
  2. a preliminary Schedule of Submittals; and
  3. a preliminary Schedule of Values for all of the Work which includes 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.
- B. *Acceptance of Preliminary Schedules:* No progress payment shall be made to Contractor until schedules are submitted to Engineer in accordance with Paragraph 2.05.A and accepted by Engineer:
1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
  2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
  3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work and the allocation of the Contract Price as shown in the Progress Schedule.

## 2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.



- B. At this conference Owner and Contractor shall each designate, in writing, specific individuals to act as their respective representatives with respect to the services and responsibilities of each party under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

### **ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

#### **3.01 *Intent***

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

#### **3.02 *Reference Standards***

- A. Standards, Specifications, Codes, Laws, and Regulations
1. 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 the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
  2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

- B. Unless specified otherwise in the Contract Documents, all Work shall meet the laws, regulations, codes, and industry standards (in that order) applicable to the location of the Work.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. Reporting Discrepancies

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers or has actual knowledge of and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.15.A) until a modification to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

#### B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
  - a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
  - b. the provisions of any 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).

### 3.04 *Modifying Contract Documents*

- A. The Contract Documents may be modified to provide for additions, deletions, or revisions (or any combination thereof) in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
  - 1. Work Change Directive
  - 2. Change Order
  - 3. Field Order;
  - 4. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.16.D.3); or
  - 5. Engineer's written interpretation or clarification.
- C. Changes in Contract Time or Contract Price must be made by Change Order.

### 3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
  - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
  - 2. reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.
- B. The prohibition of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

### 3.06 *Electronic Data*

- A. Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information

obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

#### **ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

##### *4.01 Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

##### *4.02 Subsurface and Physical Conditions*

- A. *Not used.*
- B. *Limited Reliance by Contractor Authorized:* The Specifications, which are Contract Documents, present as a contractual baseline those subsurface conditions that

Contractor may assume it will encounter; however, Owner does not warrant that actual conditions will not vary from the assumed conditions. Contractor may rely upon the express statements and depictions regarding assumed subsurface conditions at the Site presented as a contractual baseline in the Specifications. Except for such reliance, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities, with respect to:

1. the completeness of the description of the subsurface conditions contained in the Specifications, or content, quality, or completeness of any other such reports, tests, or drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in any such reports or tests, or shown or indicated in any such drawings; or
3. any Contractor interpretation of or conclusion drawn from any such report, test, or drawing or any such other data, interpretations, opinions, or information.

#### 4.03 *Differing Subsurface or Physical Conditions*

##### A. *Notice*

1. The Contractor shall give written notice to Owner and Engineer of (a) subsurface or latent physical conditions at the Site which differ materially from those indicated in the Specifications or (b) unknown physical conditions at the Site of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract Documents.
2. The Contractor's notice shall provide the Owner and Engineer the opportunity to investigate the conditions at the Site, and to obtain additional exploration or tests with respect to the pertinent condition. Owner shall provide to Contractor the results of any such additional tests or exploration.

B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

##### C. *Possible Price and Times Adjustments*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an

increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. such condition must meet at least one of the two categories described in Paragraph 4.03.A.1; and
  - b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.05 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
- a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
  - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
  - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, Contractor may make a Claim therefor as provided in Paragraph 10.05. However, Owner and Engineer, and any of their Related Entities shall not be liable to Contractor 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 Contractor on or in connection with any other project or anticipated project.

#### 4.04 *Underground Facilities*

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Contract Documents:
1. Contractor may assume the general accuracy and completeness of any such information and data shown or indicated in the Contract Documents; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
  - a. reviewing and checking all such information and data,
  - b. locating for field construction purposes all Underground Facilities shown or indicated in the Contract Documents,
  - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and
  - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

**B. *Not Shown or Indicated***

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.15.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and advise Owner as to the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If Owner concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Contractor may make a Claim therefor as provided in Paragraph 10.05.

**4.05 *Reference Points***

- A. Owner shall provide engineering surveys to establish reference points and property monuments necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established



reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer 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.

#### 4.06 *Hazardous Environmental Condition at Site*

- A. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- B. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.15.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by paragraph 4.06.C.
- C. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- D. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such



deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

- E. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.E shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- F. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.F shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- G. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

#### 4.07 *Notice of Hazardous Materials*

- A. In accordance with the intent of the Federal Occupational Safety and Health Administration (OSHA) Standard Section 29 CFR 1910.1200, Hazard Communication with effective date of May 25, 1986, as it may be amended from time to time, the Owner hereby notifies the Contractor that Work is to be performed on company property where the Contractor's employees may be exposed to hazardous materials existing on the premises.

A list of chemicals known to be used or stored by the Owner and required to be disclosed by said OSHA Standard Section 29 CFR 1910.1200, if any, will be provided to Contractor.

- B. Owner, Contractor, and any Subcontractors will each provide or make available to the others: (a) any written hazard communication program required to be maintained with

respect to the site and any material safety data sheet and other hazard communication information required to be provided in accordance with the applicable Laws and applicable Regulations; or (b) in the event that applicable Laws and Regulations do not require the provision or exchange of such hazard communications, Contractor and any Subcontractors shall, nevertheless, provide or make available to Owner and any other employers at the site a written hazard communication program, material safety data sheets and other hazard communication information of the type and consistent with the intent of said OSHA Standard Section 29 CFR 1910.1200 and acceptable to Owner and Engineer. Contractor shall be responsible for coordinating any such required exchange of documents or information between or among Owner and any other employers at the Site, or any of them. Contractor shall include the provisions of this paragraph in any subcontract for any part of the Work at the site.

## **ARTICLE 5 – BONDS AND INSURANCE**

### **5.01 *Performance, Payment, and Other Bonds***

- A. If required by the Contract Documents, Contractor 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 of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the 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. 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.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

- D. All bonds furnished in compliance with the above shall be executed by sureties having a rating of "A" by the most recent Best's Key Rating Guide and 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 Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

#### 5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in these General Conditions.

#### 5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured identified in Exhibit G, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Failure of Owner to demand such certificates or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- C. Owner does not represent that coverage and limits will necessarily be adequate to protect Contractor against all risks, including Contractor's obligation to indemnify Owner.
- D. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

#### 5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly

employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

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

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in Exhibit G, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages provided in Exhibit H or required by Laws or Regulations, whichever is greater;
3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.19;

4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in Exhibit G to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
  5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
  6. include completed operations coverage:
    - a. Such insurance shall remain in effect for five years after final payment.
    - b. Contractor shall furnish Owner and each other additional insured identified in Exhibit G, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and five years thereafter.
- C. The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations.
1. At no expense to Owner, Contractor shall (1) obtain and keep in force during the term of this Agreement, and any renewals or extensions hereof; and (2) require its Subcontractors to obtain and keep in force during the terms of their respective engagements or contracts, the minimum insurance limits and coverage set forth in Exhibit H. The insurance coverage limits stated therein are minimum coverage requirements, not limitations of liability, and shall not be construed in any way as Owner's acceptance of the responsibility of Contractor. Owner may approve in its sole discretion reduced coverages for Subcontractors upon written request by Contractor. Owner's approval of any such reduced coverages must be in writing.
  2. The minimum liability limits required may be satisfied through the combination of the primary general liability, employers' liability, and automobile liability limits with an umbrella liability policy (with coverage no more restrictive than the underlying insurance) providing excess limits at least equal to or greater than the combined primary limits.
  3. All commercial general liability including completed operations-products liability coverage, EIL or pollution liability and automobile liability insurance shall designate Owner, its parent, affiliates and subsidiaries, their respective directors, officers and employees as additional insureds. All such insurance should be

primary and non-contributory, and is required to respond and pay prior to any other insurance or self-insurance available to Owner. In addition to the liability limits available, such insurance will pay on behalf of or will indemnify Owner for defense costs. Any other coverage available to Owner applies on a contingent and excess basis. Such insurance shall include appropriate clauses pursuant to which the insurance companies shall waive their rights of subrogation against Owner.

4. Contractor and any of its subcontractors shall furnish, prior to the start of Work, certificates or adequate proof of the foregoing insurance including, if specifically requested by Owner, copies of the endorsements and insurance policies naming Owner as an additional insured, as provided herein. Current certificates of insurance shall be provided prior to the commencement of work and shall be maintained until termination of this Agreement. Contractor shall notify Owner in writing, at least thirty (30) calendar days prior to cancellation, or of a material change in any policy. Such cancellation or material alteration shall not relieve Contractor of its continuing obligation to maintain insurance coverage in accordance with this Contract.
5. The certificate holder is included as an additional insured with respect to liability arising out of the named insured's operations performed on behalf of such certificate holder. A waiver of any subrogation endorsement must accompany a certificate of insurance and must include workers' compensation policies.
6. Carriers providing coverage will be rated by A.M. Best with at least an A-rating and a financial size category of at least Class VII. Carriers shall be licensed in the state(s) where work is performed.
7. If Contractor shall fail to procure and maintain such insurance, Owner, upon written notice, may, but shall not be required to, procure and maintain same, but at the expense of Contractor. In the alternative, Owner may declare a default hereunder and, unless such default is timely cured, terminate the Agreement. Unless and until the default is cured, neither Contractor nor its servants, employees or agents will be allowed to enter upon the Owner's premises.

#### 5.05 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

### 5.06 *Property Insurance – Builder's Risk Insurance*

The Contractor shall bear all risks of all loss or damage to the materials and Work until the Work is finally accepted by the Owner, except that the Contractor may claim reimbursement under the Owner's builder's risk insurance policy as herein provided and limited. Owner may carry "All Risk" Builders Risk Insurance subject to deductibles, terms and conditions as stated in the policy and below. It is the obligation and responsibility of the Contractor to make appropriate claim to the insurance company for all losses claimed under the policy. Should any loss not be covered under this policy, in whole in or parts, the Contractor shall bear the loss. Any questions regarding coverages, limitation, exclusion, etc. contained in the policy shall be addressed by bidders prior to submittal of bids, to **Director, Risk Management, American Water, 1025 Laurel Oak Road, Voorhees, NJ 08043.**

Such insurance shall cover the full value of the cost of replacement to the Owner, less applicable deductibles, of all completed portions of the work to be performed throughout the entire time of construction. The deductibles on each separate and unrelated loss are: \$100,000 on all losses except as follows: (1) 3% of the Total Insurable Value (TIV) at the time of the loss at each location involved in the loss or damage, subject to a minimum of \$500,000 any one Flood occurrence; and (2) 5% TIV, minimum of \$250,000 per Earth Movement occurrence. Owner will furnish to the Contractor evidence of the insurance coverage provided.

Such insurance shall not cover (1) damage to or loss of material or equipment furnished by either party which are damaged or lost due to carelessness or negligence on the part of the Contractor, or (2) damage to or loss of machinery, tools, equipment, or other property furnished by the Contractor whether or not used by the Contractor in carrying out the terms of the Contract unless such machinery, tools, equipment or other property are specifically intended for permanent incorporation into the Contract work and are included in an approved application for payment.

### 5.07 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in Exhibit G to be listed as loss payees (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) in such policies 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 Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, 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 Subcontractors, and Engineer, and all other individuals or entities identified in Exhibit G to be listed as loss payees (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. 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***

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner 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 Owner's exercise of this power. If such objection be made, Owner 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, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

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

- A. If either Owner or Contractor has any objection to the coverage afforded by, or other provisions of, the bonds or insurance purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates or other requested evidence of coverage. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such



coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. 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 14.05, 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 – CONTRACTOR’S RESPONSIBILITIES**

6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall utilize the Project team members and key personnel listed in Exhibit I who shall not be replaced without written notice to Owner and Engineer and written approval by Owner, which approval shall not be unreasonably withheld, except under extraordinary circumstances.

6.02 *Labor, Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

### 6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

### 6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
  - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

### 6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, no like, equivalent, or "or-equal" item, and no substitution, is permitted.

### 6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor

shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

- B. If the Contract Documents require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner for Owner's acceptance by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Contract Documents, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked by Owner on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor
  2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade. This paragraph does not authorize Contractor to assign work to Subcontractors or Suppliers in violation of licensing requirements or other laws and regulations.

- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate written agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Contract Documents to be listed as insureds or additional insureds (and the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from 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 Subcontractor or Supplier, Contractor will obtain the same.
- H. Owner or Engineer may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by a particular Subcontractor or Supplier.
- I. Subcontractors approved by the Owner and Engineer are listed in Exhibit I. Approved Subcontractors shall not be replaced without prior notice to Owner. Owner shall have all rights provided in this Paragraph 6.06 with respect to any proposed replacement Subcontractor.

#### 6.07 *Patent Fees and Royalties*

- A. Contractor shall pay any required license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner or Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. Owner has entered into a Patent License and Non-Assertion Agreement effective July 27, 2015 with GEOSCIENCE Support Services, Inc. ("Geoscience") and Dennis Williams regarding the use of the slant well technology offered by Geoscience ("Geoscience Agreement"). The Geoscience Agreement is available for review on the Monterey Peninsula Water Supply Project website ([www.watersupplyproject.org](http://www.watersupplyproject.org)).
- C. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor and Subcontractors, and the officers, directors, partners,

employees, agents, and consultants of each and any of them from and against all claims, costs, losses, and damages, including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

- D. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### 6.08 *Permits*

- A. A listing of the permit(s) known at the time of preparation of the Bid Documents to be required for the Project and the identification of the party responsible for obtaining such permit(s) is set forth in the Specifications. Owner will obtain and pay for all necessary permits which by Laws or Regulations must be obtained by the Owner. The Contractor will obtain and pay for all other permits, licenses and certificates of inspection. The Contractor will pay for all inspection costs and fees. The Owner and Engineer will assist the Contractor as required by the Permitting Agency in obtaining all permits required to be obtained by the Contractor. The Contractor will assist the Owner as required by the Permitting Agency in obtaining the permits required to be obtained by the Owner.
- B. The Contractor and/or his Subcontractor(s) shall obtain, complete, seal and sign all applications required to obtain construction permits required by state and local government agencies. A copy of the electrician's and plumber's current state and/or local license shall be delivered to the Owner.
- C. When required by the local governing body, the electrician and plumber will execute a mechanical bond in the form approved by the local government.
- D. If Owner is required by Laws and Regulations to apply for a building permit, all bonds, application forms and copies of licenses shall be delivered to the Owner by Contractor so these documents may be submitted with the Owner's application for a building permit. The Contractor shall assist the Owner in preparing the building permit. The Owner will pay for the building permit.



### 6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that is contrary to Laws or Regulations, Contractor 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. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

### 6.10 *Taxes*

- A. Unless otherwise provided in the Contract Documents, Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.
- B. Contractor's responsibility under Paragraph 6.10 to pay all such taxes shall: (i) include the obligations to pay any interest or penalties that may be assessed as a result of Contractor's late payment or failure to pay such taxes, and (ii) survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.
- C. Contractor shall indemnify and hold harmless and defend Owner from and against all claims, losses, expenses, damages and liability relating to: (i) Contractor's nonpayment of any sales, consumer, use and other similar taxes or interest or penalties required to be paid by Contractor, or (ii) Contractor's failure to utilize or implement any available sales and use tax exemption or Contractor's failure to obtain any necessary exemption certificate or other required exemption evidence.

- D. Contractor shall furnish evidence satisfactory to Owner that Contractor has paid all sales, consumer, use and other similar taxes required to be paid by Contractor. Contractor shall also furnish to Owner with Contractor's applications for final payment a schedule of all items incorporated in the Work that Contractor has determined are entitled to sales and use taxes exemption and for which no sales and use taxes were paid by Contractor. Owner reserves the right to audit the Contractor's compliance with applicable sales and use taxes requirements prior to release of retainage and final payment. If Owner disagrees with any of Contractor's determinations or exemptions or otherwise has reason to believe that Contractor has not paid all applicable sales and use taxes, Owner shall be entitled to withhold the amount of sales and use taxes Owner believes Owner may be potentially liable for as a result of Contractor's nonpayment until: (i) Contractor presents evidence satisfactory to Owner that Contractor has paid the taxes in question or that the items in question are exempt and (ii) all statutes of limitation for the applicable taxing authority to bring an action against Owner for payment of the taxes in question have expired, whichever first occurs.
- E. In addition to Owner's other rights and remedies under this Paragraph 6.10, Owner shall be entitled to set off against monies otherwise due Contractor hereunder the amount of any sales and use tax, or any other tax, which Owner is required to pay be reason of Contractor's failure to comply with this Paragraph 6.10.

#### 6.11 *Use of Site and Other Areas*

##### A. Limitation on Use of Site and Other Areas

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any

claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work, Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. At the completion of Work, all waste materials, rubbish, and other debris generated by the Work shall be removed from the Site. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work, Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work, Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

#### 6.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents, Samples, and Shop Drawings to Engineer for Owner.

#### 6.13 *Safety and Protection*

- A. Contractor 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. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and



3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

- B. Contractor shall comply with all 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. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. 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 Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- D. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

#### 6.14 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

#### 6.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor 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. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

## 6.16 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the acceptable Schedule of Submittals (as required by Paragraph 2.05). Each submittal will be identified as Engineer may require.

### 1. *Shop Drawings*

- a. Submit number of copies specified by Engineer.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.16.D.

2. *Samples*: Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.

- a. Submit number of Samples specified in the Specifications.
- b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.16.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the Contractor's risk; no Change Order will be issued to provide additional time or compensation for corrections needed to conform previously performed work to the Shop Drawing or Sample approved by the Engineer.

### C. *Submittal Procedures*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:
  - a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.
  - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

- c. determined and verified the suitability of all materials offered with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;
  - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
  3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

#### *D. Engineer's Review*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals approved pursuant to Paragraph 2.05. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.16.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.16.C.1.

#### *E. Resubmittal Procedures*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
- F. Contractor shall furnish required submittals with sufficient information and accuracy in order to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing subsequent submittals of Shop Drawings, samples or other items requiring approval and Contractor shall reimburse Owner for Engineer's charges for such time.

#### 6.17 *Continuing the Work*

- A. Contractor shall carry on 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 permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

#### 6.18 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its Related Entities shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- C. Contractor'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 Contractor's obligation to perform the Work in accordance with the Contract Documents:
1. observations by Engineer;
  2. recommendation by Engineer or payment by Owner of any progress or final payment;
  3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
6. any inspection, test, or approval by others; or
7. any correction of defective Work by Owner.

#### 6.19 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of, in connection with, or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable. Contractor's obligations under this Section 6.19 shall not be limited to or by the amount of insurance coverage required by the Contract Documents.
- B. In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.19.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.19.A shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, consultants and subcontractors arising out of:
  1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
  2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

## 6.20 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.20, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

## **ARTICLE 7 – OTHER WORK AT THE SITE**

### 7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or via other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
  - 1. written notice thereof will be given to Contractor prior to starting any such other work;  
and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor 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 Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

#### 7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be agreed to at the Preconstruction Conference :
1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
  2. the specific matters to be covered by such authority and responsibility will be itemized; and
  3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Contract Documents, Owner shall have sole authority and responsibility for such coordination.



**ARTICLE 8 – OWNER’S RESPONSIBILITIES****8.01 *Communications to Contractor***

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

**8.02 *Replacement of Engineer***

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer whose status under the Contract Documents shall be that of the former Engineer.

**8.03 *Furnish Data***

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

**8.04 *Pay When Due***

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

**8.05 *Lands and Easements; Reports and Tests***

- A. Owner’s duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner’s identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Engineer in preparing the Contract Documents.

**8.06 *Limitations on Owner’s Responsibilities***

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

**8.07 *Compliance with Safety Program***

- A. While at the Site, Owner and its employees and representatives shall become familiar with Contractor’s safety programs as initiated and maintained under Paragraph 6.13 and shall comply with the requirements of such programs while at the Site.



**ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION****9.01 *Owner's Representative***

- A. Engineer will be Owner's representative during the construction period.
- B. Owner reserves the right to at any time, and in Owner's sole discretion to: 1) designate an employee or Owner or an Owner-affiliated entity as Engineer, 2) directly undertake or perform some or all Engineer's authority, duties, or responsibilities, and 3) retain Owner-affiliated entities or independent engineers, consultants, or managers to undertake some or all of Engineer's or Owner's authority, duties or responsibilities under the Contract Documents.
- C. The assignment of any authority, duties or responsibilities to Engineer or others under the Contract Documents, or any undertaking, exercise or performance thereof by Engineer, Owner, or others is intended to be for the sole and exclusive benefit of Owner and not for the benefit of Contractor, Subcontractor, Supplier, or any other person or organization.

**9.02 *Visits to Site***

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.07. Particularly, but without limiting the foregoing, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

### 9.03 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

### 9.04 *Rejecting Defective Work*

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require inspection or testing of the Work as provided in Paragraph 13.03, whether or not the Work is fabricated, installed, or completed.

### 9.05 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

### 9.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. For the purposes of determining the timeliness of a Claim under

Paragraph 10.05.A, the date of Engineer's decision under this Paragraph 9.06.B shall be the date of the event giving rise to the Claim.

- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.06, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

**9.07 *Limitations on Engineer's Authority and Responsibilities***

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.07 shall also apply to the Resident Project Representative, if any, and assistants, if any.

**ARTICLE 10 – CHANGES IN THE WORK; CLAIMS****10.01 *Authorized Changes in the Work***

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

**10.02 *Unauthorized Changes in the Work***

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as modified in accordance with Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.15 or in the case of uncovering Work as provided in Paragraph 13.04.B.

**10.03 *Execution of Change Orders***

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
  - 1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
  - 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
  - 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; 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, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.17.A.

#### 10.04 *Notification to Surety*

- A. 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 Times) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

#### 10.05 *Claims*

- A. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event. A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal.
- B. *Other Party's Action:* The other party will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part, or
  2. approve the Claim.
- C. In the event that the other party does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- D. The other party's written action under Paragraph 10.05.B or denial pursuant to Paragraph 10.05.C will be final and binding upon the claimant, Owner and Contractor, unless claimant invokes the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- E. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

**ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK****11.01 Cost of the Work**

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any 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 Contractor will be only those additional or incremental costs required because of the change in 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, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. 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 outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
  2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor 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 Contractor shall make provisions so that they may be obtained.
  3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. 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 Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

4. 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.
5. Supplemental costs including the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, 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.
  - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.
  - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
  - g. The cost of utilities, fuel, and sanitary facilities at the Site.



- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expresses, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

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

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office, for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or not specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
  2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
  3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
  4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
  5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A and 11.01.B.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any 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, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.



## 11.02 Allowances

- A. The Contract Price includes all allowances identified in the Contract Documents. Contractor shall cause the Work covered by such allowances, if any, to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer. Contract is not entitled to any part of an unexpended balance of an allowance.
- B. *Cash Allowances*
1. Contractor agrees that:
    - a. cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
    - b. cash allowances do not include Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, or other expenses related to the Work covered by the cash allowances, all of which have been included separately in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*
1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs. Expenditures from the contingency allowance, if any, are authorized and valued changes in the Work in accordance with Articles 10 and 12. Owner shall determine which changes in the Work, if any, are paid from the contingency allowance.
- D. Prior to final payment, if applicable, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

## 11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.05.

- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
  - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  - 2. there is no corresponding adjustment with respect to any other item of Work; and
  - 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

## **ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES**

### *12.01 Change of Contract Price*

- A. 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 submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. 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:
  - 1. 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 11.03); or
  - 2. 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 12.01.C.2); or
  - 3. 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 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
  - 4. Because the Notice to Proceed will be issued sometime after the Effective Date, the Contract Price shall be adjusted (increased or decreased) by multiplying (i) the

Contract Price (or percentage of the Contract Price if multiple indices are used), by (ii) the percentage change in the Price Escalator Index (set forth in the table below) between (a) the Index value for the month in which the Effective Date occurred, and (b) the Index value for the month in which the Notice to Proceed is issued. The Contract Price shall not escalate during delays caused in whole or in part by fault of Contractor.

Price Escalator  
[INSERT TABLE AGREED UPON BY OWNER AND CONTRACTOR]

Price Escalator Index	Percent of the Contract Price

C. *Contractor's Fee*: The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
  - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
  - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
  - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under

Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

- d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

### 12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

### 12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times 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 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors 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 Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

- C. If Contractor 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 Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer and the Related Entities of each of them shall not be liable to Contractor 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 Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

## **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

### *13.01 Notice of Defects*

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

### *13.02 Access to Work*

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

### *13.03 Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner may employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
  2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and
  3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals and furnish Engineer the required certificates of inspection or approval. Owner shall pay any inspection fee imposed by the public body.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.
- G. No observations, inspections, tests, or approvals by Engineer, Owner, or others shall relieve Contractor of its obligation to perform the Work in accordance with the Contract Documents.

#### 13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, 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, Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 13.05 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

#### 13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

#### 13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Contract Documents) any Work is found to be defective, or



if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
  2. correct such defective Work; or
  3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. 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 correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, 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.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

#### 13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to



Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner or Owner may offset an appropriate amount from final payment if not yet paid. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

**13.09 Owner May Correct Defective Work**

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times 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 13.09.

## **ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION**

### *14.01 Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.05 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

### *14.02 Progress Payments*

#### *A. Applications for Payments*

1. At intervals of once a month, Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed to the first day of such month and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested for 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 or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Each Application for Payment shall be accompanied by completed and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work, to the date of the Application for Payment. Applications for progress payments shall be accompanied by a Conditional Release of Lien substantially conforming to the form specified in California Civil Code section 8132. Contractor may use the form attached hereto as Exhibit J.
3. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment. Such affidavit shall substantially conform to the form attached as Exhibit L. It shall be Contractor's responsibility to maintain the property free of all liens from subcontractors retained or employed by Contractor upon submitting an Application for Payment covering such

subcontractor's work and an affidavit attesting that such payment has been applied to such Subcontractor's account.

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

**B. *Review of Applications***

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations on the Site of the executed Work as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.05, and to any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or

- b. there are no other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's nor Owner's review of Contractor's Work for the purposes of recommending payments or determining to make payments, nor Engineer's recommendation of any payment, including final payment, nor Owner's decision to make any payment, including final payment, will impose responsibility on Engineer or Owner:
  - a. to supervise, direct, or control the Work, or
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
  - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
  - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;
  - c. Owner has corrected defective Work or completed Work in accordance with Paragraph 13.09; or
  - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

*C. Payment Becomes Due*

1. Thirty days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

*D. Reduction in Payment*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
  - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
  - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
  - c. there are other items entitling Owner to a set-off against the amount recommended; or
  - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

*14.03 Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner free and clear of all liens no later than the time of payment.

#### 14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within 14 days after submission of the tentative certificate to Owner notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will within said 14 days execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

#### 14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the

Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions.

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner and Engineer will follow the procedures of paragraph 14.04 A.-D. for that part of the Work.
2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 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.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

#### 14.06 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.



## 14.07 Final Payment

### A. Application for Payment

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
  - b. consent of the surety, if any, to final payment;
  - c. a list of all Claims against Owner that Contractor believes are unsettled; and
  - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. The Application for Final Payment shall be accompanied by a Release of Lien completed by Contractor, Subcontractors and Suppliers substantially conforming to the form specified in California Civil Code section 8136. Contractor, Subcontractors, or Suppliers may use the form attached hereto as Exhibit K.
4. Contractor shall defend, indemnify, and hold Owner harmless against any Lien filed in connection with the Work by any Subcontractor, Supplier, or other lien claimant. At Owner's request, Contractor shall furnish a bond or other collateral satisfactory to Owner to protect and indemnify Owner against any Lien.

### B. Engineer's Review of Application and Acceptance

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for



payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

*C. Payment Becomes Due*

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

*14.08 Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

*14.09 Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
  1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
  2. a waiver of all Claims by Contractor against Owner and a release of all liens other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

**ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION****15.01 *Owner May Suspend Work***

- A. At any time after issuance of the Notice to Proceed and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 730 days by notice in writing to Contractor and Engineer which may fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed, if any, or on the date later specified by Owner. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

**15.02 *Owner May Terminate for Cause***

- A. The occurrence of any one or more of the following events will justify termination for cause:
1. Contractor'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 2.05 as adjusted from time to time pursuant to Paragraph 6.04);
  2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
  3. Contractor's repeated disregard of the authority of Engineer; or
  4. Contractor's violation in any substantial way of any provisions of the Contract Documents, including a misrepresentation or failure to comply under Article 7 of the Agreement.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion),
  2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and
  3. complete the Work as Owner may deem expedient.

- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds 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) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, 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.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor 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.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

### 15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, after issuance of the Notice to Proceed Contractor shall be paid for (without duplication of any items):
  1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
  3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or

arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.
- B. Contractor 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.
- C. If Owner terminates the Contract prior to issuance of the Notice to Proceed, Contractor shall only be entitled to compensation as set forth in Paragraph 2.04.B.

#### 15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 730 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

### **ARTICLE 16 – DISPUTE RESOLUTION**

#### 16.01 *Methods and Procedures*

- A. At any time after submitting notice of a claim under Paragraph 10.05.A and prior to the expiration of the 30-day time period set forth in Paragraph 10.05.D, Owner or Contractor may give to the other party written notice of intent to submit the Claim to a process of bilateral negotiations as set forth below.
- B. Within 30 days of delivery of such notice, Owner and Contractor shall meet and confer regarding the Claim. A good-faith effort to negotiate resolution shall be made by both parties.

- C. If the negotiations contemplated by Paragraph 16.01.B are unsuccessful, management representatives of Owner and Contractor at least one tier above the individuals who met under 16.01.B shall meet, confer, and negotiate within 30 days of the closure of the unsuccessful negotiations.
- D. If the Claim is not resolved by negotiation, the Claim shall be deemed denied and shall become final and binding 30 days after termination of the negotiations unless, within that time period, Claimant:
1. invokes the dispute resolution process provided for in Paragraph 16.01.E, or
  2. agrees with the other party to submit the Claim to another dispute resolution process.
- E. **Mandatory Non-binding Mediation.** If a dispute arises out of, or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the Parties agree to first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation under the Construction Industry Mediation Rules of the American Arbitration Association before having recourse in a court of law. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required travel and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties, unless they agree otherwise. Any resultant agreements from mediation shall be documented in writing. All mediation proceedings, results, and documentation shall be inadmissible for any purpose in any legal proceeding (pursuant to California Evidence Codes sections 1115 thru 1128), unless such admission is otherwise agreed upon in writing by both parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.
- F. Any dispute arising under the Contract not resolved through mediation shall be resolved through submittal of the dispute to a court of competent jurisdiction.
- G. **Covenant of Good Faith and Fair Dealing:**
1. This contract imposes an obligation of good faith and fair dealing in its performance and enforcement. The Contractor, Engineer and Owner, with a positive commitment to honesty and integrity, agree to the following mutual duties:
    - a. Each will function within the laws and statues applicable to their duties and responsibilities.
    - b. Each will assist in the other's performance.
    - c. Each will avoid hindering the other's performance.
    - d. Each will proceed to fulfill its obligations diligently.

- e. Each will cooperate in the common endeavor of the contract.

## **ARTICLE 17 – MISCELLANEOUS**

### **17.01 *Giving Notice***

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
  - 1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or
  - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice, or by facsimile transmission.

### **17.02 *Computation of Times***

- A. 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.

### **17.03 *Cumulative Remedies***

- A. 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, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph 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.

### **17.04 *Survival of Obligations***

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

### **17.05 *Controlling Law***

- A. This Contract is to be governed by the laws of the state of California.

17.06 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

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**ATTACHMENT C**

**BID SCHEDULES**

**DRAFT**



BID SCHEDULE

BIDDER: \_\_\_\_\_

Drilling, Constructing, Developing and Testing of Seven Subsurface Desalination Feed Water Slant Wells

Schedule of Work Items  
Seven Slant Wells

Bid Items 100-143

<u>Item No.</u>	<u>Approx. Quantity</u>	<u>Description</u>	<u>Unit Price Dlr./Cts.</u>	<u>Total Amount Dlr./Cts.</u>
1	1	LS Obtaining bonds (performance and payment) and insurance.	\$ _____	\$ _____
100	1	T&M Pre-Construction Planning not-to-exceed Allowance, including but not limited to engineering, coordination, and planning efforts with Owner, and obtaining Monterey County drilling permits.	40,000.00	\$ 40,000.00
101	1	LS Pre-mobilization activities to construct, modify, and prepare modifications as necessary to a DR-40 Drilling Rig to drill at an angle of 14 degree below horizontal at an estimated lineal depth of 1,000 ft, work shall include preparation of any supporting equipment.	\$ _____	\$ _____
102	1	LS Primary Mobilization of Drilling Equipment Including Drilling Rotary Reverse Circulation Drilling Rig (DR-40 or equal) modified to drill at an angle of 14 degree below horizontal including necessary support equipment, temporary facilities and personnel. Costs shall include crew per diem, demobilization, removal of all temporary facilities, site clean-up, and restoration upon completion of project.	\$ _____	\$ _____
102A	1	LS Final Project Demobilization, removal of all temporary facilities, equipment, site clean-up, and restoration upon completion of project.	\$ _____	\$ _____
103	6	EACH Mobilization of Drilling Equipment Between Sites Costs shall include crew per diem, demobilization, removal of all temporary facilities, site clean-up, and restoration upon completion of project.	\$ _____	\$ _____
104	7	EACH Furnish and install anchoring, jacking and jack support plates for DR-40 drilling rig during temporary drill casing installation and removal.	\$ _____	\$ _____
105	7	EACH Furnish and install temporary chain-link construction fencing (min. 6 ft height), with privacy panels and gates, to completely surround both drilling site and staging/storage area.	\$ _____	\$ _____
106	7	EACH Furnish and install noise mitigation measures adjacent to rig engine and air compressor (minimum 16 ft high, 60 ft long), as specified.	\$ _____	\$ _____
107	7	EACH Furnish and install erosion control measures, i.e., 6-mil liner to cover the work area for containing spills and preventing run off of fluids during the work.	\$ _____	\$ _____
108	7	EACH Furnish and install baffled Baker tank, piping and pumps for recirculating fluids to borehole during drilling and well construction.	\$ _____	\$ _____

BID SCHEDULE

BIDDER: \_\_\_\_\_

109	7	EACH	Furnish and install temporary above ground pipeline, which will connect to temporary disposal pipeline standpipe (provided by others).	\$ _____	\$ _____
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BID SCHEDULE

BIDDER: \_\_\_\_\_

Drilling, Constructing, Developing and Testing of Nine Subsurface Desalination Feed Water Slant Wells

Schedule of Work Items  
Nine Slant Wells

Bid Items 100-143

<u>Item No.</u>	<u>Approx. Quantity</u>	<u>Description</u>	<u>Unit Price Drs./Cts.</u>	<u>Total Amount Drs./Cts.</u>
110	7 EACH	Provide for offsite disposal of all drill cuttings generated during the project, as specified.	\$ _____	\$ _____
111	250 FT	Furnish and install 34-in. OD x 1/2 in. wall mild steel casing within the 40-inch casing to lineal depth of 50 ft, as specified.	\$ _____	\$ _____
112	300 FT	Advance by drilling the 34-in. OD x 1/2 in. wall mild steel temporary drill casing as specified, at an angle of 14 degrees below horizontal. Borehole angle to be measured each 100 lineal ft of depth.	\$ _____	\$ _____
113	440 FT	Furnish and install 32-in. OD x 1/2 in. wall mild steel casing within the 34-inch casing as specified.	\$ _____	\$ _____
114	130 FT	Advance by drilling the 32-in. OD x 1/2 in. wall mild steel temporary drill casing as specified, at an angle of 14 degrees below horizontal. Borehole angle to be measured each 100 lineal ft of depth.	\$ _____	\$ _____
115	780 FT	Furnish and install 30-in. OD x 1/2 in. wall mild steel casing within the 36-, 34-, and 32-inch casing as specified.	\$ _____	\$ _____
116	980 FT	Advance by drilling 30-in. OD x 1/2 in. wall mild steel temporary drill casing as specified, at an angle of 14 degrees below horizontal. Borehole angle to be measured each 100 lineal ft of depth.	\$ _____	\$ _____
117	1,760 FT	Furnish and install 28-in. OD x 1/2 in. wall mild steel casing within the 30-inch casing as specified.	\$ _____	\$ _____
118	1,120 FT	Advance by drilling the 28-in. OD x 1/2 in. wall mild steel temporary drill casing as specified, at an angle of 14 degrees below horizontal. Borehole angle to be measured each 100 lineal ft of depth.	\$ _____	\$ _____
119	2,880 FT	Furnish and install 26-in. OD x 1/2 in. wall mild steel casing within the 28-inch casing as specified.	\$ _____	\$ _____

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BID SCHEDULE

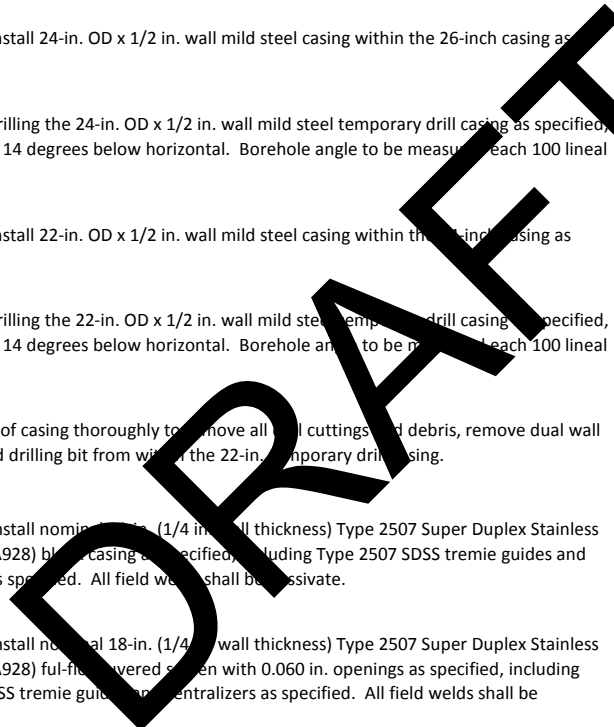
BIDDER: \_\_\_\_\_

Drilling, Constructing, Developing and Testing of Nine Subsurface Desalination Feed Water Slant Wells

Schedule of Work Items  
Nine Slant Wells

Bid Items 100-143

<u>Item No.</u>	<u>Approx. Quantity</u>	<u>Description</u>	<u>Unit Price Dirs./Cts.</u>	<u>Total Amount Dirs./Cts.</u>
120	1,260 FT	Advance by the drilling 26-in. OD x 1/2 in. wall mild steel temporary drill casing as specified, at an angle of 14 degrees below horizontal. Borehole angle to be measured each 100 lineal ft of depth.	\$ _____	\$ _____
121	4,140 FT	Furnish and install 24-in. OD x 1/2 in. wall mild steel casing within the 26-inch casing as specified.	\$ _____	\$ _____
122	1,400 FT	Advance by drilling the 24-in. OD x 1/2 in. wall mild steel temporary drill casing as specified, at an angle of 14 degrees below horizontal. Borehole angle to be measured each 100 lineal ft of depth.	\$ _____	\$ _____
123	5,540 FT	Furnish and install 22-in. OD x 1/2 in. wall mild steel casing within the 24-inch casing as specified.	\$ _____	\$ _____
124	1,460 FT	Advance by drilling the 22-in. OD x 1/2 in. wall mild steel temporary drill casing as specified, at an angle of 14 degrees below horizontal. Borehole angle to be measured each 100 lineal ft of depth.	\$ _____	\$ _____
125	7 EACH	Flush interior of casing thoroughly to remove all soil cuttings and debris, remove dual wall drill string and drilling bit from within the 22-in. temporary drill casing.	\$ _____	\$ _____
126	1,800 FT	Furnish and Install nominal 24-in. (1/4 in. wall thickness) Type 2507 Super Duplex Stainless Steel (ASTM A928) blank casing as specified, including Type 2507 SDSS tremie guides and centralizers as specified. All field welds shall be passivate.	\$ _____	\$ _____
127	2,310 FT	Furnish and Install nominal 18-in. (1/4 in. wall thickness) Type 2507 Super Duplex Stainless Steel (ASTM A928) full-flange screened screen with 0.060 in. openings as specified, including Type 2507 SDSS tremie guides and centralizers as specified. All field welds shall be passivated.	\$ _____	\$ _____
128	350 FT	Furnish and Install nominal 12-in. (1/4 in. wall thickness) Type 2507 Super Duplex Stainless Steel (ASTM A928) blank casing as specified, including Type 2507 SDSS tremie guides and centralizers as specified. All field welds shall be passivated.	\$ _____	\$ _____



BID SCHEDULE

BIDDER: \_\_\_\_\_

Schedule of Work Items  
Nine Slant Wells

Drilling, Constructing, Developing and Testing of Nine Subsurface Desalination Feed Water Slant Wells

Bid Items 100-143

<u>Item No.</u>	<u>Approx. Quantity</u>	<u>Description</u>	<u>Unit Price Dirs./Cts.</u>	<u>Total Amount Dirs./Cts.</u>
129	2,519 FT	Furnish and Install nominal 12-in. OD (1/4 in. wall thickness) Type 2507 Super Duplex Stainless Steel (ASTM A928) full flo louvered screen with 0.060 in. openings as specified, including Type 2507 SDSS tremie guides and centralizers as specified. All field welds shall be passivated.	\$ _____	\$ _____
130	7 each	Furnish and Install cone reducer and wall hook for transition from nominal 18-in. OD (1/4 in. wall thickness) to nominal 12-in. OD (1/4 in. wall thickness) fabricated from Type 2507 Super Duplex Stainless Steel (ASTM A928). All field welds shall be passivated.	\$ _____	\$ _____
131	5,690 FT	Furnish and install custom blend filter pack material, as specified, annular space between the well casing and borehole wall. Filter pack to be placed as temporary drill casings are removed. The screen interval shall be pre-developed by swabbing and surging in 5 ft intervals, as the filter pack is placed.	\$ _____	\$ _____
132	840 HR	Perform initial development using mechanical means (i.e. airlifting, swabbing, using a swabbing tool attached to the dual wall drill pipe, as specified. An additional filter pack to be added as needed.	\$ _____	\$ _____
133	1,310 FT	Furnish and install specified 10.3 sacks sand-cement grout in annular seal between the well casing and borehole wall as temporary drill casing is removed.	\$ _____	\$ _____
134	7 EACH	Mobilize pump hoist, submersible test pump, crews, generator, panel, discharge piping, control valves, and necessary support equipment, including removal of residual sediment from the low side of the well, if needed.	\$ _____	\$ _____
135	610 FT	Furnish 12-in. pump column pipe with porta-lok type connections and centralizers from Type 2507 SDSS, as specified.	\$ _____	\$ _____
136	7 EACH	Furnish and install temporary submersible test pump, downhole level instrumentation, temporary generator for pump power, ancillary equipment, and discharge head manufactured from Type 2507 SDSS to produce specified flow rate. Intake to be set as specified for final well development and aquifer testing.	\$ _____	\$ _____
137	420 HR	Conduct final development by pumping and surging, as specified, with temporary submersible pump.	\$ _____	\$ _____
138	70 HR	Conduct step drawdown pumping test for yield and drawdown.	\$ _____	\$ _____

BID SCHEDULE

BIDDER: \_\_\_\_\_

Drilling, Constructing, Developing and Testing of Nine Subsurface Desalination Feedwater Slant Wells

Schedule of Work Items  
Nine Slant Wells

Bid Items 100-143

<u>Item No.</u>	<u>Approx. Quantity</u>	<u>Description</u>	<u>Unit Price Dirs./Cts.</u>	<u>Total Amount Dirs./Cts.</u>
139	840 HR	Conduct 5 day constant rate pumping test and recovery measurements for yield and drawdown.	\$ _____	\$ _____
140	7 EACH	Conduct color "dual-cam" video survey to total depth, as specified. Initially the video survey shall be performed on the 18-in. ID pump chamber, then within the 12-in. ID screen section (i.e., two passes). Provide 3 copies of video survey in DVD format.	\$ _____	\$ _____
141	7 EACH	Conduct final well disinfection using liquid chlorine to achieve 500 mg/L residual chlorine concentration.	\$ _____	\$ _____
142	7 EACH	Excavate wellhead and provide shoring to accommodate wellhead cut structure. Cut nominal 18-in. slant well casing to required depth and install flange to accommodate wellhead discharge adapter.	\$ _____	\$ _____
143	560 HR	Standby time with active Dual Rotary drilling rig and crew as required for special circumstances.	\$ _____	\$ _____
<b>TOTAL - DRILLING, CONSTRUCTION, DEVELOPMENT AND TESTING OF NINE SLANT WELLS</b>				
<b>(Bid Items 100-143):</b>			\$ _____	
<b>OPTIONAL ITEMS</b>				
144	1,800 FT	Furnish and Install nominal 20-in. (1/2 in. wall thickness) Type 2507 Super Duplex Stainless Steel (ASTM A928) blank casing as specified, including Type 2507 SDSS tremie guides and centralizers as specified. All field welds shall be passivate.	\$ _____	\$ _____
145	2,310 FT	Furnish and Install nominal 20-in. (1/2 in. wall thickness) Type 2507 Super Duplex Stainless Steel (ASTM A928) full-flow screened screen with 0.060 in. openings as specified, including Type 2507 SDSS tremie guides and centralizers as specified. All field welds shall be passivated.	\$ _____	\$ _____

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BID SCHEDULE

BIDDER: \_\_\_\_\_

Drilling, Constructing, Developing and Testing of Nine Subsurface Desalination Feed Water Slant Wells

Schedule of Work Items  
Nine Slant Wells

Bid Items 100-143

Item No.	Approx. Quantity	Description	Unit Price Dlrs./Cts.	Total Amount Dlrs./Cts.
1	1	LS Obtaining bonds (performance and payment) and insurance.	\$ _____	\$ _____
100	1	T&M Pre-Construction Planning not-to-exceed Allowance, including but not limited to engineering, coordination, and planning efforts with Owner, and obtaining Monterey County drilling permits.	\$ 40,000.00	\$ 40,000.00
101	1	LS Pre-mobilization activities to construct, modify, and prepare modifications as necessary to a DR-40 Drilling Rig to drill at an angle of 14 degree below horizontal to an anticipated lineal depth of 1,000 ft, work shall include preparation of any supporting equipment.	\$ _____	\$ _____
102	1	LS Primary Mobilization of Drilling Equipment including Dual Rotary Reverse Circulation Drilling Rig (DR-40 or equal) modified to drill at an angle of 14° below horizontal, including necessary support equipment, temporary facilities and personnel. Costs shall include crew per diem, demobilization, removal of all temporary facilities, site clean-up, and restoration upon completion of project.	\$ _____	\$ _____
102A	1	LS Final Project Demobilization, removal of all temporary facilities, equipment, site clean-up, and restoration upon completion of project.	\$ _____	\$ _____
103	8	EACH Mobilization of Drilling Equipment to each Well drilling locations. Costs shall include crew per diem, demobilization, removal of all temporary facilities, site clean-up, and restoration upon completion of project.	\$ _____	\$ _____
104	9	EACH Furnish and install anchoring system and jack support plates for DR-40 drilling rig during temporary drilling installation and removal.	\$ _____	\$ _____
105	9	EACH Furnish and install temporary chain-link construction fencing (min. 6 ft height), with privacy panels and gates, to completely surround both drilling site and staging/storage area.	\$ _____	\$ _____
106	9	EACH Furnish and install noise mitigation measures adjacent to rig engine and air compressor (minimum 16 ft high, 100 ft long), as specified.	\$ _____	\$ _____
107	9	EACH Furnish and install erosion control measures, i.e., 6-mil liner to cover the work area for containing spills and preventing run off of fluids during the work.	\$ _____	\$ _____
108	9	EACH Furnish and install baffled Baker tank, piping and pumps for recirculating fluids to borehole during drilling and well construction.	\$ _____	\$ _____
109	9	EACH Furnish and install temporary above ground pipeline, which will connect to temporary disposal pipeline standpipe (provided by others).	\$ _____	\$ _____

BID SCHEDULE

BIDDER: \_\_\_\_\_

Drilling, Constructing, Developing and Testing of Nine Subsurface Desalination Feed Water Slant Wells

Schedule of Work Items  
Nine Slant Wells

Bid Items 100-143

Item No.	Approx. Quantity	Description	Unit Price Dlrs./Cts.	Total Amount Dlrs./Cts.
110	9 EACH	Provide for offsite disposal of all drill cuttings generated during the project, as specified.	\$ _____	\$ _____
111	350 FT	Furnish and install 34-in. OD x 1/2 in. wall mild steel casing within the 40-inch casing to a lineal depth of 50 ft, as specified.	\$ _____	\$ _____
112	420 FT	Advance by drilling the 34-in. OD x 1/2 in. wall mild steel temporary drill casing as specified, at an angle of 14 degrees below horizontal. Borehole angle to be measured each 100 lineal ft of depth.	\$ _____	\$ _____
113	660 FT	Furnish and install 32-in. OD x 1/2 in. wall mild steel casing within the 34-inch casing as specified.	\$ _____	\$ _____
114	190 FT	Advance by drilling the 32-in. OD x 1/2 in. wall mild steel temporary drill casing as specified, at an angle of 14 degrees below horizontal. Borehole angle to be measured each 100 lineal ft of depth.	\$ _____	\$ _____
115	1,060 FT	Furnish and install 30-in. OD x 1/2 in. wall mild steel casing within the 32-inch and 32-inch casing as specified.	\$ _____	\$ _____
116	1,260 FT	Advance by drilling 30-in. OD x 1/2 in. wall mild steel temporary drill casing as specified, at an angle of 14 degrees below horizontal. Borehole angle to be measured each 100 lineal ft of depth.	\$ _____	\$ _____
117	2,320 FT	Furnish and install 28-in. OD x 1/2 in. wall mild steel casing within the 30-inch casing as specified.	\$ _____	\$ _____
118	1,440 FT	Advance by drilling the 28-in. OD x 1/2 in. wall mild steel temporary drill casing as specified, at an angle of 14 degrees below horizontal. Borehole angle to be measured each 100 lineal ft of depth.	\$ _____	\$ _____
119	3,760 FT	Furnish and install 26-in. OD x 1/2 in. wall mild steel casing within the 28-inch casing as specified.	\$ _____	\$ _____

DRAFT



BID SCHEDULE

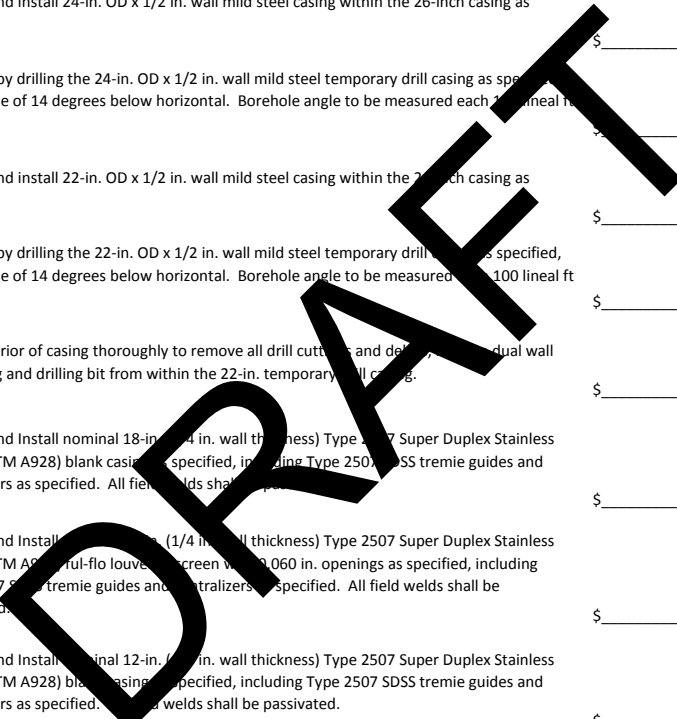
BIDDER: \_\_\_\_\_

Drilling, Constructing, Developing and Testing of Nine Subsurface Desalination Feed Water Slant Wells

Schedule of Work Items  
Nine Slant Wells

Bid Items 100-143

Item No.	Approx. Quantity	Description	Unit Price Dlrs./Cts.	Total Amount Dlrs./Cts.
120	1,620 FT	Advance by the drilling 26-in. OD x 1/2 in. wall mild steel temporary drill casing as specified, at an angle of 14 degrees below horizontal. Borehole angle to be measured each 100 lineal ft of depth.	\$ _____	\$ _____
121	5,380 FT	Furnish and install 24-in. OD x 1/2 in. wall mild steel casing within the 26-inch casing as specified.	\$ _____	\$ _____
122	1,800 FT	Advance by drilling the 24-in. OD x 1/2 in. wall mild steel temporary drill casing as specified, at an angle of 14 degrees below horizontal. Borehole angle to be measured each 100 lineal ft of depth.	\$ _____	\$ _____
123	7,180 FT	Furnish and install 22-in. OD x 1/2 in. wall mild steel casing within the 24-inch casing as specified.	\$ _____	\$ _____
124	1,820 FT	Advance by drilling the 22-in. OD x 1/2 in. wall mild steel temporary drill casing as specified, at an angle of 14 degrees below horizontal. Borehole angle to be measured each 100 lineal ft of depth.	\$ _____	\$ _____
125	9 EACH	Flush interior of casing thoroughly to remove all drill cuttings and debris. Remove dual wall drill string and drilling bit from within the 22-in. temporary casing.	\$ _____	\$ _____
126	2,170 FT	Furnish and Install nominal 18-in. (1/4 in. wall thickness) Type 2507 Super Duplex Stainless Steel (ASTM A928) blank casing as specified, including Type 2507 SDSS tremie guides and centralizers as specified. All field welds shall be passivated.	\$ _____	\$ _____
127	3,160 FT	Furnish and Install nominal 18-in. (1/4 in. wall thickness) Type 2507 Super Duplex Stainless Steel (ASTM A928) full-flou louvre screen with 2.060 in. openings as specified, including Type 2507 SDSS tremie guides and centralizers as specified. All field welds shall be passivated.	\$ _____	\$ _____
128	450 FT	Furnish and Install nominal 12-in. (1/4 in. wall thickness) Type 2507 Super Duplex Stainless Steel (ASTM A928) blank casing as specified, including Type 2507 SDSS tremie guides and centralizers as specified. All field welds shall be passivated.	\$ _____	\$ _____



BID SCHEDULE

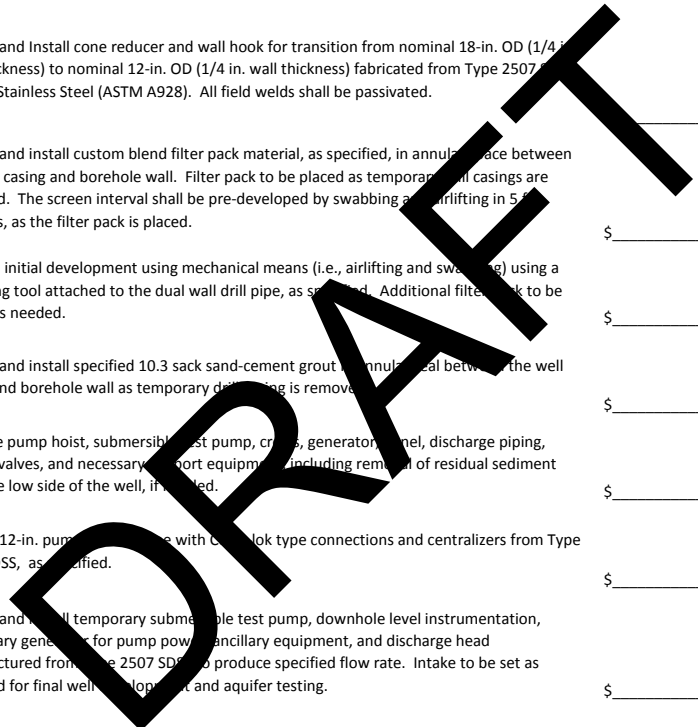
BIDDER: \_\_\_\_\_

Drilling, Constructing, Developing and Testing of Nine Subsurface Desalination Feed Water Slant Wells

Schedule of Work Items  
Nine Slant Wells

Bid Items 100-143

Item No.	Approx. Quantity	Description	Unit Price Dlrs./Cts.	Total Amount Dlrs./Cts.
129	3,193 FT	Furnish and Install nominal 12-in. OD (1/4 in. wall thickness) Type 2507 Super Duplex Stainless Steel (ASTM A928) full-flow louvered screen with 0.060 in. openings, as specified, including Type 2507 SDSS tremie guides and centralizers as specified. All field welds shall be passivated.	\$ _____	\$ _____
130	9 each	Furnish and Install cone reducer and wall hook for transition from nominal 18-in. OD (1/4 in. wall thickness) to nominal 12-in. OD (1/4 in. wall thickness) fabricated from Type 2507 Duplex Stainless Steel (ASTM A928). All field welds shall be passivated.	\$ _____	\$ _____
131	7,460 FT	Furnish and install custom blend filter pack material, as specified, in annular space between the well casing and borehole wall. Filter pack to be placed as temporary drill casings are removed. The screen interval shall be pre-developed by swabbing and airlifting in 5 ft intervals, as the filter pack is placed.	\$ _____	\$ _____
132	1,080 HR	Perform initial development using mechanical means (i.e., airlifting and swabbing) using a swabbing tool attached to the dual wall drill pipe, as specified. Additional filter pack to be added as needed.	\$ _____	\$ _____
133	1,540 FT	Furnish and install specified 10.3 sack sand-cement grout in annular seal between the well casing and borehole wall as temporary drilling casing is removed.	\$ _____	\$ _____
134	9 EACH	Mobilize pump hoist, submersible test pump, crane, generator, panel, discharge piping, control valves, and necessary support equipment, including removal of residual sediment from the low side of the well, if needed.	\$ _____	\$ _____
135	610 FT	Furnish 12-in. pump pipe with Coulolok type connections and centralizers from Type 2507 SDSS, as specified.	\$ _____	\$ _____
136	9 EACH	Furnish and install temporary submersible test pump, downhole level instrumentation, temporary generator for pump power, ancillary equipment, and discharge head manufactured from Type 2507 SDSS to produce specified flow rate. Intake to be set as specified for final well development and aquifer testing.	\$ _____	\$ _____
137	540 HR	Conduct final development by pumping and surging, as specified, with temporary submersible pump.	\$ _____	\$ _____
138	90 HR	Conduct step drawdown pumping test for yield and drawdown.	\$ _____	\$ _____



BID SCHEDULE

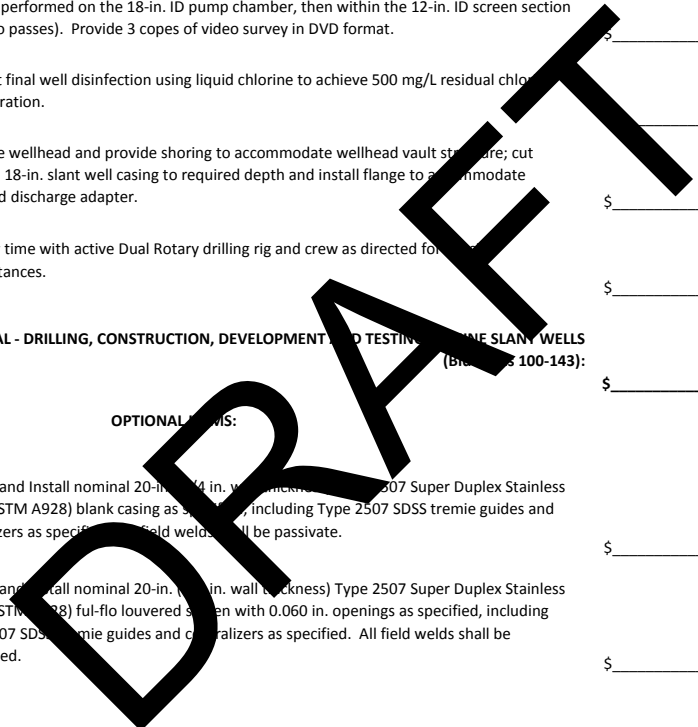
BIDDER: \_\_\_\_\_

Drilling, Constructing, Developing and Testing of Nine Subsurface Desalination Feedwater Slant Wells

Schedule of Work Items  
Nine Slant Wells

Bid Items 100-143

Item No.	Approx. Quantity	Description	Unit Price Dlrs./Cts.	Total Amount Dlrs./Cts.
139	1,080 HR	Conduct 5 day constant rate pumping test and recovery measurements for yield and drawdown.	\$ _____	\$ _____
140	9 EACH	Conduct color "dual-cam" video survey to total depth, as specified. Initially the video survey shall be performed on the 18-in. ID pump chamber, then within the 12-in. ID screen section (i.e., two passes). Provide 3 copies of video survey in DVD format.	\$ _____	\$ _____
141	9 EACH	Conduct final well disinfection using liquid chlorine to achieve 500 mg/L residual chlorine concentration.	\$ _____	\$ _____
142	9 EACH	Excavate wellhead and provide shoring to accommodate wellhead vault structure; cut nominal 18-in. slant well casing to required depth and install flange to accommodate wellhead discharge adapter.	\$ _____	\$ _____
143	720 HR	Standby time with active Dual Rotary drilling rig and crew as directed for all circumstances.	\$ _____	\$ _____
<b>TOTAL - DRILLING, CONSTRUCTION, DEVELOPMENT AND TESTING OF NINE SLANT WELLS (Bid Items 100-143):</b>			\$ _____	\$ _____
<b>OPTIONAL ITEMS:</b>				
144	2,170 FT	Furnish and install nominal 20-in. (14 in. wall thickness) Type 2507 Super Duplex Stainless Steel (ASTM A928) blank casing as specified, including Type 2507 SDSS tremie guides and centralizers as specified. All field welds shall be passivate.	\$ _____	\$ _____
145	3,160 FT	Furnish and install nominal 20-in. (14 in. wall thickness) Type 2507 Super Duplex Stainless Steel (ASTM A928) full-flow louvered screens with 0.060 in. openings as specified, including Type 2507 SDSS tremie guides and centralizers as specified. All field welds shall be passivated.	\$ _____	\$ _____





**Monterey Peninsula Water Supply Project Governance Committee**

**Meeting Date:** September 16, 2015

**Action Items**

**Agenda Item:** 3. **Adopt Minutes of August 26, 2015 Governance Committee Meeting**

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**Summary:** Attached as Exhibit 3-A are draft minutes of the August 26, 2015 Governance committee meeting.

**Recommendation:** Review the minutes and consider approval.

**Exhibits:**

**3-A** Draft Minutes of August 26, 2015 Committee Meeting



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**GOVERNANCE COMMITTEE  
FOR THE  
MONTEREY PENINSULA WATER SUPPLY PROJECT**

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California American Water • Monterey County Board of Supervisors  
Monterey Peninsula Regional Water Authority • Monterey Peninsula Water Management District

**EXHIBIT 3-A  
DRAFT MINUTES  
Regular Meeting and  
Special Meeting  
Governance Committee  
for the  
Monterey Peninsula Water Supply Project  
August 26, 2015**

- Call to Order:** The Regular and Special meetings were called to order at 2 pm in the conference room of the Monterey Peninsula Water Management District offices.
- Members Present:** Robert S. Brower, Sr., representative for Monterey Peninsula Water Management District  
Jason Burnett, representative for Monterey Peninsula Regional Water Authority (participated by telephone)  
David Potter, representative for Monterey County Board of Supervisors  
Richard Svindland, representative for California-American Water (alternate to Rob MacLean)
- Members Absent:** Robert MacLean, representative for California American Water
- Pledge of Allegiance:** The assembly recited the Pledge of Allegiance.
- Public Comments:** Michael Warburton, representing the Public Trust Alliance (PTA), stated that the Monterey Peninsula Water Supply Project has run into some problems. The regulatory world and institutions have changed profoundly. There is still a way to get back and acknowledge the changed circumstances. Or, you can plow through a lot of legalese and keep on going doing something that is no longer reasonable in the mind of the public or for the public benefit. Mr. Warburton stated further that there is a lot of gerrymandering on lots of different levels and it is not beneficial at this point. As an intervener in the case for the sake of the public interest, he asked that the special meeting also take account of changed circumstances. He requested a public discussion of what is involved, and an effort to solve the problem in the political institutions whose job it is to solve them, rather than super-complex attempts to take it behind closed doors. This is not litigation. It is a political process. It would be good if there were open and honest discussion at the Board of Supervisors and City Council meetings as to where this project is, whose interests it is serving, and how it can be most effectively and reasonably carried out.

**Presentations****1. Progress Report from California-American Water on the Monterey Peninsula Water Supply Project Including Updates on Production from Test Slant Well; Desalination Project Design; and Design and Procurement of Conveyance Facilities**

Ian Crooks, Engineering Manager, California-American Water (Cal-Am), presented the progress report. A summary of his presentation is on file at the Water Management District office and can be viewed on the Governance Committee web site. He reported the following. On June 5, 2015 the slant test well was turned off because Condition 11 of the permit required that if test well levels dropped 1.5 feet the well should be shut down. Graphs of drawdown in monitoring wells 1, 3 and 4 indicate that when the test well was turned off, there was no impact or minimal impact to water levels in the monitoring wells. The California Coastal Commission (CCC) hearing is set for October 7 through 9, 2015 in Long Beach, CA. After the CCC approves long-term operations of the test slant well, the pump must be pulled in order to investigate why there is an inconsistency in amperage. Salinity levels in the pumped water was at 86%, however the expectation is that long-term pumping will yield 90% salinity. Since the test well has been turned off, the deep test well has declined 4 feet, the medium depth test well declined 1.5 feet and the shallow test well declined .5 feet. In response to a question from the committee, Crooks stated that Condition 11 does not specify which monitoring well must exhibit the 1.5 feet drawdown before shutting of the test slant well. Cal-Am proposes that the amended permit will specify that the 1.5 feet drawdown will apply to an average drawdown of the shallow and medium depth test wells. Svindland noted that the CCC has hired an independent consultant to review the test well data. Crooks reviewed the conveyance facilities procurement schedule and production wells procurement schedule.

Svindland reviewed two alternate pipeline routes analyzed in the project EIR. He also reviewed a route suggested by the City of Monterey that is not studied in the EIR. He explained that the third route is not preferred for the following reasons: water must be lifted above a ridge which causes excess pressure in the lines; a high percentage of older mains would need to be replaced; extra 5 miles of pipeline would be needed at an additional cost of \$14; and an extra \$5 to 7 million for power costs to life water over the ridge.

Public Comment: **(A) Steve Whitree**, Acting Engineer for the City of Monterey, stated that there are technical issues that could be discussed, such as reducing pressure in the lines along the pipeline route to eliminate the concern about older pipelines needing replacement. He asked what process Cal-Am followed in order to determine the two pipelines that are studied in the EIR. **(B) Dale Hekhuis** asked for clarification of the length of the three pipeline proposals. **(C) George Riley** asked if tunneling would be an option for pipeline routes. He asked if an externalities analysis had been conducted to compare pipeline replacement on Carmel Valley Road to pipeline replacement in downtown city areas. *Svindland responded that concerns about earthquakes must be considered with tunnels, but it would solve the pressure issue. However, Cal-Am could look at that as an option. He noted that the EIR will address construction impacts on traffic.* **(D) David Stoldt**, Monterey Peninsula Water Management District (MPWMD) asked for clarification that the City of Monterey pipeline proposal would not solve the problem of bringing water across the hydraulic barrier. *Svindland agreed and stated that under certain circumstances, the Monterey alternative would prevent desalinated water and water from the Pure Water Monterey project from being distributed throughout the Cal-Am system.* **(E) Doug Wilhelm** asked for clarification of the pipeline costs. *Svindland stated*



*that the settling parties agreed on a cost of \$510 per foot. The RFP is requesting cost estimates for Alternative 2 in the EIR. (F) Michael Warburton, PTA, stated that this exercise compares each pipeline alternative. The desal exercise has not been determined to be necessary. It may be possible to do a project with known technologies moving water from the Salinas area to the Peninsula without any of these disruptions in urban areas, and you said that real numbers would be available in October. The last chance the public can comment on the EIR is the end of September. This is a very artificially segmented deal. You are talking about an EIR which, on its face, does not satisfy CEQA. There is too much legal engineering going on here. Questions such as: how do you compare one to another – nobody can answer that at this point. This meeting should be on whether an actual decision can be made or whether this is an entire exercise of avoiding reasonable alternatives. This process has been very successful at avoiding speaking of reasonable alternatives. I want to ask whether a reasonable consideration can be built into the process.*

### Action Items

**2. Review California American Water Notification #8 – Draft Construction Contract – Monterey Peninsula Water Supply Project Desalination Conveyance Facilities, and Develop a Recommendation to California America Water Concerning the Contract Terms**

In response to a question from the committee, Crooks confirmed that the bids will be presented in unit pricing. If the contractor damaged utility lines that were marked, the contractor would be responsible. If previously undisclosed infrastructure was damaged, Cal-Am would be responsible. Svindland stated that advance engineering activities should minimize the occurrence of damage to utilities in the field.

Public Comment: **(A) Tom Rowley**, Monterey Peninsula Taxpayers Association, said that he doubted the California Public Utilities Commission (CPUC) would close public comment on the project EIR without more extensive testing of the test slant well. He stated that it was premature for Cal-Am to receive bids on project components before it is clear that there is a viable project. He expressed concern about stranded costs that the ratepayers could be responsible for. **(B) George Riley** stated that monitoring well records after June 5, 2015, indicate that agricultural pumping was responsible for the drawdown. *Svindland responded that other users contribute to pumping in the area, it is not exclusively agricultural. He also confirmed that the pipeline route proposed by the City of Monterey is not analyzed in the project EIR.* **(C) Michael Warburton**, PTA, stated that the discussion of El Estero Water Rights is important, but the Pure Water Monterey project stands on its own. It is not part of the desalination project. It is being done due to common sense. The point is that El Estero was not considered because it is a small amount of water and it is not a high priority. What we are talking about here is ½ of 1 percent of regular usage of Salinas Valley Water that would totally solve this urban problem that is being discussed. The same consciousness of relativity of water rights of El Estero, that hey, it would be really good to do something because of common sense, applies to the whole project, the whole source water, and the whole consideration of this project. It is a very small amount of water that gets lost in the uncertainty of the water rights, and that thought is actually the key to solving this whole problem. That is, just in the uncertainty in terms of measuring, if it is so small, then why don't you build some wells, and put in a pipe, and serve the public interest. And that is related to item #2 in the Regular and Special meeting.

A committee member asked how the projected pipeline costs would change if an alternate to Route 2 was selected as a result of the EIR. *Svindland responded that this is a unit price contract, so if a new route increased costs, the contractor would need to explain the increase in detail. This contract must be put out to bid quickly so that Cal-Am knows if the estimated cost the parties agreed to a year ago is accurate. Once a contractor is selected, Cal-Am can negotiate with the contractor for new unit prices and the Governance Committee will review the final contract before it is approved.*

Burnett offered a motion that was seconded by Potter to accept and approve the RFP for distribution as presented. The motion was approved unanimously on a roll-call vote of 3 – 0 by Burnett, Potter and Brower.

**3. Consider Endorsement of California American Water Company Procedure for Addressing Conflict of Interest Disclosure in Requests for Proposals and Contracts Associated with the Monterey Peninsula Water Supply Project**

Svindland presented the item. In response to a question from the committee, he confirmed that the “Scheduled Construction Date” of November 18, 2015 listed in one of the examples of conflict of interest disclosure language, will be updated in discussions with the contractor.

Public Comment: **(A) David Stoldt**, MPWMD, stated that the conflict of interest language samples provided are examples from other contracts and the dates on the pipeline contract documents will be updated. **(B) George Riley** asked if there has been an investigation into the possibility that subcontractors Geoscience and the driller Board Longyear may have an agreement that has not been disclosed. The concern is that if they have an agreement, they will work hard to achieve success with the project, but that may lead them to misread, misjudge or misrepresent certain information to the public. **(C) Michael Warburton**, PTA, expressed appreciation for the conflict of interest language, but stated there is a problem with who is being protected. Under agenda item 2, the language for contracts was very clear that proposers could rely on certain things and Cal-Am could rely on certain things, but the public needs to rely on statements and the product of negotiations between these companies. It seems that what this amounts to is the person saying, “I don’t have a conflict of interest.” Therefore, Cal-Am is not responsible for anything, neither is the County and what’s really lacking is the transparency to support the statements which are signed. There have been so many statements signed. There needs to be renewed commitment to transparency and public information that goes beyond particular words that might be in particular contracts. He expressed appreciation for Cal-Am presenting the conflict of interest language, but hoped the public will be protected in these deals.

Potter offered a motion that was seconded by Burnett that the committee endorse the conflict of interest procedures presented by California American Water. The motion was approved on a roll-call vote of 3 – 0 by Potter, Burnett and Brower.

**4. Adopt Minutes of June 24, 2015 Governance Committee Meeting**

There was no committee discussion or public comment presented on this item.

On a motion by Potter and second of Burnett, the minutes of June 24, 2015 were approved on a unanimous roll-call vote of 3 – 0 by Potter, Burnett and Brower.

**Discussion Items****5. Suggest Items to be Placed on Future Agendas**

Crooks stated that at the October 16, 2015 meeting, Cal-Am will present notification on distribution of a request for proposals for slant well construction.

Michael Warburton stated that he has repeatedly suggested that the idea of reasonableness, processes, and change of circumstances be placed on the agenda; but like comments in other public processes, comments that don't come in at the right agenda item don't register. Several of the public agencies which have been intersecting with this MPWSP, one of the things that they do is if a comment is not entered at the right point, it hasn't been there. There is a dependence in this process, as it has happened heretofore at the PUC, CCC, boards of supervisors, and city councils that if comments don't appear on the agenda, they weren't made. That is no longer going to be an excuse for these other public bodies, and I'd like to use this opportunity to actually suggest that items be on the agenda because they are legally required and the reason they haven't been on the agenda is because people have not wanted to discuss them. I find that difficult.

**Adjournment**

The Regular and Special meetings were adjourned at 3:30 pm.

